

10. 11. 2011

**LYTTELTON/MT HERBERT COMMUNITY BOARD
5 OCTOBER 2011**

**Report of an Extraordinary meeting of the Lyttelton/Mt Herbert Community Board
held on Wednesday 5 October 2011 at 9.39am at the Lyttelton Recreation Centre,
25 Winchester Street, Lyttelton.**

PRESENT: Paula Smith (Chairperson), Jeremy Agar, Ann Jolliffe, Adrian Te Patu and Andrew Turner.

APOLOGIES: An apology for absence was received and accepted from Claudia Reid and an apology for lateness was received from Adrian Te Patu.

KARAKIA: Paula Smith gave the opening karakia.

The Board reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. ROAD STOPPING – CYRUS WILLIAMS QUAY / GEORGE SEYMOUR QUAY

General Manager responsible:	General Manager City Environment, DDI 941-8608
Officer responsible:	Asset and Network Planning Unit Manager
Author:	Weng Kei Chen, Asset Policy Engineer

PURPOSE OF REPORT

1. The purpose of this report is to:
 - (a) Address the concerns raised by Community Board members that the public interest in the proposed road stopping at Cyrus Williams Quay and George Seymour Quay has not been adequately considered following its decision of 17 May 2011 to commence road stopping procedure under the Public Works Act 1981; and
 - (b) To re-consider the application from Lyttelton Port Company to stop part of Cyrus Williams and George Seymour Quays as shown on the plans (**Attachment 1**).

Refer to Clause 2 for decisions made under delegated authority.

EXECUTIVE SUMMARY

2. As a consequence of the September and February earthquakes, Independent Fisheries Ltd's coolstore facility situated on the Z berth wharf was devastated, along with the wharf, rendering them both unusable.
3. The Company's business is one of New Zealand's major privately-owned fish processing companies employing approximately 300 staff and harvesting in excess of 30,000 tonnes of fish annually. As a consequence it is important to replace the facility urgently in order to help restore economic growth to the region and provide employment security to valued staff.
4. The proposal put by the Lyttelton Port Company to provide a new facility is to be commended but in order to do so there is a need to stop the adjoining roads to accommodate the development.
5. The existing road is not required for road network purposes and it only serves the port activities. The presence of fences and above ground petroleum lines have rendered the section of road redundant to the Council's requirements.

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011**1 Cont'd**

6. Members of Naval Point Club have raised with the Community Board the issue of access to the Port owned slipway adjacent to the area of road proposed to be stopped. It is understood that this boat ramp is being used informally by members of the public as an alternative access point to the harbour in the event of a southerly squall eventuating, which is a regular occurrence in Lyttelton. Council staff were not aware of the slipway issue at the time of preparing the report considered by the Board on 17 May 2011.
7. The Community Board approved the proposed road stopping pursuant to the Public Works Act 1981 at its meeting of 17 May 2011, as follows:

The Board resolved:

- (a) *To recommend to the Minister of Lands that part of Cyrus Williams and George Seymour Quays, as depicted and coloured red on the attached plan (attachment 1), containing approximately 7689m² (subject to survey) be declared to be stopped by consent pursuant to Section 116 (2)(b) (i) and (ii) of the Public Works Act 1981.*
 - (b) *That pursuant to Section 345 (1)(a)(i) of the Local Government Act 1974 the land be sold to the Lyttelton Port Company at a price of \$275,000 plus GST plus all costs associated with the road stopping.*
 - (c) *That pursuant to Section 345(2) of the Local Government Act 1974 the land be amalgamated under one certificate of title with the land contained in CB 46B/267 subject to the provisions of Section 345(2A) (a).*
 - (d) *That the road stopping be subject to permanent public access being secured to the slipway.*
8. Subsequent to the Board's decision on 17 May 2011, Council staff entered into negotiations with the Port Company to progress the road stopping. The Port Company declined to agree to the condition contained in the Board's resolution of 17 May 2011 that it provide permanent public access to the slipway. The Port Company attended a Board seminar on 30 August 2011 to discuss the issue. A further Board seminar was held on 7 September 2011 to further discuss the issue.
 9. As a result of these further discussions, and the Port Company's unwillingness to agree to permanent public access being provided to the slipway, it is considered that the public interest in the proposed road stopping may be greater than first anticipated and that the issue could become controversial. Accordingly, it is appropriate that the Community Board reconsiders its earlier decision and the statutory road stopping process to be used. The area for the road to be stopped is as shown in the attachment (attachment 1) and does not include the road for the entry to the boat ramp.

