

**Chairperson and Committee Members**  
Operations & Finance Committee

12 APRIL 2018

Meeting Status: **Public**

Purpose of Report: For Decision

**ROAD STOPPING - LEGAL ROAD ADJOINING MARINE PARADE, ŌTAKI**

**PURPOSE OF REPORT**

- 1 The purpose of this report is to:
  - 1.1 Obtain agreement that approximately 7.4998 hectares of Kāpiti Coast District Council ("Council") owned unformed legal road adjoining Marine Parade, Ōtaki ("Subject Road") is not required for the Council's operational roading requirements.
  - 1.2 Authorise officers to initiate the process under section 342 and Schedule 10 of the Local Government Act 1974 to stop the Subject Road as road, enabling the land status to best reflect its current uses.
- 2 Refer to Appendix 1 for an aerial plan showing the Subject Road to be stopped.

**DELEGATION**

- 3 The Operations & Finance Committee has the authority to make this decision under Section B.2 of the Governance Structure.

**BACKGROUND**

- 4 The total area of the Subject Road is approximately 7.4998 hectares described as Sections 1 – 4 SO 496960. The Subject Road adjoins Marine Parade, Ōtaki and is currently occupied by the Otaki Surf Lifesaving Club building and adjoining improvements and the Otaki Pavillion (toilets and changing rooms). The land has been developed as a park providing the community with open space including picnic and BBQ areas and accessways to the beach. There are a number of infrastructure assets on the land including road sump leads and soak pits, pipelines and outfalls, and the discharge structure from the Moana Street stormwater pumping station.
- 5 The land was historically managed as Reserve but was actually accreted land that had no title. Accretion occurs when a body of water moves gradually to cause changes in the physical boundary between the land and water to increase the area of land. Council applied for accretion title through LINZ and this was confirmed in late 2016. The land was then vested as road as accreted land takes on the classification of the adjacent land.
- 6 The Subject Road is not currently (nor has it ever been) required for operational roading purposes and the current uses are not appropriate to be carried out on legal road. Therefore, it is recommended that the Subject Road is stopped as road to enable it to continue to be used for its current purposes.

## ISSUES AND OPTIONS

### Issues

- 7 The road stopping process is undertaken under the Local Government Act 1974 and follows a specifically prescribed process. See Appendix 2 for the road stopping process timetable.
- 8 The Subject Road adjoins the beach (coastal marine area) and legal road (Marine Parade). Neighbours in the surrounding area (particularly those on the landwards side of Marine Parade) have been advised of this proposed road stopping (Mid 2017) and will have the opportunity to comment when full public consultation is carried out later in the process.
- 9 The Subject Road does not adjoin Department of Conservation ("DOC") land or Greater Wellington Regional Council ("GWRC") land so there is no requirement for future access across the land for access to the Beach area. Information on the proposal has been sent to both organisations for their information.
- 10 There are stormwater and roading assets located in the northern end of the area of land. All Council owned infrastructure assets on the land proposed to be road stopped, will be protected through a legal mechanism. There will be access for maintenance and any future works required.

### Next Steps

- 11 The next steps in the road stopping process are as follows:
  - 11.1 Carry out public notification of the intent to stop the road;
  - 11.2 Receive objections (if any) and attend the Environment Court hearing (if required);<sup>1</sup>
  - 11.3 Undertake public notification that the road is stopped;
  - 11.4 Report back to the Council on the long term status of the Subject Road, including whether it should be classified as reserve.
  - 11.5 Note if the land is classified as reserve there will be a community driven process to establish a Reserve Management and Development Plan.

## CONSIDERATIONS

### Policy considerations

- 12 This report has no policy implications.

### Legal considerations

- 13 There are no significant legal implications arising from this matter. Compliance with the Local Government Act 1974 will address relevant issues. The Council's solicitors will be involved at the appropriate steps in the Process.

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<sup>1</sup> If any objections are received, a hearing will be required and unless the Council decides to uphold the objections, the proposed road stopping is referred to the Environment Court for a decision (see step 8b of the attached Road Stopping Process (appendix 2)).

