
REPORT 2
(1215/53/IM)

PROPOSED ROAD STOPPING ADJACENT TO 31 THE RIGI, KELBURN

1. Purpose of Report

This report seeks approval to declare a portion of The Rigi, Kelburn stopped under Action 14 of the original Road Stopping process.

This particular Road Stopping application originated back in 2003, prior to the implementation of the Council's new Road Stopping procedures (the new process requires only one Committee report). Council officers are completing this application in accordance with the original application process involving three reports; this is the final of the three stages involved (Appendix 1, Actions 4, 6 and 14 of the original Road Stopping Process).

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Recommend that the Council resolves to publicly notify that the portion of The Rigi, Kelburn, adjoining 31 The Rigi described as Part Lot 5 Deposited Plan 3692, comprising 67m² as shown in Appendix 2, be declared stopped in accordance with the Tenth Schedule of the Local Government Act 1974 and in so declaring that the following matters are to be noted and actioned:*
 - a) *The area of stopped road (on SO 304122 see Appendix 3) will be amalgamated with adjoining land being Part Lot 5 Deposited Plan 3692 respectively held in Computer Freehold Register WN253/95.*
 - b) *That all the service authority requirements in respect of their assets/services located within the area of road to be stopped be complied with.*
 - c) *That all costs associated with compliance with the above conditions be met by the proponent. These include all survey, administration and legal costs for this application.*
3. *Recommend that Council authorises the Chief Executive Officer to negotiate and complete terms of sale.*

3. Background

3.1 The Proposal

It is proposed to stop a portion of legal road on The Rigi which adjoins the property at 31 The Rigi. The area comprises 67m² as shown on the Survey Office Plan (see Appendix 3) and aerial photograph (see Appendix 2).

If the road is successfully stopped, the land will be amalgamated with the adjoining property at 31 The Rigi (Part Lot 5 DP 3692, Computer Freehold Register WN253/95) to be used in conjunction with the existing land holding.

The owners of 31 The Rigi (the proponent) wishes to purchase 67m² of legal road to amalgamate it with their adjoining property and use it in conjunction with their existing land holding (see Appendix 4).

3.2 Site Description

The land to be stopped is located on the eastern boundary of the proponents' property on The Rigi in Kelburn. The area proposed to be stopped consists of a near rectangular parcel of land with a depth of 5.88 metres along the northern boundary and 6.35 metres along the southern side boundary with a frontage of 11.79 metres. The area of road to be stopped is of level ground fronting the proponents' fence line, with an area of hard standing marked out for vehicular parking

The width of legal road in the immediate vicinity is approximately 11.79 metres and the carriageway itself is about 6.4 metres wide. There is a one metre wide footpath running along the front boundary of the proponents' land, which will remain.

4. Discussion

4.1 Statutory Criteria

Road Stopping is provided for under the provision of Section 342(1) of the Local Government Act (LGA) 1974¹, with the required procedure being set out by the Tenth Schedule of the Act.

In summary, the Tenth Schedule requires that a local authority must initiate a road stopping action by preparing a survey plan, which is approved by the Chief Surveyor of Land Information New Zealand (LINZ). The proposal is then publicly advertised twice and signs erected in the area proposed to be stopped. The public has an opportunity to object within the statutory 40 day timeframe.

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

4.2 Public Works Act (PWA) 1981 Requirements

Council declared that the area of unformed legal road proposed to be stopped was exempt from offer-back on 25 May 2005 (see Appendix 5 & 6) based on Section 40(2) and Section 40(4) of the Public Works Act 1981.

4.3 Consultation with Service Authorities

Consultation with the relevant Service Authorities was sought as part of this application.

