

2. PROPOSED ROAD STOPPING – 21 MACMILLAN AVENUE

General Manager responsible:	General Manager City Environment
Officer responsible:	Transport and City Streets Manager
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PURPOSE OF REPORT

1. This report is submitted to the Council to authorise commencement of the road stopping procedure for the portion of road shown as Section 1 on Scheme Plan SM1538-01 (attached).

EXECUTIVE SUMMARY

2. The area of road proposed to be stopped comprises 4 square metres and is occupied by a single garage owned in conjunction with the adjoining property at 21 MacMillan Avenue. A property location map and a copy of Scheme Plan SM1538-01 that delineates the area of road proposed to be stopped, are attached to this report for information.
3. The owners of 21 MacMillan Avenue approached the Council about an opportunity to purchase the area of MacMillan Avenue occupied by their garage, being aware that their neighbours at 23 MacMillan Avenue had made a similar application to the Council in 2003, which was agreed to in principle by the Board and the Council.
4. The Transport and City Streets Unit supports the road stopping application on the basis that the area of road involved is minimal, and that in any event the physical road widening in this area of MacMillan Avenue would be unlikely given the difficult hill terrain of the road. Further, the proposed road stopping will legalise the encroachment of the garage on legal road.
5. The applicants have agreed to pay the market value for the 4 square metre area and half of the road stopping costs. The other half of the costs are being met by the owners of 23 MacMillan Avenue in conjunction with their road stopping application.
6. Given the small area of road being stopped, it is proposed to facilitate the stopping pursuant to the Public Works Act 1981, and amalgamate that part with the property at 21 MacMillan Avenue.
7. A final report will be submitted to the Council seeking its formal consent to stop the road once all survey requirements have been met and the agreement for sale and purchase has been finalised.

FINANCIAL AND LEGAL CONSIDERATIONS

Financial

8. The applicants have agreed to pay \$370.36 (inclusive of GST) for the 4 square metre area of road, being the amount calculated using the same square metre rate that Simes Limited assessed for the road stopping at 23 MacMillan Avenue.
9. The applicants have also agreed to meet half of the road stopping costs incurred as a result of this application and that of 23 MacMillan Avenue because both stoppings can be dealt with on one survey office plan, and there are inherent economies of scales as a result.

Legal

10. The Community Board does not have authority to resolve to commence a road stopping - such a decision needs to be made by the full Council. The Board has, however, recommendatory powers to the Council.
11. The Council has the ability to stop roads pursuant to the Public Works Act 1981 and the Local Government Act 1974. The latter Act requires the Council to publicly notify the proposed road stopping and to call for objections or submissions. Conversely, the Public Works Act process does not require public submission; however the Council and the adjoining landowner(s) must consent in writing to the proposal.
12. If the proposed road stopping is potentially contentious then the Council should process the road stopping application pursuant to the Local Government Act. If not, the Public Works Act process can be followed.

13. It is proposed to process this application pursuant to the Public Works Act 1981 because:
- (a) The owner of 21 MacMillan Avenue is the only logical purchaser of the subject area.
 - (b) The road is occupied by an existing garage owned in conjunction with 21 MacMillan Avenue.
 - (c) Given the small area of road to be stopped, there will be no practical effect on MacMillan Avenue – the road stopping is merely a process to formalise the existing physical situation.
14. Section 116 Public Works Act 1981 – Stopping Roads:
- This Section says that, subject to the written consent of the territorial authority and the owner(s) of the land adjoining the road, the road can be declared formally stopped by notice in the Gazette.
15. Section 345(1)(i)(a) Local Government Act 1974 – Disposal of land not required for road:
- In relation to stopped road that is no longer required by the local authority, this Section says that the Council may sell that part of the stopped road to the owner(s) of any adjoining land.
- This Section goes on further to say that the price for the stopped road can be fixed by a competent valuer appointed by the Council to value that part, or if the owner(s) is not prepared to pay the fixed price, the Council may sell the land by public auction or private tender.
16. Section 345(2) Local Government Act 1974 – Amalgamation of stopped road with adjoining land:
- This Section enables the Council to require the amalgamation of stopped road with adjoining land.
17. Subject to the road stopping process being successfully completed, the 4 square metre area will be amalgamated with the property at 21 MacMillan Avenue, more particularly described as Part Lot 19 and Part Lot 20, DP 3860 contained in Certificate of Title CB325/242, pursuant to Section 345(2) of the Local Government Act 1974.

STAFF RECOMMENDATION

It is recommended that the Council commence the road stopping process in respect of the parcel of road marked Section 1 on Scheme Plan SM 1538-01 situated at 21 MacMillan Avenue.

BOARD RECOMMENDATION

That the staff recommendation be adopted.