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REPORT 4  
(1215/53/IM)

## ROAD STOPPING AND DISPOSAL --- LEGAL ROAD ADJOINING 2 LOWER WATT STREET, WADESTOWN

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### 1. Purpose of Report

This report seeks the Committee to recommend to Council to agree that approximately 161m<sup>2</sup> of Council- owned unformed legal road adjoining 2 Lower Watt Street, Wadestown (shown highlighted green on Appendix 1) is no longer required for Council's operational requirements and to authorise officers to proceed with the offer back investigation and eventual road stopping and sale.

### 2. Executive Summary

An application has been made to Council by the owners of 2 Lower Watt Street, Wadestown to stop a portion of unformed legal road (the **Land**), adjoining their property.

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 business units and external service authorities have been consulted and all support the disposal subject to a batter easement being registered against the Land to enable Council future access to Barnard Street (below the south boundary of 2 Lower Watt Street) for maintenance purposes.

Immediate neighbours have been consulted and no objections have been received. If the road stopping proposal is successful, the Land will be sold at current market valuation, and most of the costs will be met by the applicants.

### 3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend to Council that it:*
  - (a) *Agree that the area of approximately 161m<sup>2</sup> (subject to survey) of unformed legal road adjoining 2 Lower Watt Street, Wadestown is not required for a Public Work.*

- (b) Approve the disposal of approximately 161m<sup>2</sup> of unformed legal road land adjoining 2 Lower Watt Street, Wadestown to the owners of that property.*
- (c) Authorise Council officers to undertake or commission from suitably qualified consultants a section 40 Public Works Act 1981 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) Public Works Act (if appropriate).*
- (e) Authorise Council officers to initiate the road stopping process for the area of unformed legal road in accordance with Section 342 and the Tenth Schedule of the Local Government Act 1974.*
- (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 Officer the power to negotiate the terms of sale, impose any reasonable covenants, and enter into a sale and purchase agreement in respect of the unformed legal road land adjoining 2 Lower Watt Street, Wadestown, either with the former owner, or their successor, or the owner of 2 Lower Watt Street, Wadestown, provided any such agreement is conditional upon the road being stopped.*

#### **4. Background**

The application to stop the Land was submitted on 11 November 2011 by the owners of the property at 2 Lower Watt Street, being Lot 120 DP 2644 held within Computer Freehold Register WN288/141.

The Land is situated at the southern and eastern boundaries of the applicants' land and is adjacent to an embankment that rises steeply up from Barnard Street.

The applicants have an encroachment licence for a patio, garden and fenced decking area to the east (on which a trampoline sits) and a small part of the dwelling to the south. The application is to bring the bulk of these encroachments within the applicants' property but does not cover the decking area with the trampoline, which the applicants propose to demolish.

Under the LGA (s 342 and s 345) local authorities are permitted to sell portions of stopped road which they no longer require for roading purposes or another public work. As the LGA is not exempt from the provisions of the PWA, the Council is required to carry out Section 40 investigations to establish whether the land needs to be offered back to the previous owner or their successor in title.

If the Chief Executive Officer agrees with the recommendations of the Section 40 investigation report, Council officers will proceed with the road stopping and sale process prescribed under s 342 and s 345, and the Tenth Schedule of the LGA.

## **5. Discussion**

### **5.1 *The road stopping process***

During the course of the road stopping process, the applicants are responsible for paying on an interim basis all of the costs involved in processing their application. Should the Land be stopped and amalgamated with the applicants' property's title, application be successful, then the Council's recently introduced "costs sharing" policy will apply. This provides for a proportion of the costs paid by the applicants during the road stopping to be deducted from the land valuation in order to establish a final settlement price.

The applicants have been 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 will be incurred as part of this process. The applicants have agreed in writing to meet all of these requirements and costs.

### **5.2 *This application***

The Land is an irregularly-shaped parcel of land, approximately 161m<sup>2</sup> in size (subject to survey) adjoining the southern and eastern boundaries of the applicants' land. The 2 Lower Watt Street property has frontage to Lower Watt Street only.

The applicants wish to purchase the Land and amalgamate it with their title. They intend to continue using the land for their garden and patio area.

If the road stopping and sale are successful, the Land will be amalgamated with the adjoining property held in Computer Freehold Register WN288/141.

### **5.3 *Consultation***

The immediate neighbours, 4 and 4A Lower Watt Street, Wadestown have been consulted; neither objected to the road stopping proposal. Should any neighbour or member of the public have an issue with the road stopping proposal, they will have an opportunity to object at the public notification stage of the road stopping process. Public notification of all road stoppings is a statutory requirement.

All relevant services authorities consented to the road stopping and disposal of the Land.

All internal business units gave their approval to the road stopping and disposal. The Roading team require a batter easement be registered on the Land if the road is stopped. This is to enable Council future access to Barnard Street (below the south boundary of the property) for maintenance purposes access for maintaining Barnard Street below the south boundary of the property. The Development Planning and Compliance team noted that the road stopping would increase the development potential of the subject site and consequently increase visual bulk for the properties at 4 and 4A Lower Watt Street, who should be consulted with regard to the proposed road stopping.

Officers are satisfied that if all Service Authority and internal business unit requirements are met, the Land can be stopped and sold, provided all statutory and Council requirements are also met.

### **5.2 Financial Considerations**

Most of the costs associated with road stopping the unformed legal road land adjoining 2 Lower Watt Street, Wadestown will be met by the applicants. 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

### **5.6 Next Steps**

The next steps in the road stopping and sale process are as follows:

- Obtain a Section 40 report
- Obtain the Chief Executive Officers' approval of the Section 40 report recommendations
- 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

## **5. Conclusion**

In considering our obligations under the PWA, and LGA, officers believe that the 161m<sup>2</sup> of Council owned legal road adjoining 2 Lower Watt Street, Wadestown as marked on the aerial in Appendix 1 is no longer required for the Council's operational requirements and should be declared surplus.