- 14 In the event that road stopping is successfully concluded, a fee simple title will issue in the name of the Council and the process for classifying the land as reserve will commence.
- 15 Officers have obtained a section 40 Public Works Act 1981 report from Council's external legal advisors. It confirms that the section 40 offer back obligations in the Public Works Act do not need to be considered at this stage because while the Subject Road is not required for roading purposes, it is required for a different public work under section 40(1)(b) open space and recreation purposes.

### Financial considerations

- 16 All costs associated with this road stopping will be met from existing budgets.

### Tāngata whenua considerations

- 17 The land is in Council ownership and the process of changing the classification from road to reserve is not considered to have any particular significance. However, if the road stopping is successful the future process of developing a management plan will involve Nga Hapu o Ōtaki as partners throughout the process.

## SIGNIFICANCE AND ENGAGEMENT

### Significance policy

- 18 This matter has a low level of significance under Council policy.

### Consultation already undertaken

- 19 As part of the road stopping process, service authorities and internal business units were given an opportunity to provide comments.
- 20 Some discussion with Nga Hapu o Ōtaki has taken place particularly about the accretion process and the possibility of building on the land once the road stopping process is complete. All information that was provided to LINZ for the legalisation survey was provided to Nga Hapu o Ōtaki upon request.
- 21 The Ōtaki Community Board were consulted in June 2017 and only had clarification comments.

### Engagement planning

- 22 An engagement plan is not needed to implement this decision.

## RECOMMENDATIONS

That the Operations and Finance Committee:

- 23 Agree that 7.4998 hectares of unformed legal road land (Road land) defined as sections 1-4 SO 496960, adjoining Marine Parade, Ōtaki is not required as legal road, but is required for open space and recreation purposes (appendix 1 of report CS-18-335).
- 24 Agree that there is no obligation to consider section 40 of the PWA as the Subject Road is required for open space and recreation purposes.

- 25 Authorise the Chief Executive to initiate the road stopping process for the Road Land in accordance with section 342 and the Tenth Schedule of the Local Government Act 1974.
- 26 Delegate to the Chief Executive the power to formally approve the road stopping and issue the public notice to declare the Road Land stopped as road, subject to all statutory requirements being met, if no objections to the road stopping are received.
- 27 Instruct the Chief Executive to arrange a hearing before Council if any objections to the road stopping are received.
- 28 Instruct the Chief Executive to present a further report to the Council regarding future status of the Road Land in the event that it is successfully stopped as road.

**Report prepared by**

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**Approved for submission**

**Approved for submission**

Sean Mallon

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**ATTACHMENTS**

Appendix 1 – Aerial of land to be stopped

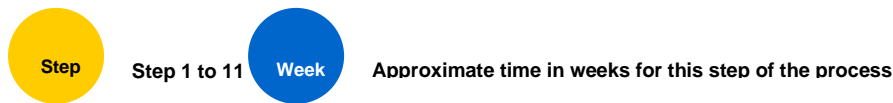
Appendix 2 – Road Stopping process timetable



