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**ROAD STOPPING AND DISPOSAL --- LEGAL ROAD ADJOINING  
32 CARLTON STREET, MELROSE**

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**1. Purpose of report**

This report recommends that Council agrees that approximately 240m<sup>2</sup> of Council-owned unformed legal road (the **Land**) adjoining 32 Carlton Street, Melrose (hatched yellow on Appendix 1) is no longer required for Council's operational requirements and that officers be authorised to proceed with the offer back investigation and eventual road stopping and sale.

**2. Executive summary**

An application has been made to Council to stop the Land and to amalgamate it with the adjoining property at 32 Carlton Street, Melrose. The owners of 32 Carlton Street currently hold an encroachment licence over the Land for garden use.

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.

Immediate neighbours have been advised about the proposal and will be given the opportunity to make submissions on the proposal at the public notification stage. 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 applicant.

**3. Recommendations**

Officers recommend that the Regulatory Processes Committee:

1. *Receive the information.*
2. *Recommend to Council that it:*
  - (a) *Agree that the area of approximately 240m<sup>2</sup> (subject to survey) of unformed road (the "Land") adjoining 32 Carlton Street (the "Adjoining Land") is not required for a public work.*
  - (b) *Approve the disposal of the Land.*

- (c) *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.*
  - (d) *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 Land with the owner of the Adjoining Land, provided any such agreement is conditional upon the road being stopped.*
3. *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.*
4. *Note the unformed road land has been valued at \$42,000, subject to survey.*

#### **4. Background**

In 2005, the previous owner of 32 Carlton Street commenced a road stopping application in relation to the Land. The proposal was considered by the Regulatory Processes Committee on 24 May and 2 August 2005, and subsequently by Council, who resolved that:

- the Land was no longer required for a Public Work;
- pursuant to section 40(4) of the Public Works Act 1981 (PWA) the Land was exempt from the offer back requirements of section 40 of the PWA; and
- officers were authorised to initiate the road stopping process in accordance with Section 342 and the Tenth Schedule of the Local Government Act 1974 (LGA).

The relevant Council resolutions are attached at Appendix 2.

The previous owner then decided not to proceed with the road stopping application and subsequently sold 32 Carlton Street.

The current application to stop the Land was submitted on 2 September 2010 by the new owners.

The Road Land is situated alongside the northern boundary of 32 Carlton Street and is currently used as by the owners as lawn under an encroachment licence.

#### **5. Discussion**

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

Under the LGA (section 342 and section 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. A section 40 investigation was undertaken as part of the previous application to stop and sell the Land, and as Council approved the findings that the Land was exempt from the offer-back requirements of the PWA, there is no need to carry out a further investigation as part of this application.

Accordingly, if the Committee approves the recommendations in this report, Council officers will proceed immediately to the next steps of survey and public notification, in accordance with the road stopping and sale process prescribed under sections 342 and 345, and the Tenth Schedule of the LGA.

### **5.2 Consultation and Engagement**

Owners of neighbouring properties have been informed of the proposed road stopping. To date, none have raised objections to stopping the Land. They along with other members of the public will have an opportunity to make a submission during the public notification stage.

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. Service authorities have been consulted and all have given their consent to the stopping subject to the usual conditions.

### **5.3 Financial considerations**

Most of the costs associated with stopping the Land will be met by the applicant. In August 2011 new cost sharing incentives for road stoppings were approved by Council. The cost sharing incentives mean that the final purchase price for the Land may be adjusted by deducting a portion of the costs paid by the applicant during the course of the application. In this case the value of the land proposed to be sold will be more than \$15,000, so the deduction will be the lesser of actual costs or an amount calculated as 15 per cent of the land value plus \$500, up to a maximum deduction of \$12,500. The amount of the deduction will be determined at the end of the road stopping process when all of the costs are known.

The net proceeds of the land will be received by the Council and applied to offset Council borrowings.

### **5.4 Climate change impacts and considerations**

There are no climate change impacts.

### **5.5 Long-term plan considerations**

This proposed road stopping has no impact on the Long-term Plan.

