
REPORT 3
(1215/53/IM)

ROAD STOPPING AND DISPOSAL - THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD, PART SEFTON STREET ADJACENT TO 113-117 SEFTON STREET, WADESTOWN

1. Purpose of Report

This report seeks approval to declare a portion of Sefton Street adjoining 113 – 117 Sefton Street, Wadestown be stopped (coloured green in the aerial photograph in Appendix 1).

This particular road stopping application originated in December 1999, prior to the implementation of the Council's new road stopping procedures (the new process requires only one Committee report). This is the final report required.

2. Recommendations

Officers recommend that the Regulatory Processes Committee:

1. *Receive the information.*
2. *Recommend that the Council resolves to publicly notify that the portion of road adjoining 113 - 117 Sefton Street, Wadestown comprising approximately 596m² being Sections 1, 2 & 3 S O 338421 be declared stopped in accordance with the Tenth Schedule of the Local Government Act 1974¹ (Refer to Appendix 2).*
3. *Recommend that Council authorises the Chief Executive Officer to finalise the road stopping and complete final terms of sale.*
4. *Note the area to be road stopped Sections 1, 2 & 3 on SO 338421 will be amalgamated with the adjoining land being Lots 1, 2 & 3 DP 24195 respectively held in Computer Freehold Registers WNA3/1367 and WNA3/1366.*

3. Background

It is proposed to stop a portion of legal road at Sefton Street, Wadestown which adjoins 113 - 117 Sefton Street. The area comprises 596m² shown as sections 1, 2 & 3 on S O Plan 338421.

¹ The Relevant provisions in the 1974 Act were not repealed when the 2002 Act came into force.

If the road is successfully stopped, the land being Sections 1, 2 & 3 on S O 338421 will be amalgamated with the adjoining land being Lots 1, 2 & 3 DP 24195 respectively held in Computer Freehold Registers WNA3/1367 and WNA3/1366.

This road stopping will facilitate the acquisition of 1.36 hectares of land to be added into the Council's Reserve at the adjoining Trelissick Park. This acquisition by land exchange was approved at a public excluded meeting of the Council on 18 June 2003.

On 6 October 2004 the Council resolved that the road stopping could be completed if the objections/submissions were withdrawn. These were not withdrawn and the matter was referred to the Environment Court on 12 September 2005. The Environment Court ruled in favour of the road stopping on 15 September 2006, and this is briefly discussed in Section 4.3 below. This report is required because the previous Council approval was conditional on the submissions being withdrawn (Refer to the minutes in Appendix 3).

4. Discussion

4.1 Statutory Criteria

Road stopping is provided for under the provision of Section 342(1) of the Local Government Act (LGA) 1974, with the required procedure being set out by the Tenth Schedule of the LGA.

The Council has complied with the LGA in terms of the requirements of the Tenth Schedule in respect of the plan, notification and receiving of objections.

4.2 Environment Court

The objections/submissions were heard by the Regulatory Committee on 28 September 2004 and on their recommendation they were rejected by the Council at a meeting on 6 October 2004. The submissions were not withdrawn following that Council meeting, and mediation was not accepted by the objectors. The matter proceeded to the Environment Court and was heard on 12 September 2005.

The Environment Court ruled that the road stopping will not have any adverse effect on road safety, parking, access or any Front Yard Rule implications. The Council's decision to stop part of Sefton Street, Wadestown was confirmed by the Environment Court on 15 September 2006 (refer to Appendix 4).

4.3 Next Steps

The next steps in the road stopping are as follows:

- Declare road stopped by public notification in the Dominion Post.
- Copies of the Public Notice and Survey Office Plan 338421 will be deposited in the office of LINZ for registration. At which time this part of Sefton Street will cease to be road.

- Stopped road will be transferred to the applicant and 1.36 ha of land will be transferred to the Council by exchange and amalgamated with the Trelissick Park Reserve.

5. Conclusion

On 6 October 2004 Council approved the road stopping subject to the neighbours objections being withdrawn. The objections were not withdrawn and the matter was referred to the Environment Court where it found in favour of the road stopping, overruling the neighbours objections on 15 September 2006. Council's obligations under the Local Government Act 1974 have been met. It is recommended that the Regulatory Processes Committee recommends to Council that officers should proceed with the road stopping and the sale process under the Local Government Act 1974.

