



# **AGENDA**

## **Late Reports**

### **Vincent Community Board Meeting Monday, 9 September 2024**

**Date: Monday, 9 September 2024**

**Time: 10.00 am**

**Location: Ngā Hau e Whā, William Fraser Building, 1  
Dunorling Street, Alexandra**

(A link to the live stream will be available on the Central Otago District Council's website.)

**Peter Kelly  
Chief Executive Officer**



**Order Of Business**

**5    Reports .....4**  
    24.8.14    Road Stopping - Swindon Street, Ophir .....4

## 5 REPORTS

### 24.8.14 ROAD STOPPING - SWINDON STREET, OPHIR

**Doc ID: 1886256**

Report Author:	Linda Stronach, Team Leader - Statutory Property
Reviewed and authorised by:	Louise van der Voort, Group Manager - Planning and Infrastructure

#### 1. Purpose of Report

To consider a proposal to stop and sell part of Swindon Street.

#### Recommendations

That the Vincent Community Board

- A. Receives the report and accepts the level of significance.
- B. Recommends that the Council agrees to stop approximately 650.5m<sup>2</sup> of unformed legal road fronting Swindon Street, and 317 square metres of the unnamed unformed legal road, as shown in figure 5 (the Proposed Stopping Plan), in accordance with the provisions of the Public Works Act 1981, subject to:
  - The land (stopped road) being sold at valuation as prescribed in the Public Works Act.
  - The parcels marked 'A' and 'B' being stopped and amalgamated with Record of Title OT366/26.
  - The parcels marked 'C' and 'D' being stopped and amalgamated with Record of Title OT188/110.
  - Easements (in gross) in favour of, and as approved to the satisfaction of, Aurora Energy Limited, being registered on the resulting titles if required.
  - The owner of Record of Title OT366/26 paying all costs associated with the preparation and registration of any easements required by Aurora Energy Limited.
  - The two applicants paying all other costs, including Council's legal fees, in equal shares.
  - The stopping and legalisation being approved by the Minister of Lands.
  - The final survey plan being approved by the Chief Executive.
- C. Authorises the Chief Executive to do all that is necessary to give effect to the resolution.

#### 2. Background

##### The Roads

Swindon Street adjoins the western side of the Ida – Valley Omakau Road about 1.7 kilometres south of Omakau. From there, the road, which is well formed, runs westward through the township of Ophir to its end at the start of the Ophir Bridge Road. An overview of Swindon Street, which is about 800 metres long and 30 metres wide, as shown below in figure 1.



Figure 1 – Overview of Swindon Street

An unnamed unformed legal road (the road) adjoins the northern side of the intersection of Swindon Street and Ophir Bridge Road. The road runs eastward, parallel to Swindon Street, to its end at the start of MacDonald Street. The road is not formed for roading purposes but there is a track formed on part of the road and this is well used by local residents. An overview of the road, which is about 290 metres long and 20 metres wide, is shown below in figure 2.



Figure 2 – Overview of the Unnamed Unformed Legal Road (the ULR)

#### Private Encroachment

Section 3 Block VI Town of Ophir (Section 3) is located at the western end of the Ophir township adjacent to the intersection of Swindon Street and the unnamed legal road. The improvements on Section 3, which is a triangular property, include a dwelling that was relocated to the site in 1989, a freestanding garage, a small shed, fencing, lawns, and a selection of gardens.

Section 2 Block VI Town of Ophir (Section 2) is located immediately to the east of Section 3. Section 2 is a rectangular property. The improvements on Section 2 include a dwelling with



an attached garage, two sheds, lawns, and a selection of gardens. An overview of Sections 2 and 3, as have been represented spatially in GIS, are shown below in figure 3.

