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**DECISION ON OBJECTIONS TO THE PROPOSED ROAD  
STOPPING AND DISPOSAL OF LEGAL ROAD ADJOINING 84 –  
90 BRACKEN ROAD, PAPARANGI**

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**1. Purpose of report**

To seek the Committee's recommendation to Council that objections from Christine and Eric Miller (the Millers), and Lynn and Patrick Smyth (the Smyths) to a road stopping proposal in Bracken Road, Paparangi not be upheld.

To seek an amendment to Council's approval to sell the 816 m<sup>2</sup> area of unformed legal road land adjoining 101 – 109 Beazley Avenue and 84 – 90 Bracken Road by being marketed publicly due to the original road stopping applicant withdrawing.

**2. Executive summary**

On 28 April 2010 Council agreed to a proposal to stop and sell two areas of unformed legal road land (the Land) adjoining 101 – 109 Beazley Avenue, 84 – 90 Bracken Road and Newlands College.

Two of the 28 April 2010 resolutions require amendment in order for Council to sell the land on the open market as the original road stopping applicant has withdrawn from the process.

Public consultation was completed in May 2012 and two objections were received. The Smyth's and the Miller's made oral submissions to the Regulatory Processes Committee on 15 August 2012 - see Appendix One for Committee reports.

The grounds for both objections are included in Section 5.1. and 5.2.

It was agreed at the 15 August 2012 meeting that Ward Councillors would meet with the objectors on site to familiarise themselves with the situation. That meeting took place on 20 August 2012 and is discussed in Section 5.3.

Some of the objectors concerns are being mitigated by Council imposing voluntary restrictions on the new titles of the land. Officers believe that the proposed mitigation measures are more than adequate and that the committee should recommend to Council that both objections to the road stopping proposal in Bracken Road not be upheld.

A decision is now required on whether or not to uphold either objection.

### **3. Recommendations**

Officers recommend that the Regulatory Processes Committee:

1. *Receive the information.*
2. *Recommend to Council that it:*
  - (a) *Agree to not uphold the objections from Mr and Mrs Miller and Mr and Mrs Smyth to the proposal to stop a total of 1,426 m<sup>2</sup> road land (the Land) adjoining 101 – 109 Beazley Avenue, 84 – 90 Bracken Road and Newlands College.*
  - (b) *Delegate to the Chief Executive Officer the power to approve and conclude any action relating to Environment Court proceedings, if needed.*
  - (c) *Agree that covenants be registered on the titles for both lots to be created limiting future development to only one single storey dwelling on each and that any fencing be of materials and style to match existing fencing at 84 – 90 Bracken Road.*
  - (d) *Agree to the disposal of the 816 m<sup>2</sup> of road land adjoining 101–109 Beazley Avenue and 84 – 90 Bracken Road, by it being marketed publicly.*
  - (e) *Delegate to the Chief Executive Officer the power to negotiate the terms of sale and enter into a sale and purchase agreement in respect of the 816 m<sup>2</sup> of road land following the land being marketed for sale, provided any such agreement is conditional upon the road being stopped.*
3. *Note that if objections are not upheld by Council and the objections are not withdrawn by either the Millers and the Smyths, then the matter will be referred to the Chief Executive Officer to make a decision on whether to proceed with the road stopping.*

### **4. Background**

#### **4.1 History of application**

On 28 April 2010 Council resolved to declare the Land surplus and commencement of the road stopping process in accordance with section 342 and the tenth schedule of the Local Government Act 1974. This road stopping proposal is outlined in the committee reports contained in Appendix One.

#### **4.2 Original applicant withdrawn**

This road stopping proposal was originally initiated by the owner of 86 Bracken Road. They have since subdivided the property into four separate lots, developed and sold them, and withdrawn their road stopping application. These four lots have been allocated the street addresses of 84 – 90 Bracken Road.