Contact Officer: *Charlotte Campbell Lamerton – Property Advisor, Property Services.*

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.

The sale of legal road, 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.

There are no adverse financial implications imposed on the Council arising from this road stopping proposal. This proposal will benefit the Council in financial terms as the applicant will acquire 596 m² of stopped road and in exchange the Council will acquire 1.36 hectares of land to add to Trelissick Park Reserve.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications.

4) Decision-Making

This report sets out the Council's responsibilities under the relevant legislation and Council's 2004 Road Encroachment and Sale Policy.

5) Consultation

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, except Urban Development who requested that no more than 50% of the road frontage will be built on to a maximum single storey height (taken from formed road level). Service Authorities have been consulted with no conditions imposed.

The adjoining landowners have been consulted and objected to the proposed stopping. Their objections were heard, considered and rejected by the Council and subsequently the Environment Court.

6) Legal Implications

The legal implications are discussed in Section 4. There are no adverse legal implications to this proposal.

APPENDIX 1
AERIAL PHOTOGRAPH

APPENDIX 2
SURVEY OFFICE PLAN

APPENDIX 3

**MINUTES OF THE WELLINGTON CITY COUNCIL
ORDINARY MEETING
6 OCTOBER 2004**

APPENDIX 4

**FINAL DECISION OF THE ENVIRONMENT COURT
15 SEPTEMBER 2006**

IN THE MATTER of the Local Government Act 1974

AND

IN THE MATTER of a proposed road stopping by THE WELLINGTON CITY COUNCIL of a portion of Sefton Street, Wadestown, under the 10th Schedule to the Act

(ENV-2006-WLG-000137
formerly ENV W 0157/05)

BEFORE THE ENVIRONMENT COURT

Environment Judge S E Kenderdine sitting alone pursuant to section 279 of the Act

IN CHAMBERS

FINAL DECISION

[1] On 7 July 2004 the Wellington City Council (WCC) gave notice of its intention to stop part of Sefton Street, Wadestown, Wellington. The WCC received three objections to the proposal. After hearing the objections, the WCC decided not to allow them. The WCC forwarded the application to the Court, under clause 5 of the Tenth Schedule to the Local Government Act 1974 (LGA) and requested that the Court confirm its decision to stop the road.

[2] I summarised my initial findings on the WCC's application thus:



I consider that the requirements of clauses 1-3 of the Tenth Schedule have been met, and that other procedural matters raised are outside the jurisdiction of this Court on a road stopping application. I find that the proposed road stopping will not affect road safety matters, parking or access. In particular, on Mr Sumby's evidence,

the existing access to 119 Sefton Street will be maintained. I am satisfied with the WCC's explanation that the road is no longer required for roading purposes, and the remaining road is sufficient for foreseeable roading purposes. However, I am not satisfied with the WCC's explanation as to JH2's concerns about the application of the Front Yard Rule. I will need clarification of that matter before I can decide whether or not to confirm the WCC's decision to stop the road.

[3] I asked the WCC to provide an affidavit addressing the Front Yard Rule as it applies to 116 Sefton Street. The WCC has lodged an affidavit from Mr J T C Loo. Mr Loo corrects the earlier error in affidavit evidence, and says that the road will be no less than 20 metres wide at any point.

[4] Therefore, the proposed road stopping will not have any effect on the application of the Front Yard Rule to any of the properties on Sefton Street, including 116 Sefton Street. The "nil" front yard requirement that the site currently enjoys will not change. This deals with JH2 Ltd's objection to the roadstopping. For this reason, and the reasons I set out in the Interim Decision, I consider it is appropriate to approve the WCC's proposal to stop a portion of Sefton Street.

[5] The Wellington City Council's decision to stop part of Sefton Street, Wadestown, is confirmed.

[6] Costs are reserved. Any application is to be made within 15 working days of the date of this decision, with any reply to be lodged within a further 10 working days.

DATED at WELLINGTON this ^{15th} day of September 2006



S. E. Kenderdine
S E Kenderdine

Environment Judge

wcc road stopping final.doc

Issued: 15 SEP 2006