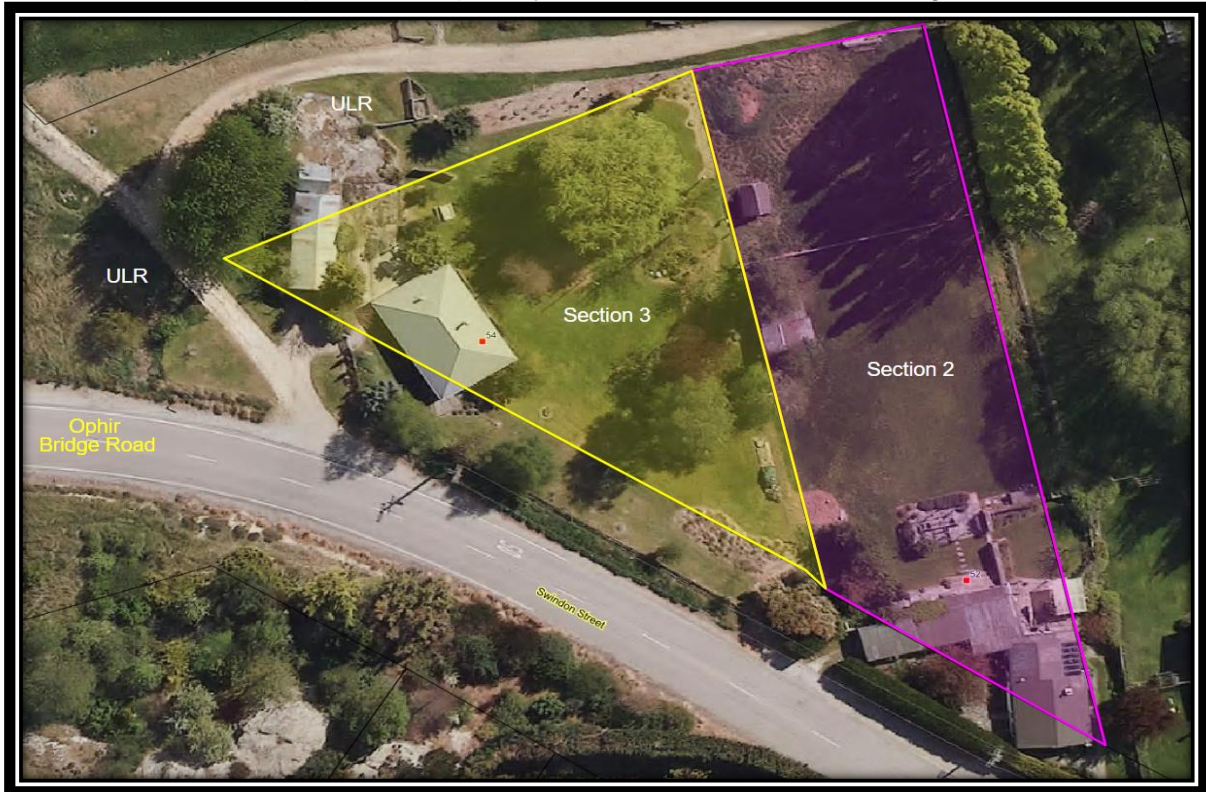


Figure 3 – Overview of Sections 2 and 3 Block VI Town of Ophir

In 2023, the owners of Sections 2 and 3 noticed that the fence on the mutual boundary did not appear to align with the legal boundary. After some investigation, it was determined that the owners of Section 2 had encroached the mutual boundary and were occupying a slither of Section 3. A cross check to GIS also showed that the eastern boundary of Section 2 was further to the east than represented in GIS. A plan of the encroachment, and the approximate location of the true eastern boundary of Section 2, is shown below in figure 4.



Figure 4 – Plan of private encroachment and approximate location of true eastern boundary of Section 2.

#### Encroachments to Legal Road

While researching their legal boundaries, the owners of Sections 2 and 3 also discovered that they both encroach the legal road to varying degrees. Those encroachments are described as follows:

- The garage, small shed, and some gardens on Section 3, all encroach the unformed legal road that runs behind the property.
- The dwelling, some fencing, and some gardens on Section 3, all encroach Swindon Street.
- The dwelling, garage, and 'front garden' on Section 2 all encroach Swindon Street.

