
REPORT 4
1215/52/IM

**PROPERTY FOR DISPOSAL UNDER SECTION 40
PUBLIC WORKS ACT 1981 – STAGE ONE: 21A
STEBBINGS ROAD, GLENSIDE.**

1. Purpose of Report

The purpose of this report is to obtain Council approval, by way of resolution, under Section 40 of the Public Works Act 1981 (PWA), the subject Council-owned property is no longer required by Council and to authorise Council Officers to proceed with offer back investigations. This approval is requested as the first stage in the disposal process as stipulated in Section 40 of the PWA.

2. Executive Summary

This report firstly seeks Council approval that the subject Council-owned property is not required for a public work and secondly to authorise Council Officers to commission a Section 40 Public Work Act 1981 report on the property. The Chief Executive Officer has delegated authority to approve either, offer back of the property to the former owner or their successors in title, or to approve the exemption from offer back.

That the land, subject to obtaining statutory clearances, may be used in an exchange with the adjoining owner of 19 Stebbings Road, part of whose land is required for the extension of Westchester Drive. The subject property is highlighted on the attached fact sheet (see Appendix 1).

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend that the Council, pursuant to Section 40 of the Public Works Act 1981:*
 - (a) *Agree that the following Council-owned property is not required for a public work:*
 - *Vacant land situated at 21A Stebbings Road, Glenside*

(Sec 3 SO 336646, Computerised Freehold Register WN191484, Area 2021m2)

- (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 the former owner or their successor in title, or whether an exemption from offer back applies.*
3. *Note that once the Section 40 report has been received, a further report will be provided to the Chief Executive, under his delegated authority, for approval to either offer the property back to the former owners or their successors in title, or to approve the exemption from offer back.*
4. *Note if the property is not required for an offer back or offer back not taken up, then Council officers may seek to exchange it for land situated on the adjoining property at 19 Stebbings Road. Part of the land at 19 Stebbings Road is required for the road construction linking Westchester Drive Extension to Middleton Road. In this event officers will prepare another report to Councillor's with the exchange details for approval.*

4. Strategic Fit

The disposal of properties does not link to a specific strategic outcome, however, it is consistent with the Annual Plan 2005/06, refer page 168 (Properties intended for sale):

“Properties intended for sale – Properties intended for sale are all property, other than investment property and property, plant and equipment, held with an intention of realisation in the ordinary course of business. Properties are classified as intended for sale where:

- The property is available for immediate sale in its present condition subject only to terms that are usual and customary for sales of such assets.”

5. Background

Council Officers are proposing to declare the following property surplus to Council requirements. Council's obligations under Section 40 of the PWA are outlined in Appendix 2 in relation to this proposal. This site lies to the North of Aintree Grove and behind houses fronting Aintree Grove and the unformed part of Stebbings Road to the North (see Appendix 1).

The site (Section 3 SO 336646 the “surplus land”) is an irregular shaped section some 15 metres above and set 20-25 metres back from the legal boundaries of Stebbings Road, which is a gravel road at this point. The site is covered in a mixture of low shrubs and long grass; Parks and Gardens Business Unit have confirmed that the site has no ecological value. The site is zoned Outer Residential under the Operative Wellington City Council District Plan. It is currently vacant and not utilised by the Council for any specific purpose. A brief summary of the acquisition history is provided below.

5.1 Acquisition History

Greater Wellington Regional Council (GWRC) originally acquired the land by negotiation with the former owner (the Molloy's) in 1987 for the purposes of Porirua Stream Flood Control scheme. Whilst not all of the land bought by the GWRC was required for the scheme, GRWC felt compelled to purchase the entire property from the Molloy's. The land not required by GWRC, for the Porirua Stream flood protection, was then exchanged with the Wellington City Council using Section 50 of the PWA.

Part of the land exchanged was subsequently subdivided into two parcels, one intended for road construction (Section 1 SO 336646) and the other identified as surplus to road construction (Section 3 SO 336646). Both parcels were taken and a notice was published in the Gazette 2004 p3794 (GN 6234150.1), for the use in connection with a road. Subsequently Computer Freehold Registry 191484 was issued for Section 3 SO 336646.