### **5.6 Next steps**

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

- Prepare a sale and purchase agreement with the adjoining owner.
- 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). If objections are received, a further report will be presented to the Committee for consideration.
- Undertake public notification that the road is stopped.
- Obtain a final valuation (if required).
- Attend to settlement and transfer of the stopped road.

## **6. Conclusion**

Officers believe that approximately 240 m<sup>2</sup> (subject to survey) of unformed legal road adjoining 32 Carlton Street 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 240 m<sup>2</sup> area of road land adjoining 32 Carlton Street, Melrose be stopped.

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) LTP/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 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. The report sets out a number of 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. Service Authorities have been consulted.*

#### b) Consultation with Maori

*Local Iwi have been consulted and have no objections to the proposal.*

### 6) Legal implications

*The proposal will be carried out in accordance with the applicable provisions of the LGA and PWA.*

### 7) Consistency with existing policy

*This proposal is consistent with WCC policy.*



# APPENDIX 1







## Minutes of Council meetings, 2005 application



## WELLINGTON CITY COUNCIL

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### MINUTES

WEDNESDAY 25 MAY 2005

5.30PM

COUNCIL CHAMBER  
FIRST FLOOR, TOWN HALL  
WAKEFIELD STREET  
WELLINGTON

#### PRESENT:

Mayor Prendergast  
Councillor Ahipene-Mercer  
Councillor Armstrong  
Councillor Cook  
Councillor Foster  
Councillor Gill  
Councillor Goulden  
Councillor McKimmon  
Councillor Morrison  
Councillor Pepperell  
Councillor Ritchie (5.37 – 6.01pm)  
Councillor Ruben  
Councillor Shaw  
Councillor Wade-Brown  
Councillor Wain

#### RESOLVED:

1. **ITEM 023/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGE ONE: 32 CARLTON STREET, MELROSE (1215/53/IM) (REPORT 1)**

*THAT Council:*

1. *Pursuant to Section 40 of the Public Works Act 1981:*
  - a) *Agree that the area of unformed legal road adjoining 32 Carlton Street, Melrose, (Appendix 1) is not required for a Public Work.*
  - 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 in title, or whether an exemption from offer back applies.*
2. *Note that once the Section 40 report has been received, a further report will be presented to Council for their approval to either offer the land back to its former owner or their successor in title, or to approve the exemption from offer back.*



## WELLINGTON CITY COUNCIL ORDINARY MEETING

### MINUTES

WEDNESDAY 31 AUGUST 2005

5.34PM

COUNCIL CHAMBER  
FIRST FLOOR, TOWN HALL  
WAKEFIELD STREET  
WELLINGTON

#### PRESENT:

Mayor Prendergast  
Councillor Ahipene-Mercer  
Councillor Armstrong  
Councillor Cook  
Councillor Foster  
Councillor Gill  
Councillor Goulden  
Councillor McKinnon  
Councillor Morrison (5.34 – 5.35pm, 6.07 – 8.19pm, 8.21 – 8.44pm)  
Councillor Pepperell  
Councillor Ritchie (5.34 – 5.35pm, 6.07 – 6.52pm, 7.19 – 8.44pm)  
Councillor Ruben  
Councillor Shaw  
Councillor Wade-Brown

#### APOLOGIES:

Councillor Wain

3. **ITEM 038/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGE TWO: (ROAD STOPPING) 32 CARLTON STREET, MELROSE (1215/53/IM) (REPORT 5)**

#### *THAT Council:*

1. Pursuant to Section 40 of the Public Works Act 1981:
  - (a) Agree that the land adjoining 32 Carlton Street is exempt from offer-back based on Section 40 (2) and Section 40 (4) of the Public Works Act 1981, and advice received from Land Information New Zealand accredited agents:
    - 32 Carlton Street, (being approximately 243m<sup>2</sup> as outlined on the aerial photograph in Appendix 6).
  - (b) Authorize Council officers to proceed with the road stopping process under Section 342 and 345 of the Local Government Act 2002.