Conditional consent has been obtained from:

Service Provider	Condition
UnitedNetworks Limited (electricity)	Has no objection provided that: <ol style="list-style-type: none">1. All activities near the lines must be carried out in accordance with the NZ Electrical Code of Practice for Electrical Safety Distances (NZECP 34:2001)2. Siemens Energy Services are contacted to obtain plans of the lines.3. Any relocation of the lines will be at the proponents cost & Siemens Energy Services must be contacted.4. If any of United Networks' lines are to be located on private land, an easement must be granted to United Networks.5. If, during construction any underground electricity cables are noticed or an electricity outage is caused, construction must be halted immediately and United Networks must be contacted.

Unconditional consent has been obtained from:

- WCC Parks and Gardens
- WCC Public Drainage
- WCC Street Lighting
- WCC Rooding
- WCC Urban Design and Development Guidance
- WCC Capacity on behalf of WCC Water Supply
- Powerco Limited (gas)
- Areva Telecommunications on behalf of Telecom (Telecommunications)
- TelstraClear (Telecommunications)

Officers are satisfied that if the above Service Authority requirements are met, the proposed portion of legal road in 31 The Rigi can be stopped and sold, provided all statutory and Council requirements are met.

4.4 Public Notification

In accordance with clauses 2 and 3 of the Tenth Schedule of the LGA 1974, the application was publicly notified in the Dominion Post on 19 October 2006 and 26 October 2006, closing at 5pm on 30 November 2006. Signs were also placed on the site during the notification period. No objections were received.

4.5 Completion of Stopped Road

When copies of the Public Notice and Survey Office Plan 341430 are deposited in the Office of the Chief Surveyor at LINZ, this part of The Rigi will cease to be road.

4.6 Sale of Land

The sale of the land to the proponent will be on commercial terms based on added value. Chief Executive Officer will finalise all negotiation details.

5. Conclusion

The road stopping proposal complies with the relevant Council policies and is being processed in accordance with the Tenth Schedule of the Local Government Act 1974.

Contact Officer: *Lisa Black, Road Stopping Advisor, Property and Parking Services*

Supporting information

a) Strategic fit

In line with the Council's financial principles, assets that are declared surplus to strategic or operation requirements are sold.

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

b) Annual Plan reference

Provisions for undertaking this work are contained within the overall organisational budget.

c) Annual Plan and Long Term Financial Strategy implications

The land is not required to be retained for roading purposes and if stopped and transferred will no longer need to be maintained by the Council.

d) Treaty of Waitangi implications

There are no Treaty of Waitangi implications.

e) Consultation

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

Consent from the relevant Service Authorities was sought, namely United Networks Limited, Powerco, Telecom, TelstraClear, WCC Water, WCC Public Drainage, and WCC Street Lighting, all of whom support the proposed road stopping.

e) Legal implications

The Road Stopping proposal complies with the relevant Council policies and is being processed in accordance with the Tenth Schedule of the Local Government Act 1974.