#### Agreement to Legalise Private Encroachment

The owners of Sections 2 and 3 have agreed to resolve the private encroachment by performing a boundary adjustment. On completion of the boundary adjustment, part of Section 3, about 198 square metres, will be sold and added to Section 2.

#### Application to Stop Legal Road

To resolve their encroachments to the legal road, the owners of Section 2 have now applied to stop part of Swindon Street, with the owners of Section 3 applying to stop part of Swindon Street and part of the unnamed road that runs behind the two properties. A plan of the proposed stopping, which also shows the recently surveyed boundary adjustment, is shown below in figure 5 and is summarised in the table below that.



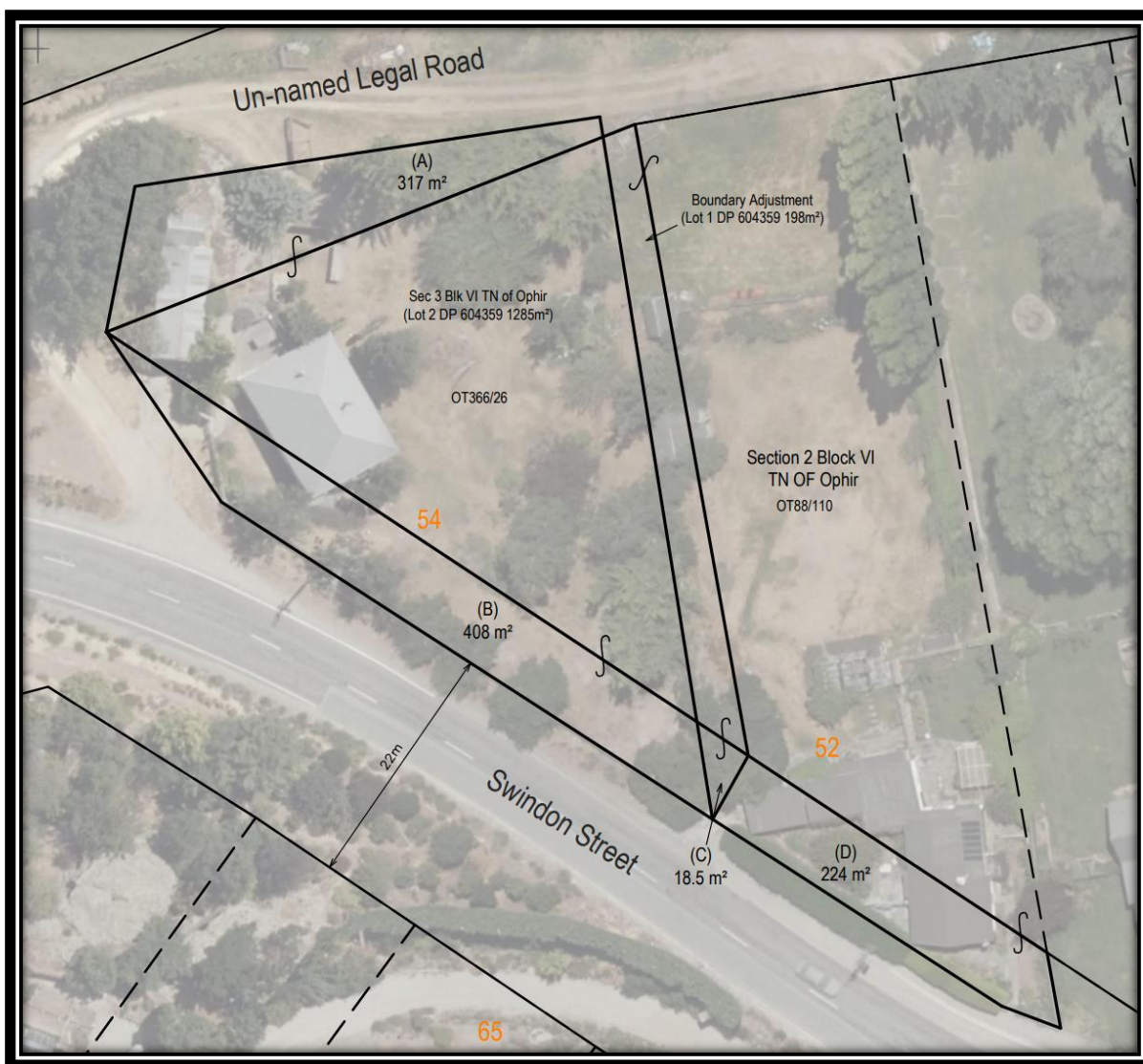


Figure 5 – Plan of the Proposed Stopping (with recently surveyed boundary adjustment).

Schedule of Road to be Stopped			
Parcel:	Being Part of:	Area (m2 - approx.):	Parcel to be Amalgamated with:
A.	Unnamed legal road	317.00	Section 3 Block VI TN of Ophir/RT OT366/26
B.	Swindon Street	408.00	Section 3 Block VI TN of Ophir/RT OT366/26
C.	Swindon Street	18.50	Section 2 Block VI TN of Ophir/RT OT188/110
D.	Swindon Street	224.00	Lot 1 DP 604359/ RT OT188/110

Table 1 – Schedule of Road to be Stopped (as shown in figure 5).

### 3. Discussion

#### Roading Network

The unnamed legal road that runs off Swindon Street and behind Sections 2 and 3 has a legal width of about 20 metres. Its current formation, which ‘swoops’ around Section 3 then on past Section 2, has come about through regular informal use.

If parcel A is stopped, the width of the first 40 metres of the western end of the unnamed road will be reduced and will range from 11 metres to 19 metres as shown below in figure 6, which is sufficient for future roading purposes.





Figure 6 – Overview of Post Stopping Width – Western End of the ULR.

Swindon Street has a legal width of approximately 30 metres. The formed road, which is well centred through the legal road, is about 8-9 metres wide. This leaves an unformed width of about 10 or 11 metres either side of the road.

If parcels B – D are stopped, the unformed road width on the northern side of the western end of Swindon Street will be reduced to about 3 metres. This is also sufficient for future roading requirements as it provides for both a footpath and any future widening of the road as shown below in figure 7.

