
BULK SALE OF ROAD RESERVE

1. Purpose of Report

This report presents a review of the viability of bulk sale of unformed legal road, and assesses the possibility of amalgamating the processing of applications.

2. Executive Summary

An investigation into the possibility of selling legal road on a bulk basis as well as bundling up or amalgamating the processing of road stopping applications has been undertaken.

The bulk sale of unformed legal road may have some viability in rural areas. Urban areas are extremely problematic from a financial, legal, and administrative perspective. There are legal issues to overcome before the stopping could proceed.

Applications are received only sporadically, meaning it is not workable to bundling up or amalgamating the processing of applications. A marketing approach may increase the awareness of property owners and therefore lead to an increase in applications which would make bundling up more appropriate. However this would place Council in a less advantageous negotiating position.

3. Recommendations

It is recommended that the Committee:

- 1. Receive the information.*
- 2. Agree to retain Council's current road stopping process.*
- 3. Agree to a marketing approach being trialled for up to a 12 month period, if successful a marketing approach being implemented provided Council is not disadvantaged during negotiations with applicants.*

4. Background

4.1 The Roadstopping Process

Road reserve, which is the colloquial term for unformed legal road, is a valued part of the Council's overall Roading Asset.

Eligibility to purchase any surplus legal road from the Council is limited to the adjoining property owner (unless it can be subdivided for use as a building site). The purchaser pays the majority of costs associated with the road stopping. In addition, the value of the land is determined by an independent registered valuer and is non-negotiable by the purchaser.

4.1.1 The Application

There are a number of key steps in the road stopping process which will be different through a process of sale of bulk road. The key steps in the current process are as follows:

1. Council is approached by a landowner who wishes to stop and purchase adjoining road reserve.
2. Factors for consideration in assessing each application are:
 - Whether the land is required for roading purposes such as road widening, footpaths, future services, etc
 - Whether sale of the land is going to adversely affect property owners in the area or the public at large
 - Possible streetscape changes if the land is privately owned (e.g. development potential)
 - Any significant trees or vegetation in the area and possible requirements for covenants to protect them
3. If Council considers it appropriate to stop that section of road, a conditional agreement for sale and purchase is entered into with the Council before the stopping process is commenced.
4. As part of that agreement, the prospective purchaser funds the cost of the road stopping process, although it is processed by Council in accordance with the statutory process.
5. Once the road is stopped (which may include going to the Environment Court), it is transferred in accordance with the sale and purchase agreement.

Refer Appendix 1 for a step by step guide "Wellington City Council Road Stopping process for adjoining owners only"

4.2 Legislative Requirements

The process is governed under the provisions of the following Acts:

- a) the Public Works Act 1981 (**PWA**) and;
- b) the Local Government Act 1974 (**LGA74**).

4.2.1 Process under the LGA74

The Council's road stopping process for landowners who seek to purchase road adjoining their property is based on the process in the Tenth Schedule of the LGA74. The Council accordingly focuses on that process as it provides for the involvement of public participation and protection of rights. It is also important to highlight the difference between road stopping (which is to permanently remove the road status) and road closing (which is a temporary use of road land, which then reverts back to road at the end of the closing period).

The mandatory steps under the Tenth Schedule of the LGA74 are:

1. Council must prepare a plan of the road to be stopped and provide an explanation as to why the road is to be stopped and the purpose or purposes to which the stopped road will be put. This can include part of a road, which includes road reserve (clause 1).
2. The plan and explanation are lodged with the Chief Surveyor for approval (clause 2).
3. Once approved, the proposal must be publicly notified at least twice and a period of at least 40 days must be given for objections. Notice is also served on all occupiers and owners of land adjoining the road reserve to be stopped (as well as notices being erected on the area of road proposed to be stopped) (clauses 2 & 3).
4. If no objections are received, the road can be stopped (clause 4).
5. If objections are received, the Council considers them. The Council process allows objectors to be heard. If the Council does not allow the objections then it is referred to the Environment Court for determination (clause 5).

The Tenth Schedule process does not contain detail on some of the steps Council follows in its road stopping process. Additional steps have been developed in accordance with the experience and practice of a number of road stopping proposals over time, along with Environment Court caselaw.

4.2.2 Process under the PWA Section 42

The PWA process does not involve public rights of participation and is generally more suited to proposals where the road is required to be stopped for a public use.

4.2.3 PWA Section 40

In both processes (LGA74 & PWA), Council investigates how the land was acquired and whether it needs to be offered back to the previous owner. A s40 investigation is required to be undertaken for any land or road held for a public work.

There may be issues under s40 with the possibility of having to offer back the road reserve. This depends on how the road reserve was acquired in the first place and whether it can be classified as 'surplus land' for the purposes of that Act.

4.3 Purpose of road reserve

The phrase 'road reserve' is generally understood to simply be that portion of the legal road which is not formed. The same statutory and common law rights and powers applicable to road therefore apply to road reserve. It can be formed by the Council at anytime. It is land set aside for future contingencies where Council may need that land for roading purposes.