APPENDIX 1 - ORIGINAL ROAD STOPPING PROCESS

WELLINGTON CITY COUNCIL ROAD STOPPING PROCESS FOR ADJOINING OWNERS ONLY								
ACTION		NO OBJECTIONS		OBJECTIONS				
		Time for Action (Weeks)	Total Time (Weeks)	Time for Action (Weeks)	Total Time (Weeks)			
1	Proponent applies to the Specialist Property Services team (SPS) with the information required overpage (noted in <i>italic</i>). Generally we will only sell the area of unformed legal road fronting the owners property, from side boundary to side boundary, unless impractical.							
2	SPS consult with other internal departments to determine whether there is any objection to sale of the legal road and if any conditions are required.	Possible Rejection	1	1				
3	Proponent requests neighbours' comments and service authority consents. (Lists will be provided.)		1	2				
4	SPS prepare a road stopping report for the next Regulatory Processes Committee meeting requesting the legal road be declared surplus, and if successful, then to a Council meeting for Council resolution.	Possible Rejection	6	8				
5	SPS arrange a Section 40 investigation to establish if the land is required to be offered back to a previous owner or successor in title.		3	11				
6	SPS prepare a road stopping report for the next Regulatory Processes Committee meeting declaring the land exempt from offer back or declaring that the land is required to be offered back to a former owner. This paper will also follow on to a full Council meeting for Council resolution.		6	17				
7	Proponent advised of outcome of Section 40 investigation. If the land is required to be offered back to a former owner, then Council's offer back process will be followed. If the land is exempt from offer back, the Proponent will be required to provide a scheme plan from a Registered Surveyor.	Possible Rejection	1	18				
8	SPS arrange an independent Registered Valuer to undertake the valuation on the basis of added value to the adjoining property. The Proponent is advised of the value and if the proponent wishes to continue is then required to pay a non refundable initial application fee of \$450 plus GST (includes up to 5 hrs processing). If processing time exceeds 5 hrs, \$80 per hr will be charged (explained overleaf).		2	20				
9	SPS arrange a report setting out the road stopping proposal, Council's considerations and any conditions that are imposed by Council upon stopping and sale of the legal road (at the Proponent's cost). The road stopping report is forwarded to the Proponent.		4	24				
10	SPS arrange a Conditional Sale and Purchase Agreement, at the Proponent's cost, which is to be signed by the Proponent. SPS arrange execution of the agreement.		3	27				
11	The Proponent is then required to provide 3 copies of LINZ certified survey office plans (prepared by a Registered Surveyor)		2	29				
12	SPS arrange Public Notification of the road to be stopped by way of newspaper advertising and notification to adjoining and other affected owners. Costs Proponent approx. \$3300 for this process (includes advertising costs and consultants costs).		2	31				
	Statutory timeframe (for the public to have an opportunity to object).		6	37				
13	<table border="0" style="width: 100%; text-align: center;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">No Objections Received</td> <td style="width: 50%; border-bottom: 1px solid black;">Objections Received</td> </tr> </table>	No Objections Received	Objections Received		1	38		
No Objections Received	Objections Received							
14	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">E & R prepare report for Regulatory Processes Committee (RC) and scheduled for next RC meeting. RC decision whether to continue with road stopping or not.</td> <td style="width: 50%;">SPS arrange objection report for Regulatory Processes Committee (RC) and schedule any oral submissions. RC hear objections and decide whether to allow objections and continue with road stopping or not.</td> </tr> </table>	E & R prepare report for Regulatory Processes Committee (RC) and scheduled for next RC meeting. RC decision whether to continue with road stopping or not.	SPS arrange objection report for Regulatory Processes Committee (RC) and schedule any oral submissions. RC hear objections and decide whether to allow objections and continue with road stopping or not.	Possible Rejection	6	44	6	44
E & R prepare report for Regulatory Processes Committee (RC) and scheduled for next RC meeting. RC decision whether to continue with road stopping or not.	SPS arrange objection report for Regulatory Processes Committee (RC) and schedule any oral submissions. RC hear objections and decide whether to allow objections and continue with road stopping or not.							
15	Council resolves to stop road. Details forwarded to Environment Court to rule on objections and whether or not to stop the road	Possible Rejection	0	44	52	96		
16	SPS arrange public notification that the road is stopped (cost to Proponent approx. \$439.21) and application to LINZ for new land appellation and new title costs (cost to Proponent approx. \$652.98) for the stopped road.		7	51	7	103		
17	SPS arrange valuation of the land on the basis of added value to the Proponent's existing title taking into account any variations such as the final survey area, any further conditions that may have been imposed by Council and any market movements since the date of the initial valuation.		2	53	2	105		
18	Settlement and Transfer of the stopped road. Council legal costs are the Proponent's responsibility and are estimated in the range of \$700 to \$2500.		5	58	5	110		
INDICATIVE TIME: NO OBJECTIONS RECEIVED			58 WEEKS					
INDICATIVE TIME: OBJECTIONS RECEIVED			110 WEEKS					
Note: These timeframes are a guide only and may be exceeded or shortened depending on workload, Proponent's response time and Councillor availability								