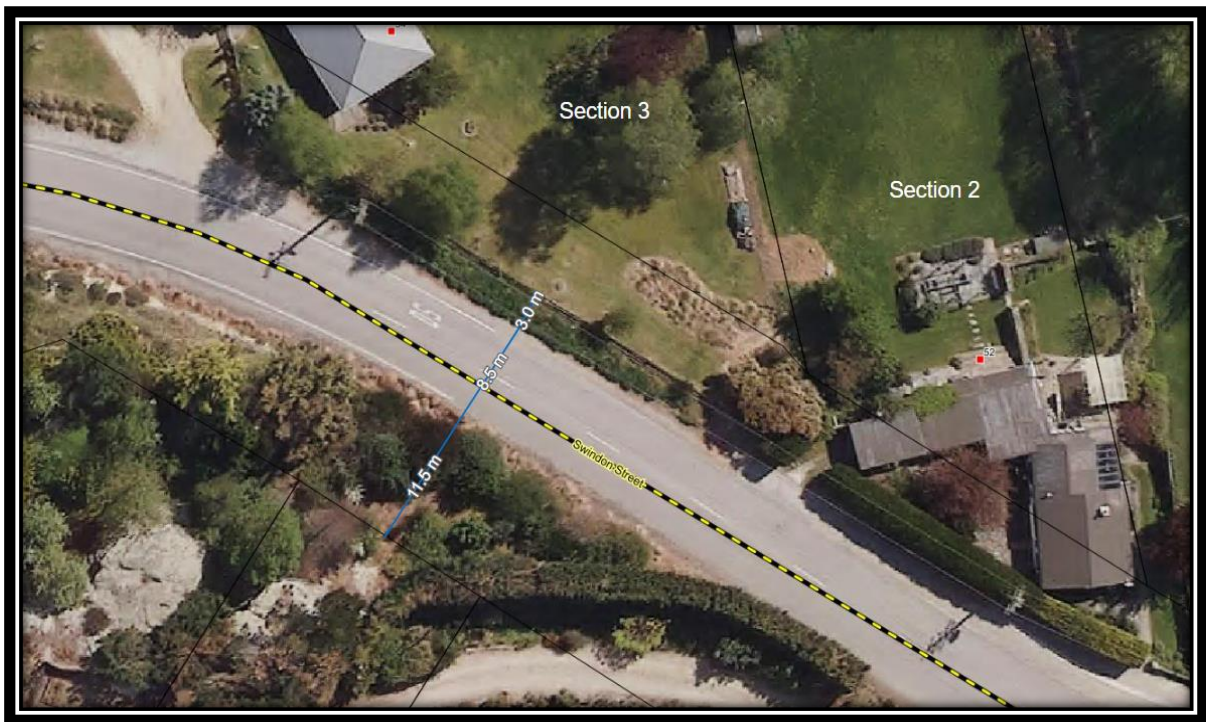


Figure 7 – Overview of Post Stopping Widths – Western End of Swindon Street

#### Utility Networks & Provider Requirements

Aurora Energy Limited (Aurora) have an overhead pole network running through Swindon Street. Part of that network runs through the legal road in front of Sections 2 and 3, and part (an underground cable), runs around Section 3 and into the unnamed legal road as shown below in figure 8.



Figure 8 – Aurora's Overhead Pole Network

If the stopping is approved, Aurora will require an easement (in gross) to protect:

- Any part of the stay identified in figure 8 that is located in or above parcel B,



- Any part of the underground cable identified in figure 8 that is found to be located in parcel B,
- Any other part of the overhead network that comes to be located in or above any part of the road that is to be stopped.

#### Legislation, Policy, & Statutory Procedure

Council's Roading Policy determines the appropriate statutory procedure for stopping a legal road or any part thereof. The policy for selecting the correct statutory process is outlined in section 8.5 of Council's Roading Policy, which says:

*The Local Government Act 1974 road stopping procedure shall be adopted if one or more of the following circumstances shall apply:*

- a) *Where the full width of road is proposed to be stopped and public access will be removed as a result of the road being stopped; or*
- b) *The road stopping could injuriously affect or have a negative or adverse impact on any other property; or*
- c) *The road stopping has, in the judgment of the Council, the potential to be controversial; or*
- d) *If there is any doubt or uncertainty as to which procedure should be used to stop the road.*

*The Local Government Act process requires public notification of the proposal. This involves erecting signs at each end of the road to be stopped, sending letters to adjoining owners/occupiers and at least two public notices a week apart in the local newspaper. Members of the public have 40 days in which to object.*

*The Public Works Act 1981 road stopping procedure may be adopted when the following circumstances apply:*

- e) *Where the proposal is that a part of the road width be stopped and a width of road which provides public access will remain.*
- f) *Where no other person, including the public generally, are considered by the Council in its judgment to be adversely affected by the proposed road stopping;*
- g) *Where other reasonable access will be provided to replace the access previously provided by the stopped road (i.e. by the construction of a new road).*

It is proposed that the Public Works Act 1981 procedures be adopted for this application for the following reasons:

- The proposal is to stop part of the legal road widths only.
- Public access will not be adversely affected.

#### **4. Financial Considerations**

Council's Roading Policy determines that the applicant is responsible for all costs and expenses associated with their road stopping. This includes purchase of the land at valuation, which is determined on a before and after basis, as prescribed in the Public Works Act 1981.

