

REPORT 5 (1215/12/IM)

ACQUISITION OF LAND FOR ROAD – 355 MAIN ROAD, TAWA

1. Purpose of Report

To obtain the Tawa Community Board's endorsement and feedback (if any) on officers' recommendation to Council that it acquires approximately 8m² of private land (the **Land**) at 355 Main Road, Tawa (currently formed as driveway) and to vest it as legal road.

This matter is to be considered by the Strategy and Policy Committee at its meeting of 7 June 2012 (see report at Appendix 1).

2. Recommendations

Officers recommend that the Tawa Community Board:

1. *Receive the information.*
2. *Endorse the recommendations contained in the report to be considered by the Strategy and Policy Committee at the meeting of Thursday 7 June 2012, and provide feedback to be included in the report if necessary.*

3. Background

3.1 History and Legal Description

The legal description of 355 Main Road, Tawa is Lot 1 DP 12890 on Computer Freehold Register WN563/31.

Stephen James Garner, Paul Joseph Perniskie and Kore Dione Garner, the owners of 355 Main Road, Tawa have been granted resource consent for a two lot subdivision. When surveyors were preparing plans for the subdivision, it was identified that 8m² of driveway had been constructed on private land at 355 Main Road. This is a Tawa driveway that Council agreed to maintain in its decision of 20 May 1998.

Council officers considered realigning the driveway, but this would be very expensive and impractical due to its topography. The option of leaving the land as is was also considered as the present owners may not alter the existing layout, though the Council has no legal standing to prevent them (or their successors) from doing so. Council's Roading team have identified that the acquisition of this land for road is in Council's best interests as currently Council has no registered rights over the Land to carry out maintenance work.

Accordingly, Council negotiated with the owners to acquire the Land pursuant to section 17 of the Public Works Act 1981 in exchange for waiving the Traffic and Roading portion of the Development Contributions payable by the owners on the proposed two lot subdivision.

Acquiring the land is in keeping with Council's overall roading strategy to legalise ownership of all land used for public road and will ensure ongoing tenure of the land at the lowest risk and cost to Council.

4. Conclusion

The acquisition of the Land is recommended because this would secure continued public access to the properties at 357 to 369 Main Road, Tawa. This acquisition will legalise the situation as the formed driveway currently runs over land to which the Council has no registered rights.

Council officers are seeking support from the Tawa Community Board for the proposal and will include feedback in their report to the Strategy and Policy Committee as necessary.

Contact Officers: Neil Johnstone, Team Leader - Planning, Road and Traffic Maintenance and Rosalind Luxford, Property Advisor - Property Projects

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ACQUISITION OF LAND FOR ROAD – 355 MAIN ROAD, TAWA

1. Purpose of Report

This report seeks that the Committee recommends to Council to approve the acquisition of approximately 8m² of private land (the **Land**) at 355 Main Road, Tawa (currently formed as driveway) and to vest it as legal road.

2. Executive Summary

The 8m² area of land proposed to be acquired is owned by Stephen James Garner, Paul Joseph Perniskie and Kore Dione Garner (the **Owners**) - see Appendix 1 for an aerial showing the Land shaded pink.

The Owners have been granted resource consent for a two lot subdivision. When surveyors were preparing plans for the subdivision, it was identified that part of a Council maintained driveway had been constructed on private land. This is a Tawa driveway that Council agreed to maintain in its decision of 20 May 1998. See Appendix 2 for a copy of the subdivision plan, with the land to be acquired for road shaded grey.

Council's Road and Traffic Maintenance business unit investigated the option to realign the driveway. However, due to the topography of the site, Officers believe that the road cannot easily be realigned and that any attempt to do so would be very expensive.

Accordingly, Officers entered into negotiations with the Owners to acquire the Land and an agreement was reached on 22 March 2012.

Officers now seek the Committee to recommend to Council to approve the land purchase from the owners of 355 Main Road, Tawa.

3. Recommendations

Officers recommend that the Strategy and Policy Committee:

1. *Receives the information.*
2. *Recommends that Council:*
 - a) *Agrees to acquire 8m² of land for road (the **Road Land**) identified and shaded pink on the aerial in Appendix 1 and located at 355 Main Road, Tawa.*

- b) Agrees to waive the Traffic and Roding portion of the Development Contributions payable by the owners of 355 Main Road, Tawa, in respect of the proposed two lot subdivision of their land, amounting to \$852 plus GST (if any) in exchange for the Road Land, and to pay \$500 towards the owners' survey costs and additional reasonable costs to be determined by the Chief Executive, including legal costs associated with vesting the Road Land as road.*
- c) Authorises the Chief Executive Officer to conclude the final contract for the Road Land purchase and carry out all further steps to acquire the Road Land and to vest the land as road.*

4. Background

4.1 History and Legal Description

The legal description of 355 Main Road, Tawa is Lot 1 DP 12890 on Computer Freehold Register WN563/31.

