
REPORT 7
(1215/53/IM)

**DECISION ON OBJECTIONS TO THE PROPOSED ROAD
STOPPING AND DISPOSAL: LEGAL ROAD ADJOINING 62
WELD STREET, WADESTOWN**

1. Purpose of Report

The purpose of this report is to seek the Committee's recommendation to Council that objections from the Wadestown School's Road and Safety Committee (the School) and Mr Kieren Simon (Mr Simon) to a road stopping proposal in Weld Street, Wadestown not be upheld.

2. Executive Summary

Officers have been progressing an application by the owners of 62 Weld Street to stop and purchase 106 m² area of unformed legal road land (the Land) that adjoins their property.

The applicants use the Land for lawn and garden by way of an encroachment licence. The land is shown in Appendix 1 outlined in red.

In June 2008 and December 2010 Council agreed to proceed with this application. Refer to Appendix 2 for copies of the previous committee reports.

After public consultation two objections were received, a decision is now required on whether to uphold either of them.

The committee heard oral submissions from the School's principal, Sally Barrett, and Mr Simon on 14 February 2012. A third oral submission in support of the road stopping proposal was also heard. This was made by Mr Ian Leary representing the applicant. Points raised in the oral and written submissions are summarised in Section 5 of this report.

If Council upholds either objection then the road stopping proposal effectively comes to an end and the area of road land will not be stopped and sold. If Council does not uphold either objection, and either objector, and the applicant still want to continue, then the matter would be referred to the Environment Court for final decision.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Recommend to Council that it:*
 - (a) *Not uphold the objections from Wadestown School's Road and Safety Committee, and Mr Keiren Simon to the proposal to stop 106 m² of road land adjoining 62 Weld Street, Wadestown.*
 - (b) *Authorises officers to refer the proposal to stop 106 m² of road land adjoining 62 Weld Street, Wadestown, and the objections from Wadestown School's Road and Safety Committee, or Mr Keiren Simon to the Environment Court, if needed.*
 - (c) *Delegates to the Chief Executive Officer the power to approve and conclude any action relating to Environment Court proceedings, if needed.*

4. Background

4.1 Previous Committee Reports

The reason that this application has required several previous reports is that when the land proposed to be stopped was surveyed it was identified that it was significantly larger than had previously been declared surplus. Based on encroachment licence records only 61 m² was originally declared surplus, when in fact the area of land is actually 106 m².

The survey also identified that a small area (1.125 m²) of the public footpath was built on private land belonging to 62 Weld St, and the opportunity was taken to obtain agreement to acquire that land.

4.2 Public consultation

Consultation on the road stopping proposal was undertaken during May and June 2011.

Two written objections were received. The grounds for these objections are completely different. The school directly adjoins 62 Weld Street, while Mr Simon does not own property in the immediate area. The school's concern relates to safety in Weld St, while Mr Simon thinks the Land could be made into a standalone section, and sold at a higher price.

5. Discussion

5.1 Objection from the school.

The grounds for this objection is that if the road stopping proposal is successful, and the stopped road land is amalgamated with the existing 62 Weld Street

property, the increased size of that property would make subdivision more likely. The School fears that subdivision would result in the development of a new driveway from 62 Weld Street onto Weld Street. The School believes that such a new driveway over this boundary would effectively prevent any safety improvements in Weld Street proceeding.

Refer to Appendix 3 for a copy of the school's written objection.

The School would prefer that :

- The road stopping did not proceed, and that the Land be retained by Council and used for future improvements to Cecil Road.
- If the road stopping did proceed, then the School requests that a restriction be registered on the title of the amalgamated 62 Weld Street property so that no driveway could ever be created over the Weld Street boundary.
- If Council did not agree to register the above restriction, then the School asks that a restriction be registered on the title of the amalgamated 62 Weld Street property, so that if a driveway was ever created over the Weld Street boundary, then vehicles using that would have to be able to drive onto the 62 Weld Street property completely off Weld Street, and then be able to turn around.

5.2 Road Safety Audit

After the School objected in the road stopping public consultation, officers met with school representatives. In recent years the School has been working with Council's Traffic Planning unit in regards to safety issues in this section of Weld Street. It was agreed that Traffic Planning would carry out a safety review to clarify what the issues were, and what improvements could improve the situation. It was agreed that the findings of the safety review would be taken into consideration as part of decisions on the School's objection.

