
REPORT 2
(1215/53/IM)

**PROPERTY FOR DISPOSAL UNDER SECTION 40
PUBLIC WORKS ACT 1981 – STAGE ONE: LEGAL
ROAD ON LERWICK TERRACE ADJOINING 58 QUEENS
DRIVE, LYALL BAY**

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 on Lerwick Terrace adjoining 58 Queens Drive, Lyall Bay 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 1974.¹

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 at Lerwick Terrace adjoining 58 Queens Drive, Lyall Bay (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 in title, 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.*

¹ The relevant provisions in the 1974 Act were not repealed when the 2002 Act came into force.

3. Background

The application to stop this road was submitted by Andrew Watson, Kendra and Anna Ross. They are the owners of the adjoining property at 58 Queens Drive, Lyall Bay (Part Lot 19 DP 879).

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 175 m² in size, as shown on the aerial photograph (refer to Appendix 2), adjoining the eastern boundary of the proponents’ land.

The owners of 58 Queens Drive wish to purchase a portion of the unformed legal road to extend their garden and create more space for their children to play safely. As well, they wish to stop the illegal dumping of rubbish and gardening material on the area that is currently occurring.

If the road stopping and sale are successful, the legal road will be amalgamated with the adjoining property in Certificate of Title WN294/34.

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 58 Queens Drive were consulted. No objections to this proposal were received.

Consultation with the Council's internal business units was sought, namely Roading and Traffic, Building Consents and Licensing Services (BCLS), 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 subject to the following conditions:

- Roading approve the application subject to the area proposed to be stopped being reduced to be no further than 5 metres from the existing boundary and must allow for the corner circumference and be clear of the neighbour at No 2 Lerwick Terrace's path.
- The Building Consents and Licensing Services Unit support the application subject to the consent being obtained from the owners of 3 Lerwick Terrace, as this property will be affected by the District Plan Front Yard Rule. Consent was received from the affected owner.
- Urban Design Unit support the application, however feel that the proposed height of the fence on the eastern boundary should be lowered to 2 metres.

The proponents have agreed to these conditions in writing.

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 and Encroachments Advisor*

Supporting Information

1) Fit with Strategic Objectives/Strategic Outcomes

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) 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, subject to the following conditions:

Roading approve the application subject to the area proposed to be stopped being reduced to be no further than 5 metres from the existing boundary and must allow for the corner circumference and be clear of the neighbour at No 2 Lerwick Terrace's path. The Building Consents and Licensing Services Unit support the application subject to the consent being obtained from the owners of 3 Lerwick Terrace, as this property will be affected by the District Plan Front Yard Rule. Urban Design Unit support the application, however feel that the proposed height of the fence on the eastern boundary should be lowered to 2 metres.

The proponents have agreed to these conditions.

5) Legal Implications

There are no legal implications at this stage in the road stopping process.