The Owners recently applied for permission to subdivide their property into two residential lots. When the subdivision plan was prepared, it emerged that the Land was actually part of the title to 355 Main Road.

The Owners contacted the Council's Property Projects team to discuss vesting the Land in Council, in exchange for a discount on the Development Contributions payable on the proposed subdivision. Officers discussed possibly realigning the driveway with Council's Traffic and Roding team, but this was considered very expensive and impractical due to its topography. Instead, the suggested discount was considered a very reasonable price to pay in exchange for acquiring the Land.

On 22 March 2012 (by which time, Council had approved the subdivision proposal), Officers made a conditional offer to waive the Traffic and Roding portion of the Development Contributions payable by the owners of 355 Main Road, Tawa in exchange for the Land. The offer was conditional on contract and Council approval. The Owners accepted on the same day.

4.2 Options

The two options available to Council are:

1. Legally acquire the Land
Legal advice received by officers recommends acquisition pursuant to section 17 of the Public Works Act 1981 as the preferred process to acquire the Land. Officers prefer this option as it is in keeping with Council's overall roading strategy to legalise ownership of all land used for public road and will ensure ongoing tenure of the land at the lowest risk and cost to Council.
2. Status quo
The present owners may not alter the existing layout, though the Council has no legal standing to prevent the owners from doing so. Council's

roading team have identified that the acquisition of this land for road is in Council's best interests as currently Council has no registered rights over the Land to carry out maintenance work. Accordingly, this option is not supported by officers.

5. Discussion

5.1 Negotiation

Discussions with the Owners commenced in February 2012, when they approached Council's Property Projects team about the Land. A conditional agreement was reached in mid-March 2012 for Council to waive the Traffic and Roothing portion of the Development Contributions due on the proposed subdivision (amounting to \$851 plus GST, if any) in exchange for the Land. Council also agreed to pay \$500 (excluding GST) towards the owners' survey costs and to cover all legal costs associated with vesting the Land as road (estimated at approximately \$2,500 excluding GST).

Officers have not obtained a valuation for the Land because the cost of doing so (around \$600) would have been disproportionate in light of the proposed purchase price.

5.2 Consultation and Engagement

Consultation has taken place with all affected parties. Council is not required under legislation to undertake public consultation on this matter. Local Iwi have not been consulted on this proposal as the land acquisition is from a private owner for a local work.

5.3 Financial Considerations

Provision for undertaking this work is contained within the overall organisational budget and is budgeted in the Roothing Operations CAPEX Budget RTCX 101.

5.4 Climate Change Impacts and Considerations

There are no climate change impacts as a result of this project and proposed acquisition.

5.5 Long-Term Council Community Plan Considerations

Provision for undertaking this work is contained within the overall organisational budget and is budgeted in Roothing Operations CAPEX Budget RTCX 101.

6. Conclusion

The acquisition of the Land is recommended because this would secure continued public access to the properties at 357 to 369 Main Road, Tawa. Roothing believe that acquiring the 8m² of land is the best way to deal with the circumstance of an existing driveway being positioned on private land, rather than repositioning the driveway itself. This acquisition will legalise the situation as the formed driveway currently runs over land to which the Council has no registered rights.

It is recommended that the Strategy and Policy Committee recommend to Council to approve the purchase of the 8m² of land at 355 Main Road, Tawa.

Contact Officers: Neil Johnstone, Team Leader - Planning, Road and Traffic Maintenance
Rosalind Luxford, Property Advisor - Property Projects

Supporting Information

1) Strategic Fit / Strategic Outcome

The report supports Council's overall vision of Creative Wellington – Innovation Capital. The report supports Council's strategic direction for managing growth through provision of adequate infrastructure.

2) LTCCP/Annual Plan reference and long term financial impact

Provision for undertaking this work is contained within the overall organisational budget and is budgeted in Rooding Operations CAPEX Budget RTCX 101.

3) Treaty of Waitangi considerations

There are no Treaty of Waitangi implications.

4) Decision-Making

A decision to acquire any land requires a Council resolution and the report explains that the agreement with the vendor is conditional upon such resolution.