Other costs include valuer's fees, survey and LINZ fees, LINZ Accredited Supplier and legal fees, and the costs associated with the preparation and registration of any easements.

While those costs would all usually be shared equally by the joint applicants, in this instance, it is proposed that the owner of Section 3 meets all costs associated with the preparation and



registration of any easement required by Aurora, with the applicants sharing all other costs, including Council's legal fees, equally.

Income from the sales of the stopped road will be paid to the Rooding Administration Management (Unsubsidised) Account. From there it will be used to fund the correction of public rooding matters such as the encroachment of formed roads.

## 5. Options

### Option 1 – (Recommended)

To recommend that the Council agrees to stop approximately 650.5m<sup>2</sup> of unformed legal road fronting Swindon Street, and 317 square metres of the unnamed legal road, as shown in figure 5, in accordance with the provisions of the Public Works Act 1981, subject to:

- The land (stopped road) being sold at valuation as prescribed in the Public Works Act.
- The parcels marked 'A' and 'B' being stopped and amalgamated with Record of Title OT366/26.
- The parcels marked 'C' and 'D' being stopped and amalgamated with Record of Title OT188/110.
- Easements (in gross) in favour of, and as approved to the satisfaction of, Aurora Energy Limited, being registered on the resulting titles if required.
- The owner of Record of Title OT366/26 paying all costs associated with the preparation and registration of any easements required by Aurora Energy Limited.
- The two applicants paying all other costs, including Council's legal fees, in equal shares.
- The stopping and legalisation being approved by the Minister of Lands.
- The final survey plan being approved by the Chief Executive.

Advantages:

- The applicant's various occupations of unformed legal road will be legalised.
- The income received will be used to fund the correction of other public rooding issues.
- Is consistent with the provisions of Council's Rooding Policy and with the Public Works Act.

Disadvantages:

- None.

### Option 2

To not agree to stop (an unformed) part of Swindon Street, or part of the unnamed unformed legal road, as shown in figure 5 (the Proposed Stopping Plan).

Advantages:

- None.

Disadvantages:

- The applicant's various occupations of unformed legal road will not be legalised.
- Will not generate income that could fund the correction of other public rooding issues.
- Does not recognise the provisions of Council's Rooding Policy or the purpose of the Public Works Act 1981.

## 6. Compliance

<b>Local Government Act 2002 Purpose Provisions</b>	<p>Road stopping applications are governed by Council's Roading Policy, and the:</p> <ul style="list-style-type: none"> <li>- Public Works Act 1981, or the,</li> <li>- Local Government Act 1974.</li> </ul> <p>Road stoppings promote the economic wellbeing of the community by generating income from the disposal of land that is held (but not required) for roading purposes.</p>
<b>Decision consistent with other Council plans and policies? Such as the District Plan, Economic Development Strategy etc.</b>	<p>Council's Road Stopping Policy applies to the application.</p> <p>Consideration of this policy has ensured that the appropriate statutory process, being to legalise the road in accordance with the provisions of the Public Works Act 1981, will be followed.</p>
<b>Considerations as to sustainability, the environment and climate change impacts</b>	There are no climate change impacts related to the recommendation.
<b>Risks Analysis</b>	There are no risks to Council associated with the recommendation.
<b>Significance, Consultation and Engagement (internal and external)</b>	<p>The Significance and Engagement Policy has been considered, with none of the criteria being met or exceeded.</p> <p>Notice of the completed road stopping will be published in the New Zealand Gazette.</p>

## 7. Next Steps

- |  |                              |
|--|------------------------------|
| 1. Stopping/Legalisation approved by Council | September 2024               |
| 2. Applicants advised of outcome             | On release of the resolution |
| 3. Suppliers engaged                         | September 2024               |

## 8. Attachments

**Appendix 1 - Stopping application - Swindon Street.pdf** [↓](#)

**PATERSONPITTS**GROUP

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0800 PPGROUP



Our Ref : A5195

Date: 11 March 2024

Central Otago District Council  
P O Box 122  
ALEXANDRA 9320

Attention: Road Administrator ([roading@codc.govt.nz](mailto:roading@codc.govt.nz))