## Appendix One – Aerial of Land to be Stopped



## Road-stopping process timetable



<p>Step 1</p>	<p>Weeks 1</p>	<p>The applicant discusses the proposed purchase with one of the Council's Access and Transport team and makes an application with:</p> <ul style="list-style-type: none"> <li>• a completed application form containing an explanation of why they wish to purchase the unformed legal road</li> <li>• a current certificate of title for their adjoining property</li> <li>• an aerial photo or plan of their adjoining property with the area proposed to be purchased clearly marked</li> <li>• service authority consents (see application form)</li> <li>• an application fee of \$715.00 (including GST)</li> <li>• current photos of the proposed road-stopping area.</li> </ul> <p>The application fee pays for up to five hours processing by Council staff. Once processing time exceeds five hours, the applicant will be charged \$143 (including GST) per hour. A partial refund may be given if the proposal is declined early in the process i.e. before step 4. In such cases, \$286 (including GST) equivalent to two hours processing time of the original application fee is not refundable and applicants are charged for any additional hours. For example, if staff spent three hours on an application and it was the withdrawn or declined, the applicant would get \$286 of their original fee back. If four hours had been spent, they would get \$143 (including GST) back. No refunds will be made following a favourable Council decision at step 4.</p> <p>All costs as they occur during the process will be met by the applicant. This includes, but is not limited to, survey costs, public notification costs, valuation costs, the Council's legal costs and staff processing time.</p>
<p>Step 2</p>	<p>Weeks 6</p>	<p>The relevant Council's business units and Community Board are consulted with to determine whether there is any reason why the unformed legal road cannot be sold; what, if any, conditions are required; and other things including which neighbours need to be consulted.</p> <p><b>Possible rejection</b></p>
<p>Step 3</p>	<p>Weeks 4</p>	<p><b>A</b> The Council writes to immediate neighbours providing details of the application. All parties are advised that if they wish to comment they will have an opportunity at step 7 of the process.</p> <p><b>B</b> The Council arranges for an independent registered valuer to value the land on the basis of added value to the applicant's property. This is known as betterment.</p> <p>The applicant is advised of the value and told that if the sale is completed within 18 months of the date of the valuation, this valuation will be the purchase price (subject to final survey).</p> <p>If more than 18 months passes before the sale is completed, a new valuation may be commissioned at step 11 of this process.</p> <p>In the event that objections are received at step 7, the Council or the Environment Court may impose conditions on the road-stopping.</p> <p>Under these circumstances it may be necessary to obtain a second valuation at step 11.</p>
<p>Step 4</p>	<p>Weeks 12</p>	<p>Council staff prepares a road-stopping report for the appropriate Council committee meeting. The report requests authorisation to initiate the road-stopping process and providing that all statutory and District Council requirements are met, the area of unformed legal road can be stopped and sold.</p> <p>If the report is passed (agreed to) by the committee it will then go to a meeting of the full Council for a formal Council resolution or decision.</p> <p><b>Possible rejection</b></p>



**Step  
5**

**Weeks  
4**

Council staff will engage the services of a LINZ accredited agent to assess whether section 40 of the Public Works Act 1981 applies to the road-stopping proposal. This establishes whether the land has to be offered back to a previous owner or their successor. If the land has to be offered back to a former owner, then the Council's offer-back process will be followed, which may take several months. If section 40 does not apply or the offer-back is rejected, then the process continues as below.

**Possible rejection**

**Step  
6**

**Weeks  
6**

Council staff arranges a conditional Sale and Purchase Agreement, which the applicant considers and approves.

The applicant provides the Council with a copy of Land Information New Zealand (LINZ) certified Survey Office plan (prepared by a registered surveyor) which is attached to the Sale and Purchase Agreement. Council staff arranges execution of the Sale and Purchase Agreement by both parties.

**Step  
7**

**Weeks  
7**

Council staff advertises and notifies the proposed road-stopping (cost to be met by the applicant).

The period of public notification is 40 days from the date of the initial advertisement. This gives the public the opportunity to object.

**Step  
8a**

**Weeks  
0**

**No objections received go to step 9**

**Step  
8b**

**Weeks  
52**

**Objections received**

Council staff may arrange a meeting with the objector/s to see whether their concerns can be resolved. If objections cannot be resolved, staff will prepare an objection report for the appropriate Council committee and schedule any oral submissions. The committee hears objections and makes a recommendation to the full Council on whether or not the objections should be upheld. The report will then go to a meeting of the full Council for a formal Council resolution (decision).

If the Council decides not to uphold the objections and the applicant wishes to continue, details are forwarded to the Environment Court. The Environment Court rules on the validity of the objections, and whether or not the Council can stop the road.

**Possible rejection**

**Step  
9**

**Weeks  
3**

Council staff advertises that the area of unformed legal road has been stopped (cost to be met by the applicant).

**Step  
10**

**Weeks  
7**

Council staff arranges an application to LINZ for new land appellation (title) for the stopped road.

**Step  
11**

**Weeks  
3**

The applicant pays for the land and any outstanding invoices, to effect the amalgamation with the title of the adjoining property.

**If more than 18 months has elapsed since the initial valuation, Council staff may arrange an updated valuation of the land before requesting payment. This will take into account variations such as:**

- the final survey area
- any market movements since the date of the initial valuation
- other factors affecting the value of the land.

**If there have been objections, the Council and/or the Environment Court may impose further conditions on the road stopping. In these circumstances it may also be necessary to obtain an updated valuation if the conditions are likely to affect the value of the stopped road.**

**Indicative time: No objections received - 53 weeks**

**Indicative time: Objections received - 105 weeks**