

REPORT 6
(1215/53/IM)

**PROPERTY FOR DISPOSAL UNDER SECTION 40
PUBLIC WORKS ACT 1981 (PWA) – STAGE 2 (ROAD
STOPPING): 58 QUEENS DRIVE, LYALL BAY**

1. Purpose of Report

The purpose of this report is to obtain agreement that the area of Council owned legal road adjoining 58 Queens Drive is exempt from the offer back provisions of Section 40 of the Public Works Act (PWA) 1981.

This is the second stage in the disposal process as stipulated in Section 40 of the PWA.

The first stage of the road stopping process was approved by full Council on 25 May 2005 when it was resolved that the legal road adjoining this property was no longer required for the public work for which they were held, or for any other public works.

The area is highlighted on the aerial photograph (Appendix 1).

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Agree that the Council, pursuant to Section 40 of the Public Works Act 1981:*
 - (a) *Agree that the land adjoining 58 Queens Drive is exempt from offer-back based on Section 40 (4) of the Public Works Act 1981, and advice received from Land Information New Zealand accredited agents:*
 - *58 Queens Drive, (being approximately 180m² as outlined on the aerial photograph in Appendix 1)*
 - (b) *Authorise Council officers to proceed with the road stopping process under Sections 342 and 345 of the Local Government Act 2002.*

3. Background

Stage One of the Council's obligations under Section 40 (1) of the PWA has been satisfied by obtaining agreement, through prior Council resolutions, that the subject property is no longer required for:

- a) the public work for which it is held; and
- b) any other public work; and
- c) any exchange under Section 105 of the PWA.

The Council is legally obliged to follow the sales process with due expedience once it has established that the above three pre-conditions have been satisfied. The Council is under a duty (subject to the discretion of Sections 40 (2) and 40 (4)) to endeavour to sell the land back to the former owner(s) or their successors in title (see Appendix 2).

The Council decides whether or not the land must be offered back to the former owner(s) in accordance with Section 40 of the PWA, but only after suitably qualified agents have made full investigations.

4. Discussion

Land can be exempt from an offer back under either:

1. Section 40 (2) PWA where the local authority considers that:
 - a. It would be impractical, unreasonable or unfair to offer the land back;
or
 - b. 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
2. Section 40 (4) PWA where the local authority believes 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 that is to be sold. Then the land may be sold to an adjoining owner.

Applying these criteria, the area of road proposed to be stopped is exempt from offer-back based on Section 40 (4) exemption as confirmed by advice received from the Council's LINZ accredited agents and solicitors.

Once a resolution is obtained from the Council agreeing that the areas of legal road adjoining the property is exempt from offer-back, officers will proceed with the road stopping process prescribed under Sections 342 and 345 of the Local Government Act 1974.

5. Conclusion

After applying the process and criteria prescribed by law, thereby satisfying the Stage Two requirements of Section 40 of the Public Works Act 1981, it is concluded the legal road adjoining 58 Queens Drive is exempt from offer-back and can be offered to the owners of the adjoining property. Further resolution from the Regulatory Processes Committee will be sought before the road is stopped.

Contact Officer: *Lisa Black, Road Stopping Advisor*

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 2004 Road Encroachment Policy.

2) LTCCP/Annual Plan reference and long term financial impact

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

At this stage, the expected income from the sale of the road to each of the proponents has not been estimated as valuations are carried out at a later stage in the road stopping process. Many proponents 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 road stopping process.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations

4) Consultation

The Encroachment and Road Stopping team have contracted out to Land Information Accredited Agent, "The Property Group" the required Section 40 investigation for 58 Queens Drive which is reviewed by the Land Information Accredited Agent's solicitors.

This investigation typically involves:

- *researching the acquisition history of the land*
- *locating the whereabouts of the former owner or their successors*
- *inspecting the land*
- *applying the current interpretations of the Section 40 principles to the particular facts surrounding the land.*

5) Legal Implications

The legal implications of the proposal are discussed in Section 4. This incorporates advice received from the Land Information Accredited Agent's solicitors.

APPENDIX 1
AERIAL PHOTOGRAPH

WCC Intranet Viewer Map



Disclaimer

Property boundaries Land Information NZ
 Licence WND853547/2 Crown Copyright Reserved
 Accuracy in urban areas: +/-1m
 Accuracy in rural areas: +/-30m
 Other information generally +/- 1m accuracy.

Other data has been compiled from a variety of sources and its accuracy may vary.
 Any contours displayed are only approximate and must not be used for detailed engineering design.

Colour Orthophotography 1:500 flown Feb 2002 owned by Terralink NZ and used under licence by WCC
 Topographic data: Wellington City Council WCC Copyright Reserved.



Scale 1:500

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:

- (a) It would be impracticable, unreasonable or unfair to do so; or
- (b) 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
- (c) 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.