The safety review was carried out in November and December 2011. Refer to Appendix 4 for copy of the review report. The review found that there are safety issues at peak school pick up and drop off times that result in pedestrian safety being compromised. The review concluded that improvements could be achieved by :

- Providing more time restricted on-street parking spaces on the western side of Weld Street during school terms.
- Providing a footpath on the western side of Weld Street linked up to the existing footpath. A minimum of 1.2 metres needs to be provided.

5.3 Officer's comments on the School's objection

- The issue of new driveways being created from 62 Weld Street, onto Weld Street, existed before the road stopping proposal. No vehicle access to the property over this boundary is currently used, although an old narrow concrete crossing and wooden gates indicate it may have been in the past.

- The increase in the number of pupils attending the School, and recent infill housing in the area has further added to the situation.
- In an attempt to alleviate the School's concern the applicant offered to sign a letter stating that they do not intend to subdivide their existing property, either now in its existing size, or if it became a larger site should the road stopping proposal be successful. The School rejected this offer as they wanted any restriction to 'run with the land'. Officers acknowledge that the owners plans could change, or they could sell the property and a new owner may want to subdivide.
- The applicant further offered to register a restriction on their title to limit the number of any future driveways over their Weld Street boundary to only one. The School did not accept this offer either, they would prefer that no driveways from 62 Weld Street were ever created.
- If subdivision of 62 Weld Street was ever applied for, it would be assessed at the time of application. It would have to comply with the District Plan and any safety issues in Weld Street would be considered then. If safety issues were considered serious enough they could result in subdivision approval not being granted.
- Even if subdivision approval was granted, the width of any new driveway created over this boundary as a result of subdivision would likely only be approximately 4.8 m wide, that being less than the length of one parallel car park. This means that even if a new driveway was created onto Weld Street, it would not mean that anything else planned to improve safety in Weld Street was unable to proceed. It would only mean that the number of new on street parallel parking spaces possible would be reduced by one. Although a driveway would mean at least one car would be able to be parked off the road.
- The road land which could be used for the work suggested in the safety review is a completely separate area to that being proposed to be stopped. The road land subject to the current road stopping proposal is on the Cecil Road side of 62 Weld Street, whereas this second area of road land is on Weld Street side of 62 Weld Street. Please refer to the last page of the safety review which is a concept plan showing how two angle and six parallel on street carparks and a new footpath could be created. There are seven existing angled on street car parks outside the School.
- The Traffic Planning unit estimated that the improvements recommended in their safety review would cost in excess of \$100,000.00. Whether or not any improvements are ever carried out is a completely separate matter to decisions on objections to the road stopping proposal. Future decisions on works to improve safety will be dependent on the Transport Planning Unit's budget and planning. The only reason this work is being discussed now is

5.4 Objection from Mr Simon

The grounds for Mr Simon's objection is that he believes that the 106 m² area of stopped road land could be made into a standalone lot for residential use.

In Mr Simon's written objection he made an offer for Council to sell the Land to him as he was prepared to pay more than the amount officers had agreed with the applicant.

Refer to Appendix 5 for copy of Mr Simon's objection.

5.5 Officer's comments on Mr Simon's objection

- The subject Land would not ever have been considered suitable to be made into a stand alone lot. 62 Weld Street's encroachment licence encompasses all of the 106 m² area proposed to be stopped. Generally officers avoid disturbing encroachment licences, and would have seen no reason to do so in this case given the Lands limited development potential because of its small size and unusual shape.
- Officers had one of Council architect's prepare a bulk and height feasibility study taking into consideration all relevant District Plan restrictions to see what could be built. The Study found that only a very small unusually shaped structure was possible. Depending on configuration and positioning a slightly different outcome could be achieved but generally building on such a small unusually shaped area of land is not a reasonable proposition. Refer to Appendix 6 for a copy of the bulk and height feasibility study.
- If a standalone lot was created from the subject land, then sunlight access plane and yard requirements would be triggered on 62 Weld Street, because part of the existing front boundary to Cecil Road would become a side boundary. Given such affects and the history of the current road stopping proposal, the owners of 62 Weld Street would most likely object.
- The floor of 62 Weld Street's garage is level with Cecil Road. Part of the garage itself is recessed into the road land to be stopped. Due to the topography the level of the backyard is much higher and the lawn at the rear of the property actually goes over the top of the garage. This presents further development challenges. It would not be fair to remove any access or garaging to 62 Weld Street that they currently enjoy under their encroachment licence.
- Mr Simon disagrees there was any difference regarding the sunlight access planes and yard requirements compared to any other residential section. The point is that these requirements would be imposed on the 62 Weld Street property if a standalone lot was created, where they did not exist before and would most likely result in 62 Weld Street objecting.