Officers are therefore proposing to progress this on the basis that if the proposed road stopping is successful that all of the Land be marketed for sale on the open market as two separate lots.

Given that the original applicant has withdrawn two of the resolutions previously passed on 28 April 2010 need to be amended so that approval is given to dispose of the Land (as two lots) by being marketed publicly, rather than one of them being sold to the applicant.

The two resolutions previously passed on 28 April 2010 that need to be amended are:

- (b) Approve the disposal of the approximately 793 m<sup>2</sup> of unformed legal road land adjoining 86 Bracken Road, Paparangi, to the owner of that property.*
- (h) Delegate to the Chief Executive Officer the power to negotiate the terms of sale and enter into a sale and purchase agreement in respect of the unformed legal road land 86 Bracken Road, either with the former owner(s) of their successor(s), or the owner of 86 Bracken Road, provided any such agreement is conditional upon the road being stopped.*

The required amendments to these resolutions are included in the recommendations of this report as (d) and (e) in section 3.

Previously the areas of the Land were referred to as being approximately 793 m<sup>2</sup> and 650 m<sup>2</sup>. The Land has now been surveyed and the areas confirmed as actually being 816 m<sup>2</sup> and 610 m<sup>2</sup>.

#### **4.3 Public consultation**

Consultation on the road stopping proposal was undertaken during April and May 2012. Objections were received from the Miller's and the Smyth's who both presented oral submissions to the Committee on 15 August 2012. The grounds for both objections and officer's comments are listed in Section 5.1 and 5.2.

## **5. Discussion**

### **5.1 Objections from Mr and Mrs Miller**

The Miller's main concerns are the control of underground springs and water runoff. They believe the land has been built up higher with backfill and rubble which is causing more water runoff on to their property. The underground springs have got worse due to the added pressure on the land (backfill) and the subsoil drain is not adequately collecting the water.

Other concerns relate to traffic effects from vehicles turning into the area; services becoming overloaded if the land is developed; impact if houses were built 2 or 3 stories high; and sunlight access plane and yard requirements resulting from a front boundary becoming a side boundary.

## **Officers Comments**

### **Underground springs/water control**

NIWA rainfall statistics published in the Dominion Post indicate that the amount of rainfall for the Wellington region is approximately 12% higher than average for the 2012 year to date, and 19% higher than average for the month of August.

The field drain installed parallel to the boundary with the objectors property is considered to be adequately draining water into the stormwater main. Provision for further stormwater control (if needed) would be addressed as part of the building consent process when the lots were developed. This would only improve the situation and not make it worse.

The placing of backfill on the land was a permitted activity related to the recent subdivision. If this fill did have any affect on the springs the field drain already installed is considered to be adequate. Therefore it is not considered appropriate to have any of the fill removed to improve the water management.

While additional drainage work could be carried out, the current situation meets Council's current policy.

### **Traffic affects from vehicles turning into the subject land**

Council's vehicle access engineer has confirmed that the design and specifications of the new shared driveway meets the design criteria needed to serve six properties. Therefore it is proposed that access to any new dwelling built on the two lots would be from the existing shared driveway, and as such there would be no additional turning affects created.

### **Services in the area not upgraded from original subdivision and will be overloaded if the subject land was developed**

All service authorities and relevant internal business units gave their consent with just standard conditions. None of the service authorities or internal business units raised any concerns that any infrastructure would be overloaded should the land be developed and built on.

### **Impact if houses were built on the subject land 2 or 3 stories high**

Under the outer residential zoning it would be possible to build up to 8 metres. However it is proposed to impose conditions on the Land to be stopped that only one single storey dwelling be built on each of the two lots proposed to be created from the road land.

### **Sunlight access plane and yard effects**

Officers have previously advised that the requirements triggered are considered less than minor given the general requirements for the property.