FINANCIAL IMPLICATIONS

10. If the road stopping proceeds as recommended using the Local Government Act procedure then the Port Company will be asked to meet the Council's costs associated with undertaking that process in accordance with the Council's Road Stopping Policy. In addition, the Port Company will be required to purchase the land from the Council at market value as determined by a registered valuer.

Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

11. Not applicable.

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011

1 Cont'd

LEGAL CONSIDERATIONS

12. Both the Local Government Act 2002 and the Public Works Act 1981 allow for the stopping of legal roads. In addition to these statutory provisions, the process of stopping roads by the Council is governed by the Christchurch City Council Road Stopping Policy 2009 ("the Policy") and the related delegations adopted by the Council on 9 April 2009 ("Delegations").
13. Under the Delegations the Corporate Support Manager has the power to accept or decline a road stopping application where:
 - (a) The area of the road to be stopped will not constitute a complying lot under the City Plan in its own account nor will its amalgamation with the adjoining lot create a new potential for the adjoining lot to be subdivided; and
 - (b) It will be necessary for the stopped road to be amalgamated with the certificate of title to an adjoining property; and
 - (c) The owner of an adjoining property is the logical purchaser of the stopped road; and
 - (d) That the proposed road stopping complies with the Council's Road Stopping Policy; and
 - (e) The area of road to be stopped is not adjoining a reserve or waterway.
14. In all other circumstances the power to accept or decline a road stopping application, and which statutory procedure to use, sits with the community board of the ward in which the road in question is situated. Those powers must be exercised in accordance with the Policy.
15. There are two statutory processes available for road stopping and the Policy articulates the circumstances when each is to be used.
16. The Local Government Act 1974 road-stopping procedure must be adopted if one or more of the following circumstances shall apply:
 - (a) Where any public right of access to any public space could be removed or materially limited or extinguished 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 is, in the judgment of the Council, likely to be controversial; or
 - (d) If there is any doubt or uncertainty as to which procedure should be used to stop the road.
17. The Public Works Act 1981 road stopping procedure may be adopted if all of the following circumstances shall apply:
 - (a) Where there is only one property adjoining the road proposed to be stopped; and
 - (b) Where the written consent to the proposed road stopping of all adjoining landowners by proposed road-stopping is obtained; and
 - (c) Where the use of the Public Works Act 1981 procedure is approved (where necessary) by the relevant Government department or Minister; and
 - (d) Where no other persons, including the public generally, are considered by the Council in its judgment to be adversely affected by the proposed road stopping; and
 - (e) Where the road is to be amalgamated with the adjoining property; and

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011

1 Cont'd

- (f) Where other reasonable access exists or will be provided to replace the access previously provided by the stopped road (i.e. by the construction of a new road).

PROVIDED THAT if any one of the above circumstances shall not apply, then the Local Government Act 1974 procedure shall be used.

18. The Public Works Act road stopping procedure is essentially an administrative process intended to be used in non-controversial circumstances involving trivial parcels of land where the consent of the neighbouring owners is available. For all other road stoppings, the Policy requires that the Local Government Act process is used.
19. The Local Government Act process involves public advertising of the application, public submissions, a hearing process and automatic referral to the Environment Court if any objections are not upheld by the Council.
20. The opinion provided by the Legal Services Unit is that, given the likely public controversy of the proposed road stopping, the Local Government Act road stopping process is the appropriate process to use.
21. The relevant sections of that Local Government Act 2002 are as follows:

Section 319(h) – General powers of councils in respect of roads:

This Section gives local authorities the general power to stop any road or part thereof in accordance with the Act.

Section 342(1)(a) – Stopping of roads:

Confers on the Council the ability to declare a road to be formally stopped.

Section 345 – Disposal of land not required for road:

In relation to stopped road that is no longer required by the local authority, this section provides that the Council may sell or lease that part of the stopped road to the owner(s) of any adjoining land. This Section goes on further to provide that the price or rent for the stopped road is to be fixed by a competent valuer appointed by the Council. If the owner(s) is not prepared to pay the fixed price or rent, the Council may sell the land by public auction or private tender.

Section 345(2) – Amalgamation of stopped road with adjoining land:

This Section enables the Council to require the amalgamation of stopped road with adjoining land if deemed appropriate.

