

DATED 26th May 2010

## STATUTORY DECLARATION

I, JAMES WOODWARD NEALE, of 1 AVON RD PYMBLE, NSW, 2076, do solemnly and sincerely declare as follows:

### ISOLATED SITES ADJOINING

**1, 1a and 5 Avon Rd, 1 Arilla Rd and 4 and 8 Beechworth Rd PYMBLE**

1. I attach a plan of the area ("A") from which it is easy to see the area of the relevant sites.  
**HISTORY.**

In 1992, after two years of considering the matter, the ADG of the DOP (Sean O'Toole) wrote to me ("B") with a copy to Ku ring gai Council urging us to develop the land for medium density. The "Derwent" Council effectively refused to consider any application.

When Mayor Derwent was not re-elected, in 1995 I submitted a rezoning application to Ku ring gai Council and was advised by the Chief Planner, Chris Young, to consult with all adjoining neighbours. I approached every adjoining neighbour and offered to include their land in my application at my expense, and at no cost or obligation to them. The owners of 2 and 6 Beechworth Rd, 1a and 3 Arilla Rd and 7 Avon Rd signed those agreements. The two Arilla Rd sites' owners later withdrew as a result of arguments presented by the owners of 15 Avon Rd (Mr and Mrs Cohen).

The owner of 12 Mayfield Ave required an inducement worth \$300,000 to participate which I was not prepared to pay. The owners of 15 Avon Rd and 3 Avon Rd were adamant that they did not want their land rezoned in any circumstances.

In 1998 Council staff unanimously recommended rezoning. Councillors rejected it and this started the process which finished in 2003 with the Minister calling the sites in.

I then retained Chris Young, after he founded Chris Young Planning, to advise me on the acquisition of any adjoining sites and liaise with the DOP. His initial reaction, and mine, was that this was "a waste of time" as I had already bought the adjoining sites which were reasonably available. We were persuaded by the DOP to try again and I attach various correspondence from that time ("C" - 5pp). I offered to purchase all the adjoining properties which Mr Young and the DOP thought to be relevant. This standard offer was reviewed by the DOP and several of the recipients of the offer copied their responses to DOP ("H"). I note that 7 Avon Rd was sold at auction in November last year and the sale



was settled early this year in the sum of \$1,415,000. It has a land size of 1,577sqm and a house in average condition. Based on its location opposite PLC and being next to an expensive house, it is probably the best located and most valuable land of the adjoining sites. I am prepared to go back to the archives and get more detail if requested by the DOP, however the offers I made in 2002 to purchase these sites was approximately double that price without allowing for the 8 years of inflation since.

In relation to the most important adjoining sites;

RailCorp. I attach a letter of refusal by Rail Estate ("D") to sell any of the adjoining airspace.

2 Beechworth Rd.

( ) This site was sold from Jim Wright, who had agreed with me to have the site rezoned by Council, to Anne Bolton who was reluctant to discuss the matter with me at all and would only deal with me through the owner of #6 Beechworth Rd. I nevertheless made the written purchase offer to her ("E" – 2pp). The site is only about 750sqm and the large single storey house covers most of the land which overlooks the railway line. The house and land has always had a market value which, in my opinion, exceeds its development value.

6 Beechworth Rd.

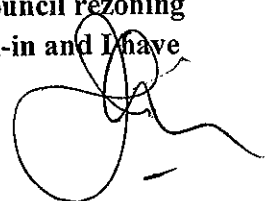
( ) The owners Mr and Mrs Goodwin, have completely renovated and substantially extended this 1888 house which he bought as a dilapidated dwelling with 5 or 6 separate tenancies in 1994. It is on a standard building block and I believe the house as a dwelling is worth a good deal more than the land value. Mr Goodwin did sign an agreement with me to include his land for rezoning ("F") by council and separately requested that it be called in by DOP in 2002. I made him the same written offer as I made to other land owners and he rejected it ("G").

12 Mayfield Ave.

The owner, Mr Dutta, would not agree to have his land included in my council submission. On the basis of the 2010 sale of 7 Avon Rd Mr Dutta's property which is 2/3rds the land area, in a much inferior location and with a dilapidated house would have a value of approximately \$900,000 although agents (Richard Tannen of PRD Pymble 9983 0003) tell me they can get \$1.1m. This is a lot less than I offered Mr Dutta in 2002 ("H" and "I" – 2pp). Since then I have been unable to contact Mr Dutta who has moved to Melbourne.

7 Avon Rd.

The owner entered into an agreement with me to include her land in the council rezoning application submitted in 1998. The land was included in the Minister's call-in and I have



exchanged dozens of emails with the owner's husband, Nelson Chiu, who required a purchase price amounting to \$2.9m. The site was sold to a Mr Tusek to whom I made a purchase offer. He refused it and said he had paid \$2.9m for 7 Avon. My legal advice ("J") was that Mr Tusek did not own the property and there were numerous encumbrances including Oakland and the previous owner. It was recently sold at auction by Lyn Bradshaw of Savills for \$1.415m on behalf of the mortgagee, Oakland, to owners who are not interested in developing the land. The agent, Lynne Bradshaw, refused to introduce me to the owners who are Chinese and according to her, require an interpreter. They have done substantial works to the house and grounds to improve its amenity as a residence.