Dear Sir/Madam

**Re: Application for Proposed Road Stopping – Swindon Street & Unnamed Road , Ophir**

1. Paterson Pitts Limited Partnership act for the owners of 52 & 54 Swindon Street, Ophir.
2. 54 Swindon Street (Sec 3 Blk VI TN of Ophir) is owned by MT & NL Tipa under record of title OT 366/26, copy attached.
3. 52 Swindon Street (Sec 2 Blk VI TN of Ophir) is owned by SM Aldrich & N Ingram under record of title OT 88/110, copy attached. The title is subject to a Sec 36(2) Builds Act 1991 Certificate 5031313-1 (copy attached ) such that a building consent for an extension to the building on the title has been issued by Council for a site subject to inundation.
4. The attached plans (A5195\_SCM Plan\_1A dated 07/03/2024 & A5195\_SCM\_1A dated 07/03/2024) illustrate the reason for this application.
5. A total of  $(408 + 317) = 725\text{m}^2$  of legal road reserve is subject to very long-standing occupation by the Tipa's and their predecessors in title, probably dating back to the 1880's (the date of the original survey of Ophir). This includes part of their house, garage and septic tank.
6. A total of  $(224 + 18) = 242\text{m}^2$  of legal road is occupied by Aldrich & Ingram, including a large part of their house.
7. Council's water tobies and the power and telecom supply points are also located at the occupation fences and not on the legal road boundary line.

**DUNEDIN:**

P.O. Box 5933,  
Dunedin 9058.  
**T** 03 477 3245

**CHRISTCHURCH:**

P.O. Box 160094,  
Christchurch 8441.  
**T** 03 928 1533

**ALEXANDRA:**

P.O. Box 103,  
Alexandra 9340.  
**T** 03 448 8775

**CROMWELL:**

P.O. Box 84,  
Cromwell 9342.  
**T** 03 445 1826

**QUEENSTOWN:**

P.O. Box 2645,  
Queenstown 9349.  
**T** 03 441 4715

**WANAKA:**

P.O. Box 283,  
Wanaka 9305.  
**T** 03 443 0110



**PATERSONPITTS**GROUP

8. The reasons for this anomaly are historic and it appears that everyone, including the applicants, Council itself when it issued building permits for both properties and network service provided have assumed that the legal boundaries of the properties coincided with the old fences, hedges etc.
9. The fact that the legal width of Swindon Street is 150 links (30.18m ) instead of the normal 100 links (20.12m) may have contributed to this, plus the rear of the properties is subject to a flood hazard (approx. RL 295m on the plan), means that dwellings have been located on higher ground next to the road formation.
10. Referring to plan A5195 SCM 1A it is requested that Council stop areas of legal road reserve A (317m<sup>2</sup>), B (408m<sup>2</sup>), C (18m<sup>2</sup>) and D (224m<sup>2</sup>). Areas A and B are to be amalgamated with Sec 3 Blk VI TN of Ophir and areas C & D with Sec 2 Blk VI TN of Ophir.
11. This application is being made contemporaneously with a resource consent application for a boundary adjustment between Secs 2 & 3. Referring to A5195 SCM 1A, Sec 3 is being subdivided into Lot 1 (200m<sup>2</sup>) and Lot 2 (1285m<sup>2</sup>) with Lot 1 amalgamated with Sec 2. This is to align the title boundary with the actual fence line between the properties.
12. This boundary adjustment will proceed to title prior to the road stopping being given legal effect. This will result in areas A & B being added for the proposed Lot 2 and areas C & D being added to the proposed Lot 1 & Sec 2 Blk VI TN of Ophir.
13. The normal practice is for the applicants to pay Council market value for the land, as assessed by an independent valuation by a registered valuer. However, in this instance it is requested that this requirement be waived on the following grounds :
  - Undue financial hardship to the applicants who have purchased their properties in good faith, unaware of the legal situation.
  - The fact that Council and its predecessors appear to have practically acceded to the occupation over many years , in particular by issuing of building consents and the location of installed points of supply for water (tobies) etc.
  - That there are no adverse effects on the balance of Council's legal roads, noting that Swindon Street will have a legal width of 22m after the road stopping, and that no other properties will be affected by the stopping .
  - The very long-standing historical nature of the occupation.
  - The requirement to build on higher ground closer to the road to site dwellings out of the flood zone.