It is recommended that the Regulatory Processes Committee recommends to Council that officers should proceed with the road stopping and sale process under the PWA and LGA.

Contact Officer: *Rosalind Luxford, 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.*

*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.*

*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, 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 has been carried out as part of this application. Road and Traffic Maintenance, and Development Planning and Compliance have given their consent subject to certain conditions. Service Authorities have been consulted.*

#### **b) Consultation with Maori**

*Local Iwi have been consulted with and have given unconditional consent.*

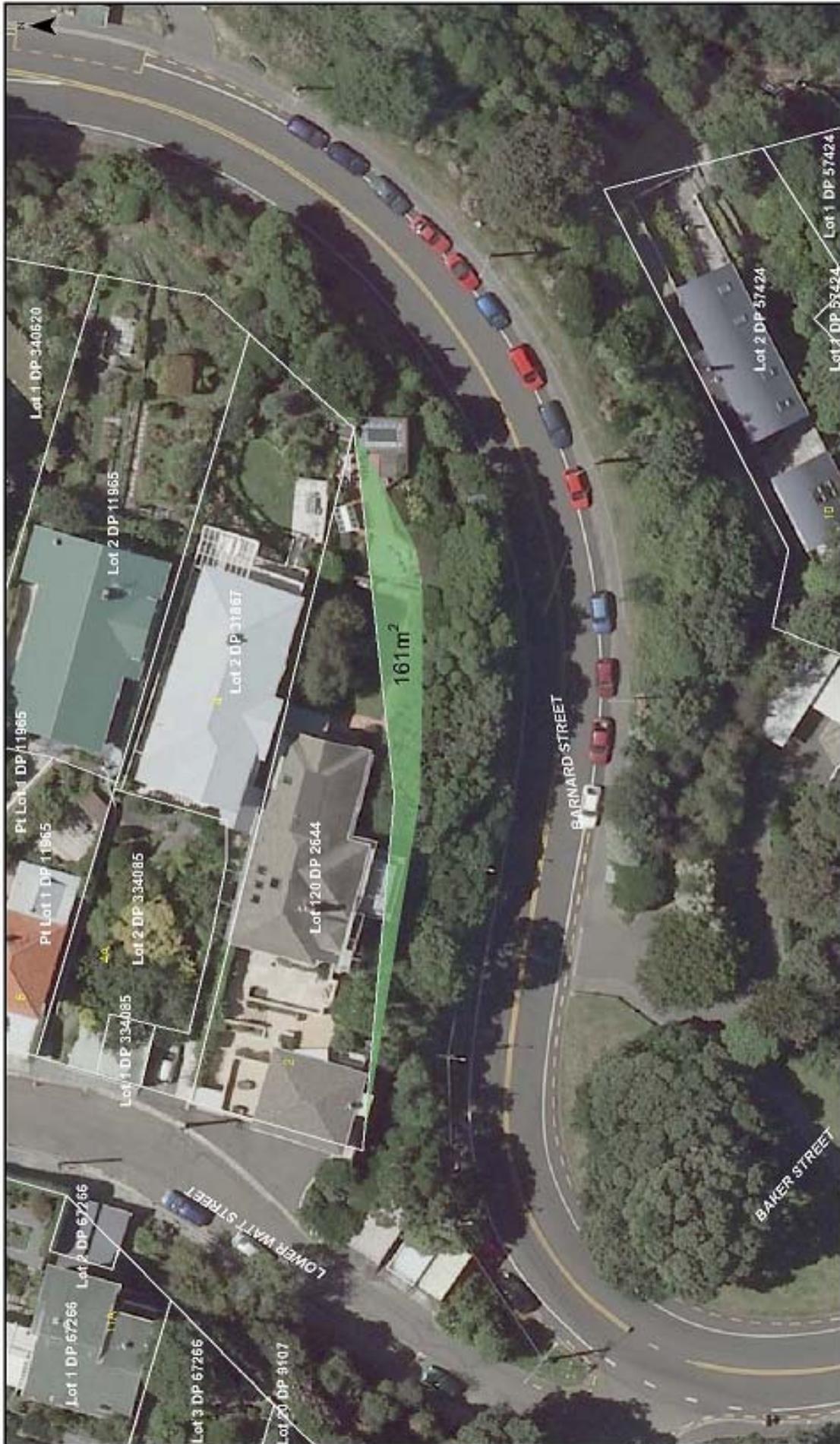
### **6) Legal Implications**

*There are no significant legal implications arising from this matter. Compliance with the LGA and Section 40 PWA considerations will address relevant issues.*

### **7) Consistency with existing policy**

*The recommendations of this report are consistent with WCC policy.*

# APPENDIX 1



## 2 Lower Watt Street Proposed road stopping

Property boundaries, 20m contours, road names, cell line, address & file paths sourced from Land Information NZ. Owner information sourced from the Land Information NZ. Property boundaries, 20m contours, road names, cell line, address & file paths sourced from Land Information NZ. Owner information sourced from the Land Information NZ. Property boundaries, 20m contours, road names, cell line, address & file paths sourced from Land Information NZ. Owner information sourced from the Land Information NZ.

MAP PRODUCED BY:  
Wellington City Council  
301 Wakefield Street  
WELLINGTON, NZ

ORIGINAL MAP SIZE: A4  
DATE: 23/12/2011  
AUTHOR: jshakes2a  
REFERENCE: 10150

**Absolutely  
Positively**  
The Best at What We Do Wellington