APPENDIX 2 – AERIAL PHOTOGRAPH



APPENDIX 4 – INITIATION REPORT

REPORT FOR ROAD STOPPING INITIATION

Proposed Road Stopping – 31 The Rigi

File Ref: 480 48 RIG-31

PROPOSAL

The proposed road stopping consists of part of The Rigi, Northland. The area to be stopped is approximately 67m², being the land adjacent to 31 The Rigi, shown as the highlighted parallelogram shaped area in front labelled “67m²” on the scheme plan by Tse Group Ltd, Project 386/43 Drawing 3, Sheet 1, drawn 1/7/99.

ZONING

The land adjoining the road to be stopped is within the Outer Residential Area of the Operative Wellington City District Plan (the District Plan).

PURPOSE OF THIS REPORT

To seek Council approval to initiate the road stopping procedure for the above proposal, in terms of the Tenth Schedule of the Local Government Act 1974.

REASON FOR THE ROAD STOPPING

The reason for the road stopping is to facilitate the sale of a portion of Legal Road (The Rigi) to the adjoining landowner at 31 The Rigi.

PURPOSE TO WHICH THE ROAD WILL BE PUT AFTER IT IS STOPPED

Should the road stopping be successful, the land will be amalgamated with the adjoining property at 31 The Rigi (Pt 5 DP 3692, Certificate of Title WN 253/95) to be used in conjunction with the existing land holding.

BACKGROUND / SITE INFORMATION

The Rigi is a relatively short street that extends from Northland Road (between Karori Tunnel and the roundabout with Upland Road and Glenmore Street) down onto Glenmore Street. The road formation is relatively narrow, especially the top half which is one way, until the intersection with Governor Road. The topography is hilly and the surrounding land uses are established residential properties with well-vegetated frontages. The property at no. 31 consists of 268m² and is located on the eastern side of the street. An existing dwelling is situated at the front (top) of the site with step access to the street. An existing garage is located in front of the site in the area of road to be stopped.

The subject Legal Road to be stopped is located adjacent to the western (front) boundary of the property. The portion of road to be stopped is a 67m² parallelogram shaped area of land, and is relatively flat and level with this part of the formed

APPENDIX 4 – INITIATION REPORT

carriageway to the front. The area contains a paved car pad at the southern end and the remaining area is grassed and contains small trees. Council's Senior Roading engineer had initially noted that the vehicle crossing to the car pad is an illegal crossing and has a plastic pipe in the gutter which is covered in tar seal and noted that the car pad had not been properly surfaced. In a later email dated 15 September 2004 Council's Senior Roading engineer advised that there was no objection to the proposed road stopping provided that the new boundary is in line with the existing fence along the eastern edge of the informal low-level path. Therefore, the portion of the legal road east of the fence line can be considered for disposal.

Wooden steps have been constructed along the front boundary to provide access to the property from the street. Part of the steps encroach over the boundary with the Legal Road (see Tse Group Ltd Project 386/43 Drawing 3, Sheet 1, drawn 1/7/99).

The District Plan maps show the identified Hazard (Fault Line) Area traverses through part of the subject area of road to be stopped and part of the adjoining property at No. 31 The Rigi.

Evaluation

The Rigi is a "Local Road" which is defined in the Wellington City District Plan as:

"Local Road: roads that provide direct access to properties fronting the road and includes both long and short cul-de-sacs (secondary road)".

The function of The Rigi fits the above definition. The section of legal road subject to the proposed stopping is 11.79 metres at its widest point. It runs from one side of the property to the other and extends at the same angle as the side boundaries of the property and would result in no. 31 having the same shaped frontage. If the road stopping is successful the portion of legal road adjacent to No. 31 will be approximately 24 metres wide at its narrowest point and approximately 95 metres at its widest point (due to the corner site opposite). The formed road in front of 31 The Rigi will remain at approximately 7.2 metres wide.