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14. In terms of the statutory process , paras ( e ) & (f) of pg 30 of Council Rooding Policy 2015 provide that this application qualifies for the Public Works Act 1981 to be used

Yours faithfully

A handwritten signature in blue ink, appearing to read 'P L Dymock'.

PETER L DYMOCK  
SENIOR PLANNER

Encl.

- Evidence of payment of \$115 application fee
- Application form
- CFR OT 366/26
- CFR OT 88/110
- 5031317.1 Certificate
- A5195\_Plan\_1A
- A5195\_SCM\_1A

## Application for Proposed Stopping of Legal Road



To: The Roading Administrator  
Central Otago District Council  
PO Box 122  
ALEXANDRA

Matthew

~~Matthew~~ Thomas Tipa  
Norinne Lynette Tipa  
Sean Mark Aldrich

Applicants Name:

Naomi Ingram

Postal Address:

52 & 54 Swindon St, Ophir

Phone Number (work):

027 893 96 11

Phone Number (home):

Fax Number:

Email Address:

matt.tipa@extra.co.nz  
seanaldrich1@gmail.com

I/We request the Central Otago District Council to consider the stopping of part/parts/the whole (delete as required) of a legal road in the Central Otago District, as described below:

- Name of Road: Swindon St & unnamed Road, Ophir  
Is the road formed or unformed? unformed (occupied by above)
- The road adjoins or bisects my/our land described below:  
Legal description of affected property: Sections 2 & 3 Bk VI TNo of Ophir  
Name of registered owners: as above

Please attach a Terraview or similar plan of the area CLEARLY showing the location of the property affected, the position of the road within the property and any neighbouring properties that might be affected by the proposal to close the road - all affected properties including the applicant's are to be identified by Certificate of Title reference, Valuation Reference number and the owner's name.

- Does the road to be stopped provide legal access (frontage) to any other property? Yes ☒ No ☐  
Legal Description of affected property or properties:

Valuation Reference No.:

Name of Landowner/s:

(Continue on separate page if necessary)



4. Have the other property owners been consulted on the proposal?

✓ No other property owners are affected

5. How will legal access/frontage be provided if the road is stopped?

see attachment plans - all legal frontage/access will be retained

6. Why is the road stopping being requested?

see attached letter

**I/We agree to do the following:**

1. Engage a Council approved agent to prepare my application and meet all their costs.
2. Meet all survey and other costs (including LINZ fees) associated with the preparation and lodging of plans of road to be stopped.
3. Meet all costs associated with public notification of the proposal and meeting the requirements of the Tenth Schedule (making and erecting of notices) and advising affected persons.
4. Meet all of the Council's costs, including legal fees associated with the stopping action, ordering of Certificates of Title where required and the transfer and/or amalgamation of the land.
5. Meet all the costs for easements of existing underground services where they are located in the road to be stopped.
6. Pay the Council's administration fee of \$115 including GST for the Council's costs attendant on this application.
7. **Pay market value for the land, unless I/We am proposing to form and vest an alternative road in the Council as a condition**

See request for waiver in attached letter

Signature:

P. G. M. (consultant for the applicants)

(To be signed by the applicant)

Date:

11 March 2024

**Note: This application does not constitute any form of commitment from the Council to proceed with or approve the stopping action.**

Office Use	Cost Centre: 1762 1360
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