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**REPORT 2**  
*(1215/53/IM)*

## **ROAD STOPPING AND DISPOSAL - THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 62 WELD STREET, WADESTOWN**

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### **1. Purpose of Report**

The purpose of this report is to obtain agreement to authorise officers to proceed with the road stopping and sale of approximately 108 m<sup>2</sup> of Council owned unformed legal road adjoining 62 Weld Street, Wadestown, and acquisition of approximately 1 m<sup>2</sup> of associated land by exchange.

Refer to appendix one for aerial showing both areas of land in red.

### **2. Executive Summary**

This report seeks approval to declare surplus a total area of road land of 108m<sup>2</sup>.

A decision to declare surplus and stop 61m<sup>2</sup> of unformed legal road adjoining 62 Weld Street was approved by Council on 27 June 2008. The reason for the larger area of land being considered now is that the previous 61m<sup>2</sup> had been based on encroachment licence records, which were incorrect.

When the surveyors prepared the survey office plan for the road stopping, they also identified that a small area (1.125 m<sup>2</sup>) of the public footpath is actually built on private land belonging to 62 Weld Street. Council's Road and Traffic Maintenance unit want to acquire this land to preserve the existing footpath and ensure that visibility on the road corner concerned is not compromised, and also to allow for any future road widening.

The sale of the road land and the acquisition of the private land for footpath are proposed to be carried out by way of land exchange. The current market value of each area has been assessed separately by a registered valuer and agreed between the parties. Council will receive the amount of \$59,138 including GST.

### **3. Recommendations**

Officers recommend that the Committee:

- 1. Receive the information.*

2. *Recommend that the Council:*

- (a) *Agree that the area of approximately 108m<sup>2</sup> (subject to survey) of unformed road (Road Land) adjoining 62 Weld Street (Adjoining Land) is not required for a public work.*
- (b) *Approve the disposal of the Road Land.*
- (c) *Delegate to the Chief Executive Officer the power to either offer the Road Land 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) Public Works Act 1981 (if appropriate).*
- (d) *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.*
- (e) *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.*

*Note: that if objections are received to the road stopping and the applicant wishes to continue with the road stopping, a further report will be presented to the Committee for consideration.*

- (f) *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, either with the former owner or their successor, or the owner of the Adjoining Land, provided any such agreement is conditional upon the road being stopped.*
- (g) *Agree to the acquisition of approximately 1m<sup>2</sup> of land currently held in Computer Freehold Register WN94/273, and to the vesting of that land in the Wellington City Council as road.*
- (h) *Delegate to the Chief Executive Officer the power to negotiate and finalise the terms of the acquisition described in (g) above, and enter into a sale and purchase agreement, by way of exchange.*

## **4. Background**

### **4.1 Application**

An application to stop an area of road land has been submitted by the owners of adjoining land at 62 Weld Street, Wadestown. This land is legally described as Lot 18 DP 299 contained on Computer Freehold Register WN94/273.

Under the LGA local authorities are permitted to sell portions of legal road which they no longer require for roading purposes or another public work.

This road stopping application was the subject of a previous report that the Regulatory Processes Committee and Council considered in June 2008, when 61m<sup>2</sup> of the 108m<sup>2</sup> was declared surplus.

Refer to appendix two for copy of the meeting minutes.

Council officers now wish to advance the road stopping of the unformed road adjoining 62 Weld Street, Wadestown, to the eventual disposal of the land to the adjoining owners, and the exchange of privately owned land for footpath.

#### ***4.2 Section 40 Public Works Act 1981 - Offer back investigations***

In 2008 offer back investigations under section 40 of the Public Works Act 1981 (PWA), were satisfied, and a section 40 PWA report prepared.

The section 40 report found that offer back was exempt. This finding was approved by the Chief Executive Officer on 13 January 2009.

The exemption was based on section 40 (4) PWA. This concerns situations where due to the size, shape, or situation of the land it could not be expected to sell that land to any person who did not own land adjacent to it.

However the offer back exemption assessment only considered a land area of 61m<sup>2</sup>. This point has been further reviewed to consider whether the larger 108m<sup>2</sup> area of land would still be exempt. The Property Group, being a LINZ accredited agent, were consulted and confirmed that the increased area had no effect on the offer back exemption.