The location of the proposed stopping is separated by approximately 8 metres from the carriageway. The proposal has no actual or physical effect on the functioning of the road, as the width of the formed carriageway will not change.

The size, shape and topography of the area of road that is proposed to be stopped and its location relative to the existing formed carriageway and adjacent residential property is such that the area is not suitable for independent use. The area of road to be stopped currently contains a garden area and part of a car pad that has been constructed for the use of the proponent's property. It is therefore reasonable that the proponent wishes to stop the road in order to add this land area to the existing residential property and therefore guarantee the tenure of the car pad.

The reduction in the width of the road will result in a front yard being imposed on other properties. The proponent has gained the consent of the adjoining neighbours to the north and south:

APPENDIX 4 – INITIATION REPORT

- 33 The Rigi (property to the south)
- 29 The Rigi (property to the north)

The road stopping application will, in our opinion, have little or no adverse effects on the existing road network, the streetscape or the environment generally as the road proposed to be stopped is already occupied by the car pad serving the proponent's property, and is of a topography, size and shape unlikely to be required for roading purposes in the future. In addition the difference in topography of the subject area of land and the adjoining property is such that future development is unlikely, and any significant development would require resource consent in any event. Should the proposal be approved, the land will easily be incorporated into the proponent's property with no visual change required to facilitate the amalgamation.

CONSULTATION

The proponent consulted with the following relevant service authorities as part of the proposal. The authorities have commented as follows:

- Capacity on behalf of Wellington City Council Water Supply: letter dated 3 September 2004 – no objection.
- TelstraClear: letter dated 2 September 2004 – no objection.
- UnitedNetworks Limited: fax dated 24 August 2004 – no objection provided that:
 - 1 All activities near the lines must be carried out in accordance with the New Zealand Electrical Code of Practice for Electrical Safety Distances (NZECP 34:2001)
 - 2 The proponent must contact Siemens Energy Services to obtain plans of the lines
 - 3 Any relocation of the lines will be at the proponent's cost and options should be discussed with Siemens
 - 4 If any of UnitedNetworks' lines are to be located on private land (either as a result of a boundary change or a relocation of the lines), an easement must be granted to United Networks
 - 5 If during construction any underground electricity cables are found or any outage is caused, the proponent must halt construction and contact UnitedNetworks.
- Areva Telecommunications Services on behalf of Telecom: letter dated 13 October 2004 – no objection provided that when encountering Telecom ducts and/or cables, the following conditions are required to be adhered to:
 1. The 124 Call Centre is staffed Monday to Friday from 7:30am to 6:00pm, to accept plan requests & make appointments for on-site locations.
 2. There is a 24 hour emergency service available on 0800 111 124
 3. Please contact Telecom Cable Location – Ph 124, Fax: 0800 110 124, A/hrs: 0800 111 124, Website: www.124locate.co.nz at least 48 hours (2x working days) notice.

APPENDIX 4 – INITIATION REPORT

4. An outside cable locate required a minimum of 24 hours (1x working days) notice. This is available Monday to Friday from 8:00am to 5:00pm (on-site locates outside these hours are available, with prior arrangements).
 5. A free stand-over for all high capacity cables, requires a minimum of 48 hours (2x working days) notice.
 6. A clearance of 300mm should be maintained between any excavation and Telecom cables and/or ducts.
 7. If excavation must take place within 300mm from Telecom cables and/or ducts, hand tools should be used to avoid damage.
 8. If Telecom cables/ducts are damaged or need to be relocated (due to the proposed work), the concerned parties will be held responsible and expected to cover all costs.
- Powerco Limited: letter dated 3 September 2003 – no objection to the proposal however a gas “markout” must be supplied prior to final confirmation from Powerco Ltd.

