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**REPORT 5**  
*(1215/53/IM)*

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**PROPERTY FOR DISPOSAL UNDER SECTION 40  
PUBLIC WORKS ACT 1981 (PWA) – STAGE 2 (ROAD  
STOPPING): 270 MASSEY ROAD, MAHANGA BAY**

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**1. Purpose of Report**

The purpose of this report is to obtain agreement that the area of Council owned legal road adjoining 270 Massey Road 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 30 March 2005 when it was resolved that the legal road adjoining this property was no longer required for public works 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 270 Massey Road 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:*
    - *270 Massey Road, (being approximately 226m<sup>2</sup> as outlined on the aerial photograph in Appendix 1)*
  - (b) *Authorise Council officers to proceed with the road stopping process under Section 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.

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 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 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 270 Massey Road 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**

### **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**

*The proposal is to be located on a site that is associated with the Mataki-kai-ponga Landscape Feature Precinct, as per the current District Plan. The Tenth's Trust has been approached and considers the proposal an appropriate use of the land.*

### **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.*

### **5) Legal Implications**

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