- The 2010 Committee report discussed the Section 40 Public Works Act 1981 investigations carried out by officers to confirm whether any offer back exemptions existed. The investigations concluded that there were grounds to not offer the land back to the former owner (or successors in probate) based on section 40 (4). That being due to the size, shape, or situation of the land it could not be expected to sell that land to any person who did not own land adjacent to it. The original investigations were based on a land area of 61m². When it was later identified that the area was larger, The Property Group being a LINZ accredited agent, were consulted and they confirmed that the increased area had no effect on the offer back exemption. This point is important in light of Mr Simon's view that the Land could be made into a standalone section.

5.6 Submission on behalf of the applicant by Ian Leary

On 14 February 2012 the committee heard an oral submission by Ian Leary on behalf of the applicant.

Refer to Appendix 7 for a copy of Mr Leary's written summary of his oral submission.

5.7 Officer's comments on Mr Leary's submission

The key points of Mr Leary's submission are firstly that the road stopping proposal does not mean that future safety improvements in Weld Street are not possible. Secondly while it may be possible to build something on the Land given that there is no minimum lot size in the District Plan, it would not be appropriate to do so given the unusual shape and small size.

5.8 Next Steps

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

- The Committee will now decide on the School's and Mr Simon's objections, and will make a recommendation to Council on whether or not to uphold either of them.
- If the Committee's decision is to uphold either objection, and the full Council agrees, then the road stopping application is effectively terminated.
- If it is decided to not uphold (i.e. reject) either objection and to proceed with the road stopping process, and the objectors still wishes to pursue their objections, and the applicant also wants to continue, then the road stopping proposal and the objection will be referred to the Environment Court for a decision.

6. Conclusion

In attempts to alleviate the objectors concerns Officers have met with them. The applicant has also made proposals to the school. These actions did not result in the objections being withdrawn.

The School's concerns over safety are appreciated. However if a new driveway onto 62 Weld Street from Weld Street was proposed as part of a subdivision, the

effects of that would be considered under the subdivision rules. Even if a new driveway was approved that would not mean that other safety improvements in that part of Weld Street could not be carried out.

Furthermore given the considerations of the subdivision process officers do not believe that it is necessary as part of the road stopping process to register any restrictions on 62 Weld Street's title to limit or restrict access over its Weld Street boundary.

While a standalone lot could be created only a very small and unusually shaped structure would be possible. Also 62 Weld Street would be affected by new sunlight access plane and yard requirements being triggered, so the owners of that property would most likely object.

Officers therefore believe that the committee should recommend to Council that both objections to the road stopping proposal in Weld Street not be upheld and that no additional conditions or restrictions need to be imposed on the title of 62 Weld Street when the Land is stopped and amalgamated with it.

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) LTCCP/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 applicant including all survey, administration and legal costs. This proposal will benefit the Council in financial terms as the applicant will purchase the stopped road from the Council at market value, and will then pay rates on it 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

Consultation with the relevant 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 the consents from Roading and Traffic Maintenance, Parks and Gardens, and Public Drainage subject to certain conditions.

Service Authorities have been consulted and a number of conditions have been noted.

Public consultation has been carried out with two objections received. One objection has been discounted. The Committee has previously heard oral submissions on 14 February 2012, and is now needs to make final decision on whether the objections are to be upheld or not.

6) Legal Implications

All legal implications relevant to this road stopping such as public consultation requirements and offer back investigations have been considered and are contained in this report.

APPENDIX 1

Aerial