Schedule 10 – Conditions as to Stopping of Roads:

The following is a summary of the various steps:

- (a) The Council prepares a survey plan of the road proposed to be stopped and an explanation as to why the road is to be stopped and the purposes or purposes to which the stopped road will be put. The Plan is lodged with Land Information New Zealand for approval.
- (b) Once Land Information New Zealand has approved the plan, it is made available for public inspection. In addition the Council is required to at least twice, at intervals of not less than 7 days, give public notice of the proposal and the place where the plan may be inspected. A notice is also required to be served on the occupiers of all land adjoining the road and a further notice is required to be affixed in a conspicuous place at each end of the road proposed to be stopped.

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011

1 Cont'd

- (c) The Plan is then open for public objections to be received within 40 days after the date the first notice is published.
 - (d) If no objections are received, then the Council may by public notice declare the road to be stopped.
 - (e) If objections are received, then it will be necessary for those objections to be heard, usually by a hearings panel appointed by the Council. If the Council decides to allow any objection, the process will then cease and the road will not be stopped. However, if the Council does not allow any objection(s), it is required to refer that objection(s) to the Environment Court for final decision.
22. The above processes will be initiated if and when the necessary Board resolutions are available and an appropriate agreement with the Port Company is concluded.
23. To give effect to this advice the Board's resolution of 17 May 2011 resolving to adopt the Public Works Act road stopping process will need to be revoked and a new resolution adopted.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

24. The road is not required for the roading network.

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

25. Yes.

ALIGNMENT WITH STRATEGIES

26. Yes, as part of the rationalisation of road assets. Currently the road is utilised for port activity purposes.

Do the recommendations align with the Council's strategies?

27. Yes.

CONSULTATION FULFILMENT

28. If the staff recommendation to adopt the Local Government Act 1974 road stopping procedure is adopted then members of the public will have an opportunity to make submissions on the proposal and be heard as part of that process. In addition, under that procedure if the Council does not uphold an objection then it is automatically referred to the Environment Court for final determination.

BOARD CONSIDERATION

Board members believed it was important to ask the Council to consider applying the funds from the sale of the road to purchase of land in the vicinity, so that the community recreational facilities in the area could be increased. Members were concerned that public use of the slipway in that area could be restricted by the owner or lessee at any time, and that currently the public could only use the slipway through the good graces of those parties.

BOARD RECOMMENDATION

That the Council enter into negotiations with the Lyttelton Port Company Limited to secure an alternative permanent slipway for the public within the inner harbour.

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011

1 Cont'd

BACKGROUND (THE ISSUES)

29. Independent Fisheries previously owned and operated a 3,000 tonne capacity coolstore facility in the port situated on Z-Berth at the entrance to the Port of Lyttelton's wharf areas. The coolstore complex was fully utilised by other port users for the storage of frozen product and added a valuable facility to the Port of Lyttelton. As indicated the September earthquake devastated the coolstore facility and the Z – Berth wharf area rendering it unusable for Independent Fisheries and the port. In addition to this the February earthquake caused substantial damage to Independent Fisheries Limited's Woolston operation and the combined impact of both earthquakes has extensively impacted on Independent Fisheries operations.
30. Independent Fisheries is now working closely with the Lyttelton Port Company to develop a new dedicated fish facility which includes a new purpose built 5,000m² coolstore and heavy duty wharf. This will allow Independent Fisheries Limited and other large charter operators to safely berth vessels and unload in Lyttelton.
31. Existing Road Environment:
 - (a) The road is currently only used for port activity purposes servicing the wharf;
 - (b) The seaward side of the road is fenced off for safety reasons because of the above ground petroleum and LPG pipes which effectively provide a barrier preventing access to the foreshore.
32. Public Access after Road stopping:
 - (a) Adequate road access is still available to the adjoining land via those portions of Cyrus Williams and Charlotte Jane Quays which will remain open;
 - (b) Public access to the foreshore is still available via Godley Quay and as such the existing recreational opportunities are still maintained.
33. In accordance with the Council's Road Stopping policy the Port Company will be required to meet the Council's cost's relating to the stopping as well as purchasing the land. With respect to the latter point the Port Company employed Colliers International to assess the land's value while the Council engaged Ford Baker. Colliers placed a negative value of \$110,000 on the land while Ford Baker assessed it's current market value at \$350,000. Both valuers discounted the value to reflect the presence of the services in the road (water, storm water, Telecom, Orion and LPG) which will be protected by easements in favour of the service authorities. However in addition, Colliers factored in the cost of repairing the road as a consequence of the earthquakes, but this argument was rejected by Council staff. After negotiation a price of \$275,000 plus GST was agreed upon, but subject to this parcel of road being stopped. With the reduced road area to be stopped the price will be adjusted accordingly.
34. It must be recognised that without the stopped road the adjoining site is too small to accommodate the proposed new development. Given the regional significance of the industry in terms of restoring both economic growth and employment opportunities the application has significant benefits should it be approved.
35. The stopping of the road will enable the Council to rationalise its road network asset and in this instance it provides the Port Company the opportunity to extend their business activities on suitable ground.