5) Consultation

a) General Consultation

All affected parties have been identified. Council is not required under legislation to consult on this matter.

b) Consultation with Maori

Local Iwi have not been consulted on this proposal as the land acquisition is from a private owner for a local work.

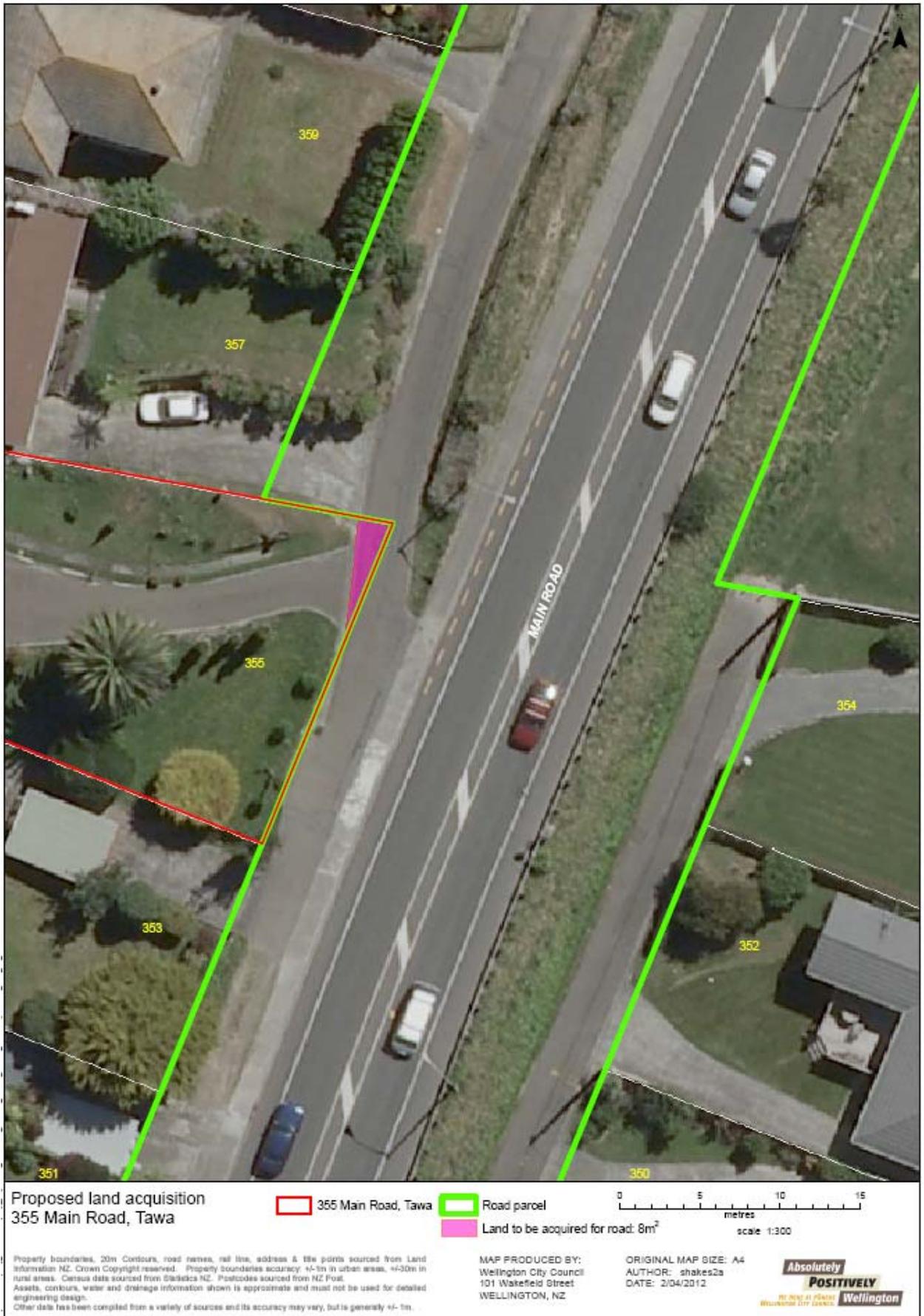
6) Legal Implications

The Sale and Purchase Agreement will be prepared by Council Solicitors. A solicitor's certificate will be obtained before any documentation is signed.

7) Consistency with existing policy

The proposal is consistent with existing policy to carry out the legalisation of formed road.

Appendix 1
Aerial photograph with subject land highlighted



Appendix 2 Draft Survey plan