Development Planning have sought legal advice on this point and advise that there are two options available to Council to mitigate this affect as follows:

- Require the future owner of the new lot to provide written approval to any development by 101 – 109 Beazley Ave that breaches the sunlight access plane by a certain amount.
- Register a covenant on the title of the new lot restricting its ability to register an objection to a development of two storeys by 101 – 109 Beazley Ave.

If something is not actually registered on the title it is not seen as having much weight as it can be overlooked if ownership changes.

The exact affect would only be able to be considered at the time that a proposal to demolish and rebuild, or increase the area or add another level onto the existing townhouse had been lodged and able to be assessed.

**Land behind 107 and 109 has been backfilled, how long before it can be built on. This has now taken the height of a dwelling higher**  
Development Planning have advised that the backfill on the road land proposed to stopped was a permitted activity related to the recent subdivision. The fill could be built on now but the design of any future foundations would have to take the fill into consideration, and foundations would have to be to the satisfaction of the building consent and inspection process.

### ***5.2 Objection from Mr and Mrs Smyth***

The Smyths' main concerns are about traffic congestion in the area as Bracken Road is the only road access to the schools and provides access to Newlands and Ngauranga Gorge for residents north of Paparangi. Bronwyn Way serves many properties with visitors parking in Beazley Ave this then forces others to park in Bracken Road. There is also increased parking at school peak time and Saturday mornings during sports. The traffic will increase when the new supermarket opens and will continue to increase with infill housing. The Smyths' believe a further two houses on the land will add to congestion and the Council should retain the land for public parking.

### ***Officers Comments***

Bracken Road is classified as a 'Collector Road' requiring a minimum road reserve width of 22m needing to be retained. In this case Road and Traffic Maintenance has supported the proposal but conditional on a width of 24m being retained to allow for future road and traffic needs.

It is proposed that Council will put a condition on the sale of the two lots so that only one single storey dwelling can be built so the increase in the volume of cars coming from those properties would be minimal. Advice from the Road and Traffic Unit is that the road stopping proposal will not affect the traffic congestion in the area.

There is a bus stop situated directly in front of the road land proposed to be stopped so there is public transport at the doorstep. This bus stop is not marked so if cars are parked in front of the bus stop, buses then have to double park to drop off or pick up passengers. Transport Planning have been instructed to have

road markings installed to enable the bus stop to be kept clear to avoid this situation.

Adding to congestion is the fact that the college does not allow cars during sports days to be parked on their grounds. The school enforces that by closing the gates and having patrols. Therefore at such peak times when there are visitors using the school grounds, they have no option but to park on nearby streets.

Any new dwellings built on the Land proposed to be stopped would have parking needs assessed in compliance with the District Plan. Given that future development is to be limited to only one single storey house per lot this is seen as being the minimum possible development possible. It is appreciated that at times traffic congestion is an issue in the area. However officers do not agree that by two more houses being built following the road stopping that that would significantly increase any traffic congestion problem.

### ***5.3 Site meeting of 20 August 2012***

A site meeting was held on 20 August 2012. Present at the meeting were Newlands College, the Millers and Smyths, Councillors Best and Lester, and officers from Public Drainage and Property.

The key concerns discussed were the control of the underground springs and surface water coming from the Land and its affects on 101 – 109 Beazley Avenue.

It was agreed that Public Drainage would undertake water testing to confirm whether it contained any fluoride. This would confirm whether a broken water main was a factor. At the time of preparing this report no conclusive test results had been obtained as the seepage inspector was unable to take water samples because the site had dried up. He will return at a later date to take water samples and if traces of fluoride are found then the source of the water will be investigated and pipe repairs will be carried out.

The Miller's suggested that if the fill added to the Land was removed, where practical, back to the original ground level, that this would improve the situation with water run off. They also suggested restricting future development to only one single level dwelling per lot and that a defined maximum height be incorporated into such a restriction.