A good local example of this process is the road through Mana, which required widening for an additional lane. This could occur even though adjoining owners had enclosed the road reserve with fences and maintained the grass areas. It is difficult for the Council to determine the potential future use of road reserve. However, the current consideration of this matter is restricted to whether small sections of road reserve may be required for future use once adjoining property owners request the purchase of the area adjoining their land.

4.4 How the road will be used once stopped

As part of the Tenth Schedule process of stopping road, the Council must give an explanation as to why the road is to be stopped and the purpose to which the stopped road will be put. This is an easier exercise when the section of road to be stopped is small and is proposed to be transferred to an adjoining owner in accordance with s345 of the LGA74. The reason and use focuses on the owners needs and are included in each sale and purchase agreement.

Bulk stopping of road will make it difficult for the Council to identify the purpose that each section of stopped road will be used for. The Council's primary reason for stopping the sections of road in bulk will be that it is not anticipated for future use. While we will still put restrictions in to a sale and purchase agreement for individual sales, we anticipate a purchaser being reluctant to accept conditions as the road has already been stopped. They may/will use the conditions as a bargaining tool to lower the purchase price.

Further to this, in terms of the Tenth Schedule process, the stopping of sections of road in bulk will become more vulnerable to submission and challenge to the Environment Court on the basis that the reasons for stopping and use of the stopped road are inadequate and do not justify the stopping process. There would be a lot of work required on this aspect of the proposal if the bulk road stopping process was to proceed. The statutory provisions anticipate the status quo unless there is an appropriate reason to stop the road.

5. Discussion

As part of looking at the possibility of bulk sale of road reserve, the amalgamation of processing applications was investigated. The primary focus of this was to try and obtain optimum value by reducing costs of processing applications, with a secondary focus of reducing processing time.

5.1 *Amalgamating the processing of applications*

The required steps in the process are largely dependent on outside factors such as the time taken for the purchaser to gain neighbour comments/consent.

Amalgamating the processing of applications would place unnecessary strain on both internal and external service providers. For example, to request five initiation reports at once would only slow down the process as external consultants still have to do the necessary legwork for each initiation report. Aspects of the Section 40 reports may be completed more quickly when requested in bulk, however the external consultant advises that advance warning would be required so that a large timeslot can be scheduled. Similarly, site inspections are required when comments are requested from internal business units and these are likely to be easier to slot in to busy schedules if received one at a time.

Additionally, to hold road stopping proposals until a prescribed number are received would not be fair to the purchasers. This would also create a perception that Council is not promptly dealing with applications.

If Council takes a marketing approach to road stopping while retaining the current process, amalgamation of applications is more likely to happen as a matter of course, as more applications are likely to be received.

5.2 *Bulk Sale of Road*

The Council would need to identify all road reserve it considers surplus, stop it on a bulk basis and then attempt to sell it to adjoining owners. Then identify what owners (if any) want to purchase stopped road reserve and proceed with stopping only for those portions of road reserve. This would involve Council determining what demand there is for adjoining land owners to purchase road reserve in specified areas. If there is no demand, then there is little justification for the Council to pursue road stopping given some of the potential problems with the process. If there is a demand, then further information will be required.

If the Council decided to proceed with a bulk road stopping and then attempted to sell the stopped road after the stopping was completed, there is no direct process to recover the costs of the stopping from the adjoining owners. The Council will have to cover all costs of the stopping process and any subsequent Environment Court hearing. Once the bulk road stopping is complete, not all adjoining owners will want to purchase the stopped road, as mentioned earlier. As mentioned, the Council's bargaining position on the purchase price is also reduced as the Council has already incurred the costs to stop the road. In simple economic terms, the Council has no certainty as to a willing purchaser. This lack of certainty as to purchase could mean that the Council ends up with strips of land where it is limited by s345 of the LGA74 on what it can do with the land. If the Council cannot dispose of the land then it will need to hold onto land that has no status as road and has a limited use. There will also be further costs incurred for the Council with the process of obtaining separate certificates of title for the stopped road.

Consideration also needs to be given to the implications of stopping portions of legal road on the common law and statutory rights of adjoining owners. In particular, adjoining owners have a right of access to legal road from all points of the frontage of their property. If the legal road is stopped then some properties may be landlocked without access to a legal road. In practical terms, these implications will restrict the ability for Council to stop large portions of road reserve. This is not such an implication from the current process as the adjoining owner proposes that the stopped road will be combined with their existing title, therefore having no effect on these rights relating to their road frontage. Also, these implications may be lessened in rural areas where large properties may not be affected by loss of a proportionately small area of road frontage.

