

IN THE MATTER OF the Local Government Act
1974

AND

IN THE MATTER OF the proposed stopping of a
portion of Kennedys Bush
Road

**REPORT AND RECOMMENDATIONS OF THE
RESOURCE MANAGEMENT HEARINGS PANEL
(ROAD STOPPING)**

1. INTRODUCTION

The proposed road stopping of a portion of Kennedys Bush Road as defined on Survey Ordinance Plan SO20055 was publicly notified on 8 May 1999. Two submissions against the proposal were received, resulting in a hearing being held on 17 May 1999, before a Panel comprising Councillors Sue Wells (Chairman), Erin Baker and Denis O'Rourke.

2. BACKGROUND

The reason for the road stopping request, was to enable Rock Hill Ltd to undertake their residential development of their property at the end of the formed part of Kennedys Bush Road. The portion of road to be stopped is a paper road approximately 450 metres in length.

A new road would be constructed on a better gradient and would allow for easier residential allotment access and better section aspects.

A new subdivisional road would be connected to the Kennedys Bush Road.

3. SUBMISSIONS

Submissions were received from 2 residents opposing the stopping.

4. LEGAL CONSIDERATION

Under the provisions of the Tenth schedule of the Local Government Act 1974, where there are objections to the proposal, these are required to be referred to the Environment Court, for confirmation or otherwise of the proposed stopping. However, it is customary for the submissions to be first heard by the Council in order that an opportunity is available to reconsider the proposal and hear any further evidence. The hearing on the 17 May 1999 was convened for that purpose.

5. THE HEARING

Mr Lester Reilly, City Design, outlined the proposal and advised that an exchange of land had been agreed to in respect of the land contained within a paper road and that of the new subdivisional road. The Council had approved the proposal.

6. SUBMISSIONS

In addition to the written submissions received against the proposal, the Panel had heard other evidence from the following:

1. Mr Guy Carnaby, appeared on behalf of Mr Graham Lee who advised that his client's property was directly to the south of the Van Asch land, some of it being zoned for urban use. He was therefore keen to protect his rights in respect of this.

As a result there was need to provide for adequate access to Mr Lee's property by means of an intersection treatment and this would be cobblestoned at Mr Lees' expense.

2. Mr Paul Loughton on behalf of P & J Loughton, stated that any land swap required that each party receive valid consideration. As the public were entitled as of right to a fully serviced road, including the land, all paid for by the developer, there could be no valid consideration for the act of stopping the road and transferring the land therein to the developer. This would amount to a gift and not a swap of land.

His objection would be overcome if the developer gave the equivalent value in land elsewhere on his site as a reserve or alternatively a reserve contribution equivalent to the value determined by an independent valuation.

He considered that clause 10 of the Buddle Findlay legal opinion was incorrect, and that it should be viewed in the context of his submission.

Council staff had not required the upgrading of the Kennedys Bush Road as a condition of the subdivision and the Council itself was not obliged to do anything with the road.

The basis of his objection was that something of equal value had to be given in exchange, and in this case the exchange was ultra vires as no valid reason had been provided. The exchange would amount to a gift if it was allowed to proceed.

It was not unreasonable to place a value of \$1m on the six sections, which the land provided by the closed road equated to.

He stated that Buddle Findlay had missed the point completely and that the Council had seriously erred in its negotiations for a swap of land. Had this been generally known, then more objections to the proposal would have been raised.

Mr Laughton concluded by commenting that he was not objecting to the closure just the fact of the road value being given away.

7. APPLICANT

Mr David Fox, Fox & Associates Ltd tabled further submissions detailing the process followed in determining the location of the new road in responding to the claims of the two submitters.

He commented that the proposals for the development of the land were discussed as far back as 1994 with the City Surveyor, Mr A C Iversen. Both Mr Iversen and himself were of the opinion that the position of the paper road was inappropriate and it should not constrain development proposals by adhering to a road alignment that was produced years ago for different purposes.

In conclusion Mr Fox stated that from a physical and planning point of view there was no question in his mind, other than that the road should be stopped. No submission had actually been made against stopping the road.

Mr Rick Chapman, Valuer, Ford Baker Ltd advised he had valued the road before and after the exchange at the request of the Council. The difference in valuation he had assessed at \$33,000 in favour of the subdivision.

8. DISCUSSION

Both submitters were asked to consider their position in the light of the evidence given by the applicant, as to whether a compromise could be reached.

Doubt was expressed as to whether or not the matter should proceed to the Environment Court, as the submissions received may not be considered to be part of the road stopping process by the Court.

9. DECISION AND CONCLUSION

The Panel adjourned for a short period to allow discussion to take place amongst the various parties.

Mr Carnaby advised that while he believed his client had a perfect right to make a submission on the road stopping, his client had agreed to withdraw the objection on the basis of a round table discussion taking place between himself and the owner of the development.

In response Mr Van Asch advised he was happy to meet on the matter and would approach any discussion with an open mind.

Mr Loughton advised that while he was not happy he was prepared to withdraw his objection, if it was proven that a contract for the exchange of land had been entered into. He still believed that the Council had an asset which could have been sold rather than given away.

The Chairman advised that the hearing had been valuable in that it had brought to light certain matters related to the process of exchanging land for road.

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10. RECOMMENDATION

On the basis that it had been noted by the Panel and both submitters had agreed to withdraw their objections the Panel recommends:

1. That pursuant to the provisions of the Local Government Act 1974 the portion of Kennedys Bush Road as defined on Survey Ordinance Plan as SO20055, be stopped.
2. That staff prepare a report for consideration by the Strategy & Resources Committee's August 1999 meeting, updating the policy on the procedures for the exchange of land contained within legal road and proposed road.

It was agreed that Mr P Loughton should be invited to attend this meeting.

The hearing concluded at 11.40 am.