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011

PART C – DELEGATED DECISIONS

2. ROAD STOPPING – CYRUS WILLIAMS QUAY / GEORGE SEYMOUR QUAY (CONT'D)

The Board considered a report on the proposed road stopping at Cyrus Williams Quay and George Seymour Quay, and to reconsider the application from the Lyttelton Port Company to stop part of Cyrus Williams and George Seymour Quays. Refer to Clause 1 for the Board's recommendation to the Council on this matter.

STAFF RECOMMENDATION

It is recommended that the Board:

- (a) Reconsider its resolution of 17 May 2011 concerning the road stopping of Cyrus Williams Quay and George Seymour Quay, and revoke that resolution if necessary;
- (b) Consider whether the statutory process to be employed in relation to the proposed stopping of Cyrus Williams Quay and George Seymour Quay should be the Local Government Act 1974 road-stopping procedure;
- (c) Subject to (b) above, resolve that pursuant to sections 319(h) and 342(1)(a) of the Local Government Act 1974 the road stopping procedure contained in Schedule 10 of that Act be commenced in respect of that part of Cyrus Williams Quay and George Seymour Quay as is specified on the plan attached to this report (attachment 1).
- (d) Subject to such road stopping procedures being successfully completed, pursuant to clause 32(3) of Schedule 10 of the Local Government Act 2002, resolve to sub-delegate to the Corporate Support Manager the power under section 345 of the Local Government Act to dispose of the parcel of land created by such road stopping to Lyttelton Port Company Limited on such terms and conditions as he shall consider appropriate (including any requirement under section 345(2) and (2A) that it be amalgamated with such other parcels of land as he shall consider appropriate).

BOARD CONSIDERATION

Consideration was given to which road stopping procedure was the appropriate one in these circumstances. It was suggested that if a smaller portion of road was to be stopped, it would remove any controversy around this issue, as the community accepted the need to build a new cool-store to protect local employment and contribute to the economic recovery of the town, but they did not agree that it was necessary to stop such a large portion of road.

10. 11. 2011

Lyttelton/Mt Herbert Community Board 5.10.2011

2 Cont'd

It was noted that only a portion of Cyrus Williams Quay was within the footprint of the proposed cool-store. By stopping only that smaller portion of road, the Board believed that there would be no removal or limitation of public access to any part of the public space in that area. Board members were also confident that stopping only that portion of road would not be controversial, and therefore could proceed through the Public Works Act process.

BOARD DECISIONS

The Board **resolved**:

- (a) To revoke its resolution of 17 May 2011 concerning the road stopping of Cyrus Williams Quay and George Seymour Quay.

Paula Smith moved, seconded by Andrew Turner, that the Board **resolve**:

- (b) To approve the road stopping of the portion of Cyrus Williams Quay identified on attached plan **attachment 2**.
- (c) To recommend to the Minister of Lands that part of Cyrus Williams Quay identified on the attached plan **attachment 2** be declared and be stopped by consent pursuant to Section 116 (2) (b) (i) and (ii) of the Public Works Act 1981.

On being put to the meeting motions (b) and (c) were declared **carried** on Division No. 1 by 4 votes to 1 abstention, the voting being as follows:

For (4): Paula Smith, Andrew Turner, Adrian Te Patu and Jeremy Agar.

Abstained (1): Ann Jolliffe.

- (d) Subject to such road stopping procedure being successfully completed, to sub-delegate to the Corporate Support Manager the power under section 345 of the Local Government Act to dispose of the parcel of land created by such road stopping to the Lyttelton Port Company Limited on such terms and conditions as he shall consider appropriate (including any requirement under section 345(2) and (2A) that it be amalgamated with such other parcels of land as he shall consider appropriate), and that the Council be requested to apply the proceeds of sale to the purchase of land in the vicinity.