If road is proposed to be stopped that has the effect of removing a frontage to road or landlocking properties from legal road, then this will be a valid ground for objection that would be upheld by the Environment Court. This is an important issue to address in some detail as it is likely to practically prevent the proposal to stop large portions of road reserve. The Environment Court will determine whether the public benefit to be gained by the proposed stoppage is outweighed by the private injury which would follow from the proposal. The Environment Court must also be satisfied that adequate access to lands in the vicinity of the road to be stopped is left or provided.

5.3 Valuations and Surveyors

At present road reserve is assessed on the value it will add to an existing property's title. The valuer looks at the before and after value, and what potential the land can provide to a landowner. Each individual property would be different in size and shape, with some properties having the ability to subdivide once the road reserve is added to their title.

It is certainly possible and cost effective to undertake 'street by street' valuation assessments and applying the average land value. However, in doing this the Council may not achieve the true market value for each individual property. This should be balanced by the premise that not every landowner will wish to either:

- a) purchase the land; or
- b) pay the market value that has been assessed.

It is also highly probable that the market value of a number of the surplus parcels of land will be less than the costs to dispose. Furthermore if the purchaser is to also pay for all costs incurred, these will need to be factored into the total price paid.

There are also significant savings to be made by surveying an entire street in terms of administrative costs through depositing only one plan with LINZ. The street could be surveyed en bloc, and the individual property side boundaries extended and marked on the plan as subsections. There may be issues with subdivisions where an unsold surveyed subsection needs to be re-surveyed by Council to reflect the subdivision.

There is a potential risk of Council expending a lot of money on implementing a process, which will not be recovered from the sales.

5.4 Advantages and disadvantages

The following options are available for consideration:

Option A – Status quo – least risk for the Council

- Continue with the current process and stop road reserve and sell it when there is a request from adjoining owners
- Enter into agreements for sale and purchase which include the purchaser paying the stopping costs
- Proceed with the road stopping in accordance with the current process

Option B – Marketing to increase sales – slight risk for the Council

- Advertise road stopping as an option available to Wellington property owners.

The only difference between this option and the status quo is that the Council is more proactive in getting the knowledge of the service out to property owners. Once interested owners are identified then the process would proceed as currently occurs.

Option C – Identify prospective purchasers – expensive for the Council

- Gather further information. This would involve Council determining what demand there is for adjoining land owners to purchase road reserve in specified areas. If there is no demand, then there is little justification for the Council to pursue bulk road stopping given some of the potential problems with the process. If there is a demand, then further information and consideration will be required. For example:
 - Does the Council think the relevant road reserve is surplus or is it possible it may still be required?
 - Will interested landowners enter into a sale and purchase agreement and agree to pay the costs of the stopping?
 - Do any issues or implications arise for other owners who are not interested?

Option D – Bulk sale – expensive for the Council and can be challenged

- Identify all road reserve the Council considers surplus stop it on a bulk basis and then attempt to sell it to adjoining owners.

This option would be very risky for the Council as it would potentially be challenged in the Environment Court. The Council would not be able to give a reason for how the road will be used once stopped.

6. Conclusion

The bulk sale of road reserve is currently possible under the Tenth Schedule of the LGA74. However, it has the potential to be challenged and difficult to justify under the existing provisions and caselaw.

Our view is that the least risk approach for Council is to not change the existing process.

The second best alternative is to:

- Market the sale process
- Identify the areas of road reserve that adjoining owners may want to purchase
- Enter into agreements for sale and purchase, which include the purchaser paying the stopping costs
- Proceed with the road stopping in accordance with the current process

In other words, the same process as is currently used but with the Council taking a more proactive approach to identifying road to be potentially stopped.

The other option is to:

- Identify all areas of road reserve that the Council considers surplus
- Stop all those areas of road reserve, with Council paying the costs of the process
- Endeavour to sell the stopped road reserve to adjoining owners.

This last option has the potential to be expensive and time consuming and there is a risk that the stopped road cannot be sold. It is also unlikely all the costs for the stopping can be recovered. The process also carries much greater risk of successful opposition under the Tenth Schedule of the LGA74.

It is recommended that the Council agree to retain the status quo to stopping road but commence a trial marketing strategy for up to 12 months to enable the possibility of amalgamating road stopping applications.

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Supporting Information
<p>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.</p>
<p>2) LTCCP/Annual Plan reference and long term financial impact Provision for undertaking this work is contained within the overall organisational budget.</p>
<p>3) Treaty of Waitangi considerations There are no Treaty of Waitangi implications under the scope of this report.</p>
<p>4) Decision-Making The report sets out a number of options for consideration of bulk sale of road.</p>
<p>5) Consultation a) General Consultation Roading and Traffic have been consulted in the preparation of this report.</p> <p>b) Consultation with Maori No consultation with Mana Whenua was required under the scope of this report.</p>
<p>6) Legal Implications Council's lawyers have been consulted during the development of this report.</p>
<p>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.</p>

APPENDIX 1
WELLINGTON CITY COUNCIL ROAD STOPPING PROCESS
FOR ADJOINING OWNERS ONLY