#### ***4.3 Exchange Agreement***

An agreement for the exchange of land at 62 Weld Street, Wadestown has been signed by both parties. The agreement is subject to Council approval being obtained.

### **5. Discussion**

Council business units confirmed in June 2008 that the unformed legal road adjoining 62 Weld Street, Wadestown is no longer required for a public work. The road stopping applicant's surveyor subsequently identified that part of the public footpath adjoining 62 Weld Street is over that property. Completion of the road stopping process and sale of the unformed road to the adjoining owner, and the associated acquisition of the small area of land (by exchange) should be progressed.

#### ***5.1 Valuations***

The current market value of the two areas of land was assessed by Darroch Limited. The approximate 1m<sup>2</sup> area of land being acquired is assessed as being worth \$2,362.00 including GST, and the 108m<sup>2</sup> area is assessed as being worth

\$61,500 including GST. Those two sums are included in the exchange agreement and the payment to Council will be \$59,138 including GST.

### **5.2 Next steps**

If Council approve the recommendations contained in this report, the next steps in the road stopping and sale, and transfer process are:

- complete survey
- carry out public notification of the intent to stop the road
- receive any objections, and attend to the Environment Court hearing (if required)
- undertake public notification that road is stopped
- attend to settlement and transfer of the stopped road land, and by exchange acquire a little over 1m<sup>2</sup> of 62 Weld Street for road purposes.

## **6. Conclusion**

After due consideration of this road stopping application, and the situation of public footpath being on private land, officers recommend that the Regulatory Process Committee recommends to the Council that officers proceed with the road stopping and sale process under the Local Government Act 1974, and acquisition of land for 'road', by exchange.

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.*

### **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 legal road and acquisition of land for road, by exchange.*

*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 all survey and administration and half legal and valuation costs. This proposal will benefit 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 2004 Road Encroachment and Sale Policy.*

### **5) Consultation**

#### **a) General Consultation**

*Consultation with the relevant Internal Business Units, the Wellington Tenth and Ngati Toa has been carried out as part of this application. They have all advised that they have no objection to the proposed road stopping.*

*Neighbours and Service Authorities have been consulted and any conditions noted in the previous report.*

*The applicants have agreed in writing to these conditions.*

### **6) Legal Implications**

*Any legal implications were addressed in the report to the Regulatory Process Committee meeting of 25 June 2008.*



# APPENDIX ONE

Aerial photograph







# APPENDIX TWO

Minutes – Regulatory Processes Committee meeting - 25 June 2008



## REGULATORY PROCESSES COMMITTEE

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### MINUTES

WEDNESDAY 25 JUNE 2008

1.01PM

Committee Room 2  
Ground Floor, Council Offices  
101 Wakefield Street  
Wellington

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**PRESENT:**

Councillor Gill (Chair)  
Councillor Best  
Councillor Cook (1.01 – 1.36pm)  
Councillor Goulden (Deputy Chair)  
Councillor McKinnon (in the Mayor's absence)  
Councillor Pannett  
Councillor Wain

**APOLOGIES:**

Mayor Prendergast  
Councillor Cook (for an early departure)

034/08RP **APOLOGIES**  
(1215/53/IM)

**RESOLVED:**

*THAT the Regulatory Processes Committee:*

- 1. Accept apologies for absence from Mayor Prendergast.*
- 2. Accept apologies for an early departure from Councillor Cook.*

038/08RP **EARTHQUAKE PRONE BUILDING POLICY: REQUESTS FOR EXTENSION OF TIME - 83 CONSTABLE STREET, 37 CLEVELAND STREET AND 38 - 42 WILLIS STREET**  
Report of Claire Stevens, Team Leader Bylaws, Building Consents and Licensing Services.  
(1215/11/IM) (REPORT 2)  
**Moved Councillor Gill, seconded Councillor Pannett the substantive motion.**

**Moved Councillor Best, seconded Councillor Wain the following amendment to recommendation 1.**

THAT the Regulatory Processes Committee approve an extension of time related to 38-42 Willis Street, to reduce or remove the danger by **30 June 2009**.