5.2 Westchester Drive Extension

The land that was acquired from GWRC ensured that Council could cover all options for constructing a road between Westchester Drive and Middleton Road . The preferred, best construction and most sustainable option is to use the "surplus land" to negotiate the exchange of land for a more efficient road alignment in the area. By retaining the "surplus land" for exchange, rather than selling it on the open market, it is more likely that the land swap can be achieved. (Subject of course to the outcome of any offer back obligations)

5.3 Valuation

DTZ undertook a market appraisal to determine a likely capitalisation figure over the site should it be declared surplus. DTZ assessed the current market value of the property as at 1 February 2006 as \$ 145,000 based on future access being provided to the site off the new connector road within 5 years. The value would be reduced to \$85,000 if access is not provided to the property and the new connector road is not built. (The site is currently land locked as there is no formed road to the site.)

6. Discussion

6.1 Consultation

The preliminary step in any potential disposal process is to undertake consultation with affected Business Units and confirm that the subject property is no longer required. This is to ensure that there are no special interests that need to be considered in the event of any sale. All of the Council's Business Units have been given the opportunity to demonstrate that this parcel of land will be needed for a public work within a reasonable timeframe. All Business Units have responded that the property in question is not required for any Public Works Act purpose.

The next step is to seek a resolution by Council, under Section 40 of the PWA that the land is no longer required for a Public Work before investigating whether there is a need to offer back the property to any former owner or their successors in title.

6.2 Disposal Process

1. *Investigate and implement any section 40 obligations Council has.*
2. *Undertake a current market valuation of the property.*
3. *Offer back the land to the former owner at current market valuation.*
4. *If the offer back is turned down then officers will negotiate a land exchange with the adjoining owner at 19 Stebbings Road for land that Council requires to construct a new road linking Westchester Drive to Middleton Road.*
5. *Seek Council approval for a land exchange proposed with the adjoining owner of 19 Stebbings Road.*

7. Conclusion

It is recommended that the Strategy and Policy Committee recommend to Council that they agree, under Section 40 of the PWA, that the Council-owned property at 21A Stebbings Road is not required for a public work. Council officers will then investigate whether any offer back obligations exist. A further report will then 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 offer back is accepted then the property will be sold and a further paper to acquire adjoining land will be required. If offer back is not taken up then officers will seek to negotiate a land exchange agreement with the owner of 19 Stebbings Road. Council approval will be sought for this land exchange.

Contact Officers: *John Vriens, Property Advisor, Property & Parking Services or Stephen Harte, Asset Development Manager, Infrastructure.*

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

Provision for undertaking this work is contained within the overall organisational budget.

3) Treaty of Waitangi considerations

Local Iwi will be approached about any possible 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

All affected parties have been identified. Council is not required under legislation to consult on this matter. Consultation with all of the Council's Business Units have been completed there have been no Business Unit that see a need to retain this area of land.

b) Consultation with Maori

Local Iwi will be approached and provided with this proposal for their comments.

6) Legal Implications

The Council's legal obligations in relation to the Public Works Act 1981 are detailed within this report, and in particular Appendix 2. Any Sale and Purchase Agreements will be prepared by Council Solicitors. A solicitor's certificate will be obtained before any documents are signed.

APPENDIX 1

Property	21A Stebbings Road (exchanged land from WRC)
Suburb	Glenside
File ref	75/2570
Legal description	Section 3 SO 336646
Certificate of Title	WN191484
Area	2,021m ²
Zoning	Outer Residential
Rating Valuation	\$ 63,000.00
Rates	\$ 0.00 (non rateable)
Comments	<p>WCC acquired this site in 2004 by land exchange with the Wellington Regional Council, as part of a larger parcel of land to be used in connection with roading purposes. This land parcel was further subdivided into 3 Sections on SO 336646.</p> <p>21A Stebbings Rd is not actually required for the construction of the proposed new road.</p>

Aerial photo attached over page.

