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**PROPERTY FOR DISPOSAL UNDER SECTION 40  
PUBLIC WORKS ACT 1981 (PWA) – STAGES ONE  
AND TWO (ROAD STOPPING): 31 THE RIGI,  
NORTHLAND**

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**1. Purpose of Report**

The purpose of this report is to obtain agreement under Section 40 of the Public Works Act that the area of Council owned legal road adjoining 31 The Rigi is no longer needed for Council's operational requirements and is exempt from the offer back provisions of Section 40 of the Public Works Act (PWA) 1981.

This is both the first and second 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>

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

**2. 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 area of unformed legal road adjoining 31 The Rigi, Northland (refer to Appendix 2) is not required for a Public Work*
  - (b) *Agree that the land adjoining 31 The Rigi 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 and Council's solicitors' opinion:*
    - *31 The Rigi, (being approximately 67m<sup>2</sup> as outlined on the aerial photograph).*
  - (c) *Authorise Council officers to proceed with the road stopping process under Section 342 and 345 of the Local Government Act 2002.*

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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 The relevant provisions in the 1974 Act were not repealed when the 2002 Act came into force.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 road was submitted by Tony and Marie Rollason. They are the owners of the adjoining property at 31 The Rigi, Northland (Part Lot 5 DP 3692).

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.

Stage one of the Council's obligations under Section 40 (1) of the PWA can be satisfied by obtaining agreement, through 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.

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.

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 Exemption from offer back**

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 areas of road proposed to be stopped are exempt from offer-back based on both Section 40 (2) (a) and Section 40 (4) exemptions 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 area of legal road adjoining the property is surplus to operational requirements and exempt from offer-back, officers will proceed with the road stopping process prescribed under Sections 342 and 345 of the Local Government Act 1974.

### **4.3 This application**

The area of legal road proposed to be stopped is a near rectangular shaped parcel of land, approximately 67 m<sup>2</sup> in size, adjoining the eastern boundary of the proponents' land.

The owners of 31 The Rigi wish to purchase a portion of the current fenced land encroachment is to secure the area for their own future use.

If the road stopping and sale are successful, the legal road will be amalgamated with the adjoining property in Certificate of Title 253/95.

### **4.4 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 31 The Rigi were consulted. No objections to this proposal were received. Consultation with the Council's internal business units was sought, namely Roading and Traffic, Environmental Control Business Unit (ECBU), Urban Design 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 condition:

- Roading advised that they had no objection to the proposed road stopping subject to the western boundary line being altered from the original proposal.

The proponents have agreed to this condition.

## **5. Conclusion**

After applying the process and criteria prescribed by law, thereby satisfying the Stage One and Two requirements of Section 40 of the Public Works Act 1981, it is concluded the legal road adjoining 31 The Rigi is surplus to operational requirements, 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 and Encroachments Advisor*

## Supporting information

### a) Strategic fit

*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.*

### b) Annual Plan reference

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

*This report is the first and second steps 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.*

### c) Treaty of Waitangi implications

*There are no Treaty of Waitangi implications.*

### d) Consultation

*Consultation with Roding and Traffic, Environmental Control Business Unit (ECBU), 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 condition:*

*Roding advised that they had no objection to the proposed road stopping subject to the western boundary line being altered from the original proposal.*

*The proponents have agreed to these conditions.*

### e) Legal implications

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