The meeting closed at 11am.

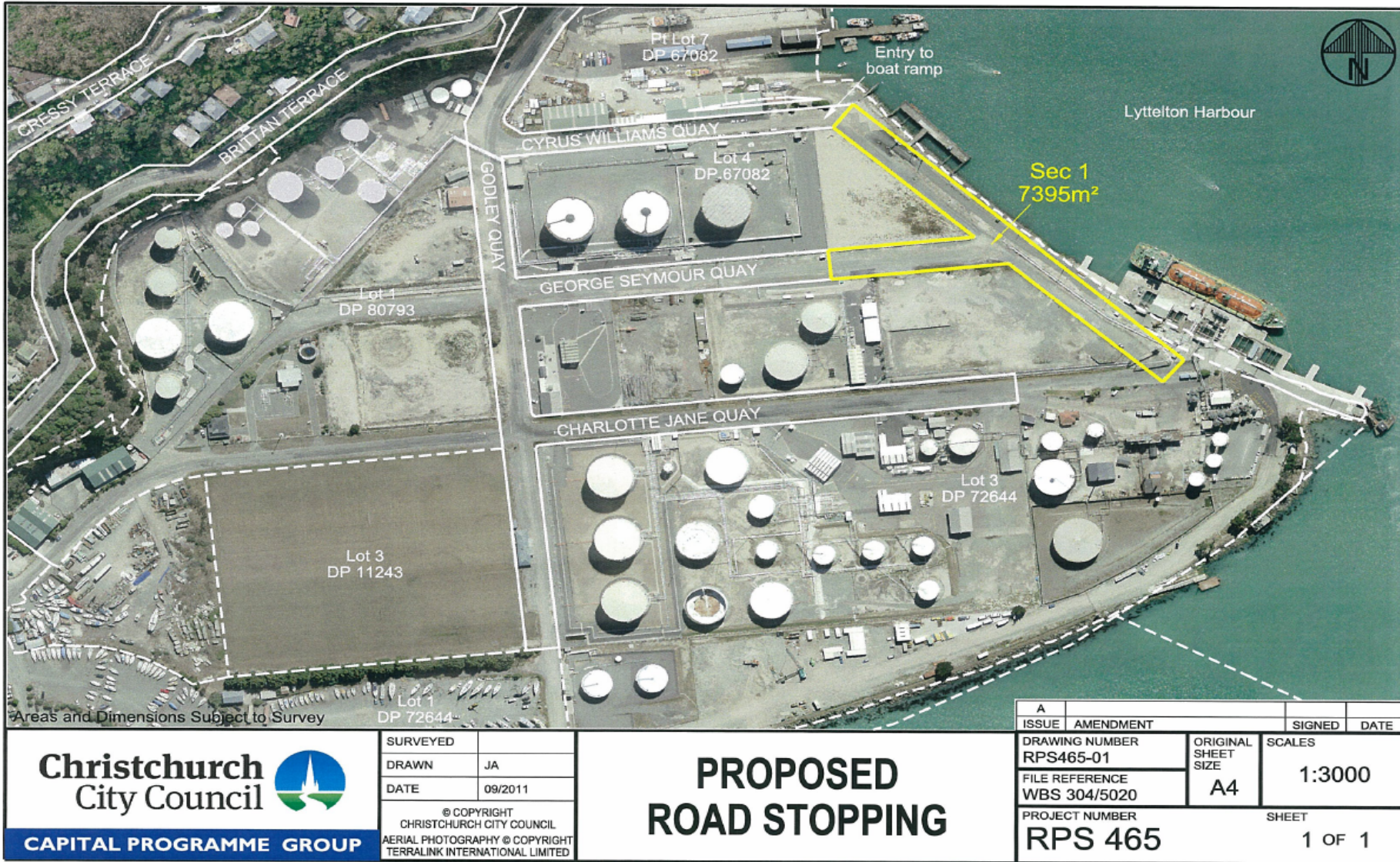
CONFIRMED THIS 1ST DAY OF NOVEMBER 2011.