APPENDIX 2

SECTION 40 OBLIGATIONS UNDER THE PUBLIC WORKS ACT 1981

S40 Obligations under The Public Works Act 1981

The Public Works Act 1981, and its predecessors, has played a large part in the development of New Zealand's infrastructure. It has enabled land to be acquired, either by agreement or by compulsion, for the construction of local or public works. The main intention of the Public Works Act 1981 regarding surplus land is that it must be offered for repurchase to the person from whom it was acquired, or the successor of that person, if it is not exempt under the grounds set out in the Act.

Section 40 of the Public Works Act 1981 deals with the disposal of land that is no longer required for the public work for which it is held, or any other public work.

Under section 40 Council is required to:

- (a) identify what land is subject to section 40;
- (b) determine when the offer-back obligations under section 40 are triggered;
- (c) investigate the circumstances surrounding the acquisition, use and characteristics of the land in order to determine whether any exceptions to the offer-back requirement apply as per section 40 (2); and
- (d) determine the appropriate course of action in relation to any affected land.

What Land is Subject to Section 40?

All land held by Council for any public work will be subject to section 40. The land need not have been acquired specifically for a public work nor does it need to be designated formally as such.

Local and public works are:

"Local work" means a work constructed or intended to be constructed by or under the control of a local authority, or for the time being under the control of a local authority:

"Public work" means every Government work or local work that the Crown or any local authority is authorised to construct, undertake, establish, manage, operate, or maintain. It also includes every use of land and anything else required directly or indirectly for any such Government work or local work or use, including those required by any Education Authority within the meaning of the Education Act 1964 and any university within the meaning of the Universities Act 1961 (abridged definition).

The purpose for which Council holds any particular land needs to be considered objectively.

When is an Offer-Back Triggered Under Section 40?

Council must proceed under section 40 when the pre-conditions in Section 40(1) are satisfied, namely when the land in question:

- (a) is no longer required for the public work for which it is held; and
- (b) is not required for any other public work; and
- (c) is not required for any exchange under Section 105 of the Public Works Act 1981.

The Courts have not yet defined the phrase “required for any other public work”. However Council’s legal advisors have recommended that the Land Information New Zealand guideline be followed to interpret this requirement. Their interpretation is as follows:

- The land has been designated for another public work; or
- Written notification has been given of another public work requirement; and
- Council has demonstrated that there is an actual need for the land, or
- Council has demonstrated that the land will be used for the purpose, within a reasonable timeframe.

Council is legally obliged to follow the sales process with due expedition once it has established that the three pre-conditions in Section 40(1) have been satisfied. Having satisfied the above pre-conditions, Council is under a duty (subject to the discretion of Section 40(2) and 40(4)) to endeavour to sell the land back to the former owner or their successors, in a timely manner.

Exemptions to Offer-Back Requirements – Section 40(2) and (4)

Once the affected land has been declared surplus, a decision must be made as to whether or not the land must be offered back to its former owner(s) in accordance with section 40. This is a decision for Council and must be made after suitably qualified agents have made full investigations.

Land can be exempted from an offer-back where:

- it would be impracticable, unreasonable or unfair to do so; or
- there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or held; or
- it is believed on reasonable grounds that, because of the size, shape or situation of the land that it could not be expected to be sold to any person who did not own land adjacent to the land being sold. Hence the land may be sold to an adjoining owner.

Sale of Land

If a property is not exempt under section 40(2) or (4), the property must be offered back to the previous owner(s) or their successors as per section 40(2). This may require further investigation to locate the appropriate person(s) for the offer-back to occur. Once the offer-back is made, the offeree has a certain amount of time to accept the offer.

Where an offer under Section 40(2) is not accepted within the timeframe or is declined outright, or where an exemption to offer-back applies, the land may be sold to the owner of adjacent land, or by public auction, public tender or by private treaty.