### ***5.4 Mitigation measures***

After considering the objections officers are proposing that a couple of mitigation measures be implemented. These involve registering covenants on the titles of the proposed two new lots limiting the number and height of any new dwellings that could be built, see recommendation (c) under Section 3.

New sunlight access plane requirements would be triggered on a section of the Miller's boundary as a result of the road stopping. A covenant could be registered on the title of the adjoining proposed new lot preventing the future owner from ever objecting if there ever was a proposal for a two storey development on the Miller's property which breached sunlight access plane

requirements. The difficulty with deciding whether or not such a restriction is needed is that the exact affect can only be considered at the time that a proposal to demolish and rebuild, or increase the area or add another level onto the existing townhouse had been lodged and able to be assessed. There is also little case law to gauge how objections based on such grounds have been viewed by the Environment Court.

No mitigation measures are proposed to be taken regarding removing fill from the land or installing further drains. Both points relate to the objectors and Public Drainage's opposing views on whether ground water is being adequately managed, with Public Drainage advising that it is. While additional drains could be installed that would be outside of Council policy.

### **5.5 Next Steps**

The next steps in the process for this road stopping proposal are:

- The Committee will consider the submissions, and the final Committee report, and will make a recommendation to Council on whether or not to uphold the objections.
- If the Committee's decision is to uphold either objection, and the full Council agrees, then the road stopping proposal is effectively ended and the road land will not be stopped and sold.
- If the decision reached is to not uphold (i.e. reject) the objections and to proceed with the road stopping process, and either of the objectors still wish to pursue their objection, then the road stopping proposal and the objection(s) will be referred to the Environment Court for a decision.
- If the objections are not upheld and are withdrawn then the road stopping would be finalised and the two new lots would be sold on the open market.

### **5.6 Financial considerations**

There are no significant financial considerations to be considered in the decision on objections to this road stopping proposal.

### **5.7 Climate change impacts and considerations**

There are no climate change impacts.

### **5.8 Long-term plan considerations**

This proposed road stopping has no overall impact on the LTP.

## **6. Conclusion**

Public consultation concluded in May 2012 and two objections were received. Officers have attempted to alleviate the objectors concerns through meetings and written correspondence. Following the Regulatory Processes Committee meeting held on 15 August 2012 Ward Councillors and officers also met with the objectors on site. The site meeting was helpful however the objectors concerns remain.

A fundamental disagreement remains over whether existing measures to control ground water are adequate or not. Some of the objectors concerns are being mitigated by Council imposing voluntary restrictions on the new titles of the Land to limit future development to one single storey unit for each of the two new lots proposed.

Officers believe that the proposed mitigation measures are more than adequate and that the committee should recommend to Council that both objections to the road stopping proposal in Bracken Road not be upheld.

Contact Officer: *Paul Davidson, Property Advisor, Property Services*

## SUPPORTING INFORMATION

### 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.*

### 2) LTP/Annual Plan reference and long term financial impact

*This report is a step towards the possible sale of the legal road.*

*The costs associated with this proposal will be met by the proceeds of sale. This proposal will benefit the Council in financial terms as two new lots will be created, sold at market value, with future owners then paying rates on them in the future.*

### 3) Treaty of Waitangi considerations

*There are no Treaty of Waitangi implications.*

### 4) Decision-making

*This report is for the purposes of making a decision on whether objections should be upheld or not.*

### 5) Consultation

#### a) General consultation

*Consultation with the relevant service authorities and internal business units has been carried out as part of this application. They have all advised that they have no objection to the proposed road stopping, with standard conditions relating to leaving services in road land applying.*

*Public consultation has been carried out with two objections received.*

#### b) Consultation with Maori

*The internal business unit consultation included Treaty Relations who consulted with local iwi, who had no interest in the subject land.*

### 6) Legal implications

*All legal implication relevant to this road stopping such as public consultation requirements are considered in this report.*

### 7) Consistency with existing policy

*The road stopping proposal and this report are consistent with WCC policy.*