**PAULA SMITH
CHAIRPERSON**

ATTACHMENT 1



ATTACHMENT 1 – CONTINUED



Christchurch City Council
 CAPITAL PROGRAMME GROUP

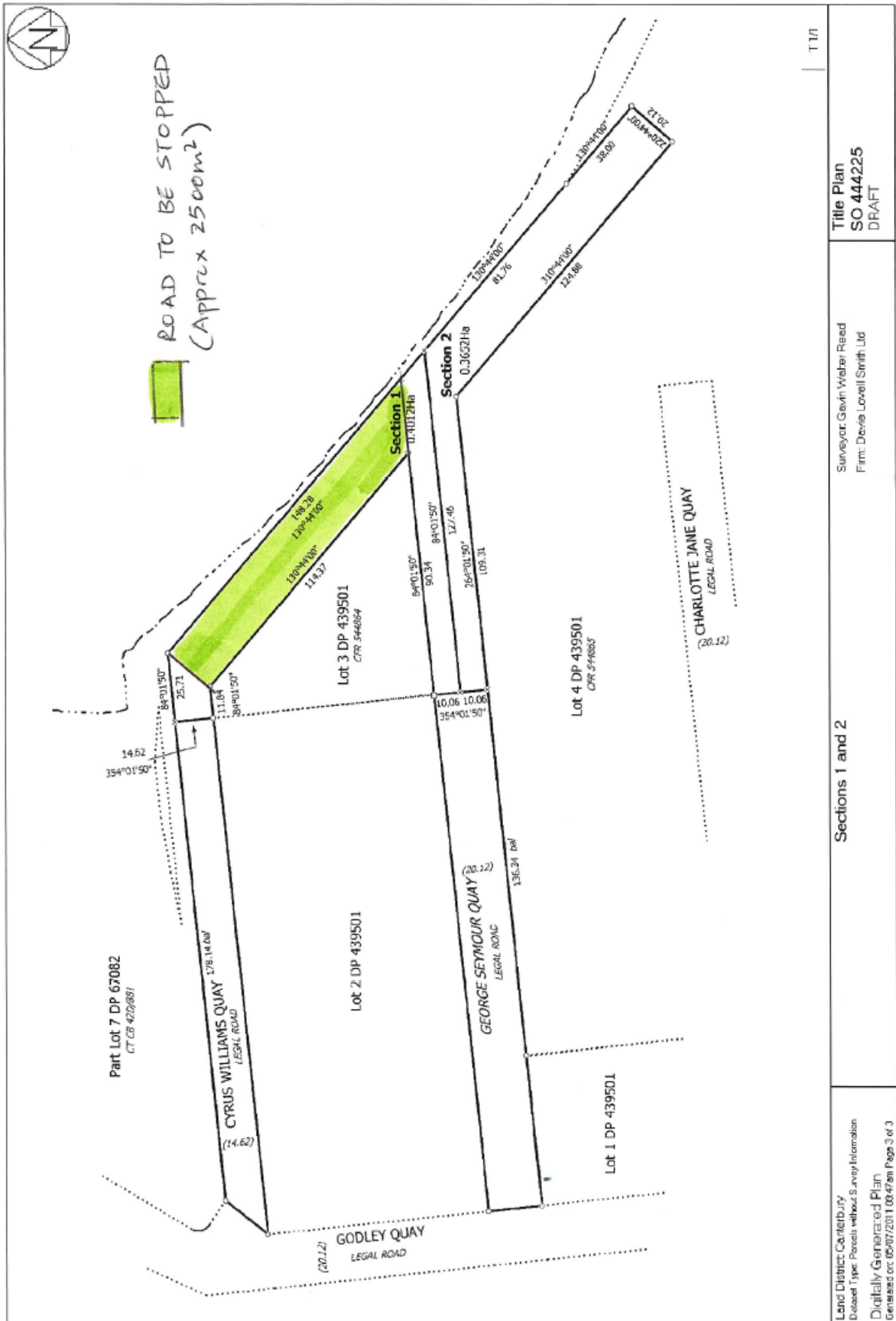
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DATE	09/2011
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PROPOSED ROAD STOPPING

A		SIGNED	DATE
ISSUE	AMENDMENT		
DRAWING NUMBER	ORIGINAL SHEET SIZE	SCALES	
RPS465-01	A4	1:3000	
FILE REFERENCE		SHEET	
WBS 304/5020		1 OF 1	
PROJECT NUMBER			
RPS 465			

10. 11. 2011

ATTACHMENT 2



Title Plan
SO 444225
DRAFT

Surveyor: Gavin Weber Read
Firm: Devine Lovell Smith Ltd

Sections 1 and 2

Land District: Canterbury
Dashed Type: Planets without Survey Information
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