**The amendment was put and declared carried.**

**The substantive motion as amended was put and declared CARRIED.**

**RESOLVED:**

*THAT the Regulatory Processes Committee:*

1. *Approve an extension of time related to 38-42 Willis Street, to reduce or remove the danger by **30 June 2009**.*

039/08RP **ROAD STOPPING AND DISPOSAL: THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 62 WELD STREET, WADESTOWN**  
Report of Paul Davidson Property Adviser, Property Services.  
(1215/11/IM) (REPORT 3)

**Moved Councillor Gill, seconded Councillor Goulden the substantive motion.**

**The substantive motion was put and declared CARRIED.**

**RESOLVED AND RECOMMENDED TO COUNCIL:**

*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 area of approximately 61m<sup>2</sup> (subject to survey) of unformed legal road adjoining 62 Weld Street, Wadestown is not required for a Public Work.*

*Note: 62 Weld Street, Wadestown is described as Lot 18, DP 299, being Computer Freehold Register WN94/273.*

- 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.*
3. *Note that once the Section 40 report has been received, a report will be presented to the Chief Executive Officer for approval under delegated authority to either offer the land back to its former owner or their successor, or to approve the exemption from offer back.*
  4. *Authorise Council officers to initiate the road stopping process in accordance with Section 342 and the Tenth Schedule of the Local Government Act 1974.*
  5. *Subject to all statutory and Council requirements being met with no objections to the road stopping being received, Council delegates to the Chief Executive Officer the power to formally approve the road stopping and issue the public notice to declare the road stopped.*
  6. *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.*
  7. *Delegate to the Chief Executive Officer the power to negotiate the terms of sale and enter into a sale and purchase agreement, provided any such agreement is conditional upon the road being stopped.*

**040/08RP RESOLUTION TO EXCLUDE THE PUBLIC  
(1215/53/IM)**

**Moved Councillor Gill, seconded Councillor Best the motion to exclude the public**

**The motion was put and declared CARRIED.**

**RESOLVED:**

*THAT the Regulatory Processes Committee:*

*Pursuant to the provisions of the Local Government Official Information and Meetings Act 1987, resolve that the public be excluded from the following part of the proceedings of this meeting namely:*

*Report 4 - District Plan Change Appeal*

Minutes – Council meeting – 27 June 2008



COUNCIL

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MINUTES

FRIDAY 27 JUNE 2008

9.17 – 9.20AM  
9.30AM – 2.54PM

Council Chamber  
First Floor, Town Hall  
Wakefield Street  
Wellington

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**PRESENT:**

Mayor Prendergast  
Councillor Ahipene-Mercer (9.17 – 9.20am, 9.30am – 12.32pm, 1.33 – 2.46pm)  
Councillor Best  
Councillor Cook (9.17 – 9.20am, 9.30am – 12.42pm)  
Councillor Coughlan  
Councillor Gill (9.17 – 9.20am, 9.30am – 11.43pm)  
Councillor Goulden (9.17 – 9.20am, 9.30 – 10.58am, 11.18 – 2.54pm.)  
Councillor McKinnon  
Councillor Morrison  
Councillor Pannett  
Councillor Pepperell  
Councillor Ritchie (9.17 – 9.20am, 9.30 – 10.58am, 1.22 – 2.54pm)  
Councillor Wade-Brown  
Councillor Wain

**APOLOGIES:**

Councillor Foster

*the Committee, be declared stopped in accordance with the Tenth Schedule of the Local Government Act 1974.*

2. *Authorise the Chief Executive Officer to negotiate and complete final terms of sale.*

073/08C **REGULATORY PROCESSES COMMITTEE**  
**Meeting of Wednesday 25 June 2008**  
(1215/11/IM) (REPORT 7)

1. **ITEM 039/08RP ROAD STOPPING AND DISPOSAL: THE LOCAL GOVERNMENT ACT 1974: LEGAL ROAD ADJOINING 62 WELD STREET, WADESTOWN**  
(1215/11/IM) (REPORT 3)

**Moved Councillor Goulden, seconded Councillor Gill, the substantive motion.**

**The substantive motion was put.**

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

Voting against: Nil.

Majority Vote: 13:0

**The substantive motion was declared CARRIED.**

**RESOLVED:**

*THAT Council:*

1. *Pursuant to Section 40 of the Public Works Act 1981:*
  - a) *Agree that the area of approximately 61m<sup>2</sup> (subject to survey) of unformed legal road adjoining 62 Weld Street, Wadestown is not required for a Public Work.*

*Note: 62 Weld Street, Wadestown is described as Lot 18, DP 299, being Computer Freehold Register WN94/273.*
  - 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.*