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**REPORT 4**  
*(1215/53/IM)*

## **PROPERTY FOR DISPOSAL UNDER PUBLIC WORKS ACT 1981 – STAGE ONE: LEGAL ROAD ADJOINING 69 PITT STREET, WADESTOWN**

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

The purpose of this report is to obtain Council agreement under Section 40 of the Public Works Act 1981 that an area of Council owned legal road adjacent to 69 Pitt Street, Wadestown, is no longer needed for Council's operational requirements, and to authorise Officers to proceed with the offer back investigation.

This approval is requested as the first stage in the disposal process as stipulated in Section 40 of the Public Works Act 1981, which may then proceed to road stopping under Sections 342 and 345 of the Local Government Act 1974.<sup>1</sup>

### **2. Recommendations**

It is recommended that the Committee

1. *Receive the information.*
2. *Recommends that the Council, pursuant to Section 40 of the Public Works Act 1981:*
  - a) *Agree that the area of unformed legal road adjoining 69 Pitt Street (refer to 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, or whether an exemption from offer back applies*
3. *Notes 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.*

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<sup>1</sup> The relevant provisions in the 1974 Act were not repealed when the 2002 Act came into force.

### **3. Background**

The application to stop this area of road was submitted by Raymond and Barbara Matthews. They are the owner/s of the adjoining property at 69 Pitt Street (Part Lot 1-2 DP 2524).

Under the Local Government Act 1974 (Sections 342 and 345) local authorities are permitted to sell portions of the legal road which they no longer require for roading purposes or another public work. As this Act is not exempt from the Public Works Act 1981, the Council is required to carry out a Section 40 investigation to establish whether the land needs to be offered back to the previous owner or their successor in title. In most cases legal road is exempt from offer back as “it would be impracticable, unreasonable or unfair to do so” due to the fact that legal road is generally the existing property owner’s frontage.

However, in some circumstances portions of legal road may not be exempt from offer-back, for example if the area is of significant size.

The Council’s obligations under Section 40 of the Public Works Act 1981 are described in Appendix 3.

### **4. Discussion**

#### ***4.1 The road stopping process***

Any legal road will be sold in accordance with the Local Government Act 1974 and Public Works Act 1981.

The proponent (i.e. the party who has applied to the Council to buy the legal road) is responsible for most of the costs involved in processing their request to change the designation of the legal road and then purchase the freehold land to amalgamate with their adjoining property title.

The proponent is provided with as much information as possible at the start of the road stopping process, to ensure they are fully aware of the road stopping and sale requirements, timeframes and costs that may be incurred as part of this process.

#### ***4.2 This application***

The area of legal road proposed to be stopped is a rectangular shaped parcel of land, approximately 80 m<sup>2</sup> in size, as shown on the aerial photograph (refer to Appendix 2), adjoining the western boundary of the proponents’ land.

The owners of 69 Pitt Street wish to purchase the area so that they own the land currently encroached on by their structures, and to secure the area for their future use.

If the road stopping and sale are successful, the legal road will be amalgamated with the adjoining property in Certificate of Title WN298/213.

#### **4.3 Process to date**

As part of the road stopping process the neighbouring property owners are given an opportunity to provide comments concerning the road stopping application. Typically, these are the adjacent property owners and the owners opposite the area proposed to be stopped. In this case, owners of the properties surrounding 69 Pitt Street were consulted. No objections to this proposal were received.

Consultation with the Council's internal business units was sought, namely Roading and Traffic, District Plan, City Development and Parks and Gardens, to determine whether there is any objection to the sale of the legal road and if any conditions are required to protect the existing streetscape and amenity value of the neighbourhood. No objections were received from these internal business units.

## **5. Conclusion**

It is recommended that the Regulatory Processes Committee agree that under Section 40 of the Public Works Act 1981 this area of legal road is not required for a public work. Council officers will then be able to investigate the Council's requirements for offer back and will return to the Council for a further resolution to proceed with an offer back, or agree that an exemption applies.

Contact Officer: *Lisa Black, Road Stopping Advisor, Property & Standards*

## **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 overall organisational budget.*

*This report is the first step towards the possible sale of the legal road. At this stage, the expected income from the sale of the road to the proponent has not been quantified 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 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 proponent including all survey, administration and legal costs. This proposal will benefit Council in financial terms as the proponent 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 with regard to this stage of the road stopping process.*

### **5) Consultation**

*Consultation with Roading and Traffic, Building Consents and Licensing Services (BCLS), Parks and Gardens and City Development has been carried out as part of this application. They have all advised that they have no objection to the proposed road stopping.*

### **6) Legal Implications**

*The legal implications of the proposal are discussed in section 4.*

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

*The sale of legal road, where surplus to strategic requirements, is mandated under the Council's 2004 Road Encroachment Policy.*

**APPENDIX 1**  
**SITE PHOTOGRAPHS**





**APPENDIX 2**  
**AERIAL PHOTOGRAPH**

# WCC Intranet Viewer Map



**Disclaimer**

Property boundaries Land Information NZ  
 Licence WN0853547/2 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 3**

**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.