The following comments have also been sought and received:

- WCC Public Drainage (Stuart Gunn): Memorandum dated 27 August 2003 – no objection.
- WCC Roding (Peter Sumbly): Email dated 15/9/03 – no objection provided that the new boundary is in line with the existing fence along the eastern edge of the informal low level path, hence the portion of the legal road east of the fence line can be stopped and sold.
- WCC Parks and Gardens (Victoria Lamb): Memorandum dated 10 September 2003 – no objection.
- WCC Urban Designer (Jane Black): Email dated 25 August 2003 – no objection.
- WCC BCLS (Angela Jones): Memorandum dated 3 September 2003 – no objection. The memorandum acknowledges that the road stopping will not result in a front yard being imposed on the other properties, and that the road frontage only provides access to the subject site at No. 31.

CONCLUSION

In conclusion, we recommend that this particular road stopping be initiated pursuant to the Tenth Schedule of the Local Government Act 1974.

Recommendation

Pursuant to the Tenth Schedule of the Local Government Act 1974, the undersigned recommend the initiation of the road stopping procedure for an area of land adjacent to 31 The Rigi, Northland (Pt 5 DP 3692, Certificate of Title WN253/95), comprising of 67m² and shown as “Proposed Road Stopping Area - 67 sq metres” on the plan by Tse Group Ltd, Project 386/43 Drawing 3, Sheet 1, drawn 1/7/99, subject to the following conditions:

APPENDIX 4 – INITIATION REPORT

- a) That the title for the area of stopped road be amalgamated with the adjoining land (held in Certificate of Title WN253/95) and a new title issued for that land.
- b) That an appropriate legal instrument be registered on the new title requiring that the owners of the property at 31 The Rigi maintain the batter slope separating the site from the legal road carriageway.
- c) That compliance with all of the above service authorities requirements, as outlined in the correspondence in respect of their assets/services located within the area of road to be stopped, is required.
- d) That all costs associated with the compliance of the above conditions be met by the proponent, including all survey, administration and legal costs involved in this application.

Prepared by:

Megan Williams
Resource Management Planner

Tonkin & Taylor Ltd

Dated: 22 April 2005

Reviewed by:

Chris Hansen
Senior Resource Management Consultant

Tonkin & Taylor Ltd

APPENDIX 5 – COMMITTEE AND COUNCIL DECISIONS

Wellington City Council
Te Kaunihera o Poneke

EXTRACT OF MINUTES

REGULATORY PROCESSES COMMITTEE

MEETING OF TUESDAY 24 MAY 2005

026/05RP **PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGES ONE AND TWO: 31 THE RIGI, NORTHLAND**

Report of Lisa Black – Road Stopping and Encroachment Advisor.
(1215/53/IM)

(REPORT 4)

RESOLVED AND RECOMMENDED TO COUNCIL:

THAT the Regulatory Processes 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 67m² 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 1974.*

APPENDIX 5 – COMMITTEE AND COUNCIL DECISIONS

WELLINGTON CITY COUNCIL EXTRACT OF MINUTES Ordinary Meeting of Wednesday 25 May 2005

092/05C **REGULATORY PROCESSES COMMITTEE**

Meeting of Tuesday 24 May 2005

(1215/11/IM)

(REPORT 2)

Moved Councillor Gill, seconded Councillor Goulden, the substantive motion clauses 1 – 6.

(Councillor Ritchie left the meeting at 6.01pm.)

The substantive motion clauses 1 – 6 were put.

Voting for: Mayor Prendergast, Councillors Ahipene-Mercer, Armstrong, Cook, Foster, Gill, Goulden, McKinnon, Morrison, Pepperell, Ruben, Shaw, Wade-Brown and Wain.

Voting against: Nil.

Majority Vote: 14:0

The substantive motion clauses 1 – 6 were declared CARRIED.

RESOLVED:

1. ***ITEM 023/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGE ONE: 32 CARLTON STREET, MELROSE***
(1215/53/IM) (REPORT 1)

THAT Council:

1. *Pursuant to Section 40 of the Public Works Act 1981:*
 - a) *Agree that the area of unformed legal road adjoining 32 Carlton Street, Melrose, (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.*
2. *Note 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.*

APPENDIX 5 – COMMITTEE AND COUNCIL DECISIONS

2. **ITEM 024/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGE ONE: LERWICK TERRACE ADJOINING 58 QUEENS DRIVE, LYALL BAY (1215/53/IM)(REPORT 2)**

THAT Council:

1. *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, (Appendix 2) 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.*
2. *Note 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.*

3. **ITEM 025/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGE ONE: LEGAL ROAD ADJOINING 517 OHARIU VALLEY ROAD AND 20 TAKARAU GORGE ROAD (1215/53/IM)(REPORT 3)**

THAT Council:

1. *Pursuant to Section 40 of the Public Works Act 1981:*
 - a) *Agree that the area of unformed legal road adjoining 517 Ohariu Valley Road and 20 Takarau Gorge Road, Ohariu Valley (Appendix 3) 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.*
2. *Note 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.*

APPENDIX 5 – COMMITTEE AND COUNCIL DECISIONS

4. **ITEM 026/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGES ONE AND TWO: 31 THE RIGI, NORTHLAND**
(1215/53/IM)(REPORT 4)

THAT Council:

1. *Pursuant to Section 40 of the Public Works Act 1981:*

- (d) *Agree that the area of unformed legal road adjoining 31 The Rigi, Northland (Appendix 4) is not required for a Public Work.*
- (e) *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 67m² as outlined on the aerial photograph).*
- (f) *Authorise Council officers to proceed with the road stopping process under Section 342 and 345 of the Local Government Act 1974.*

5. **ITEM 027/05RP PROPERTY FOR DISPOSAL UNDER SECTION 40 PUBLIC WORKS ACT 1981 – STAGE TWO: (ROAD STOPPING) 270 MASSEY ROAD, MAHANGA BAY**
(1215/53/IM)(REPORT 5)

THAT Council:

1. *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 226m² as outlined on the aerial photograph in Appendix 5)*
- (b) *Authorise Council officers to proceed with the road stopping process under Section 342 and 345 of the Local Government Act 2002.*

APPENDIX 5 – COMMITTEE AND COUNCIL DECISIONS

6. **ITEM 028/05RP PROPOSED ROAD STOPPING ADJACENT 41
UPLAND ROAD KELBURN
(1215/53/IM)(REPORT 6)**

THAT Council:

1. *Agree that Council resolve to publicly notify that the portion of Upland Road, Kelburn, adjoining 41 upland road described as Lot 12 and Part Lot 13, Block IV Deposited Plan 1197, comprising 102m² as shown in Appendix 6 of the officer's report, be declared stopped in accordance with the Tenth Schedule of the Local Government Act 1974 and in so declaring that the following matters are to be noted and actioned:*
 - (a) *The area of stopped road (Section 1 on SO 341430) will be amalgamated with adjoining land being Lot 12 and Part Lot 13, Block IV Deposited Plan 1197 held in Certificate of Title WN272/277.*
 - (b) *That all service authority requirements in respect of their assets/services located within the area of road to be stopped be complied with.*
 - (c) *That all costs associated with the compliance of the above conditions be met by the proponent, including all survey, administration and legal costs involved in this application.*
2. *Authorise the Manager, Property and Standards to negotiate and complete terms of sale.*

Fiona Dunlop
Committee Adviser

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

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 1974.²

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*

² The relevant provisions in the 1974 Act were not repealed when the 2002 Act came into force.

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- (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 67m² 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.*

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

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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 m² 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.

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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*

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Supporting information

b) 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.

f) 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 Roading 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:

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 these conditions.

e) Legal implications

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