15 Avon Rd.

I attempted to buy the property in the 1990s from Mr Fay and later from the Cohens however neither party was interested in selling.

3 Avon Rd.

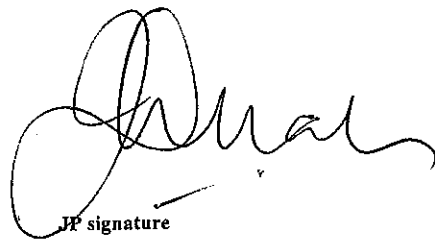
The O'Sullivan's own the property and have always told me they have no interest in selling or developing the property. I made them a formal written offer in 2002 ("K" - 2pp) and received a polite refusal. I have spoken to Mr O'Sullivan within the last 6 months.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the " Oaths Act of 1900 - 1953".

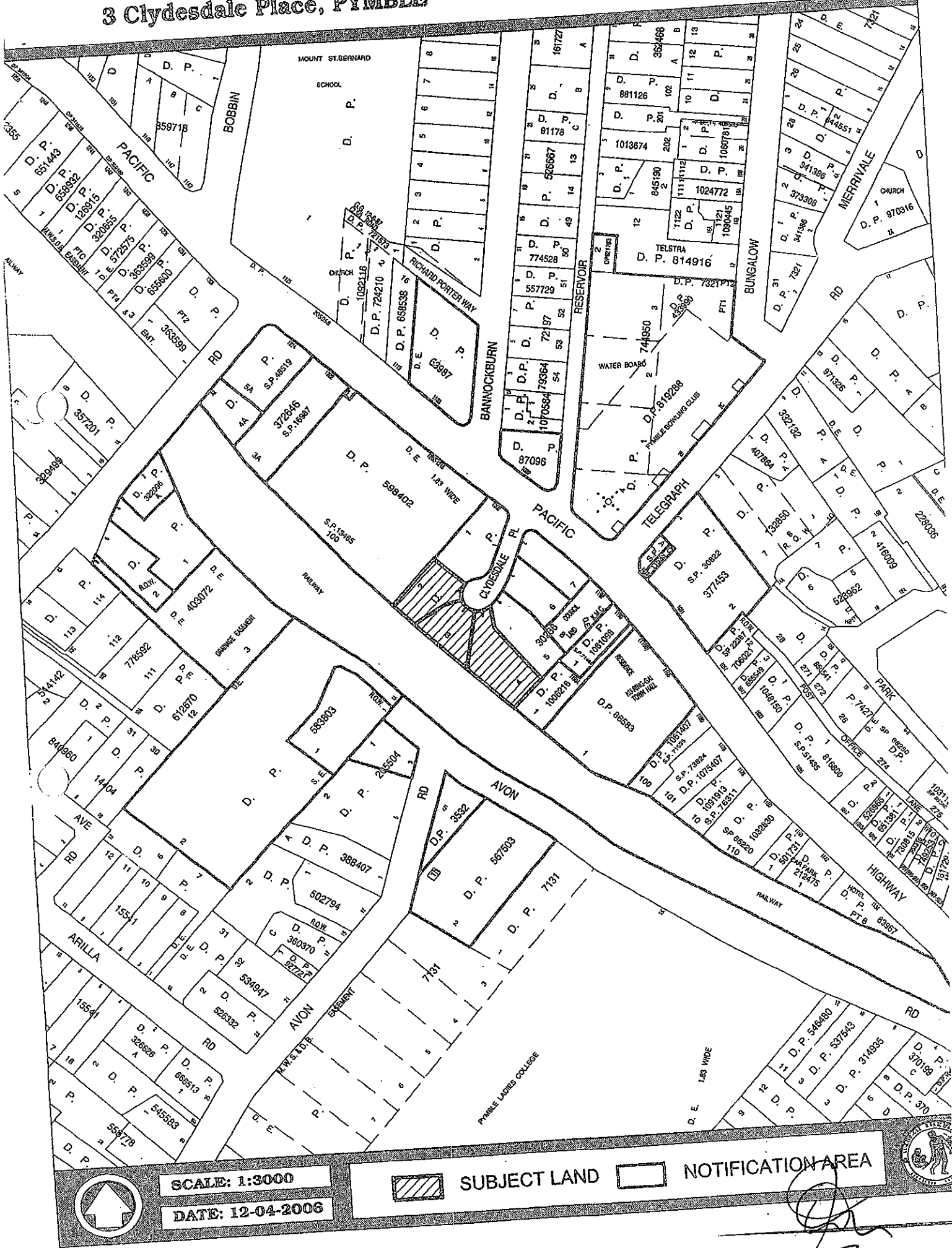
Subscribed and declared at  
this                      day of  
two thousand and  
before me

JANET NEWING

Janet Newing

  
JP signature

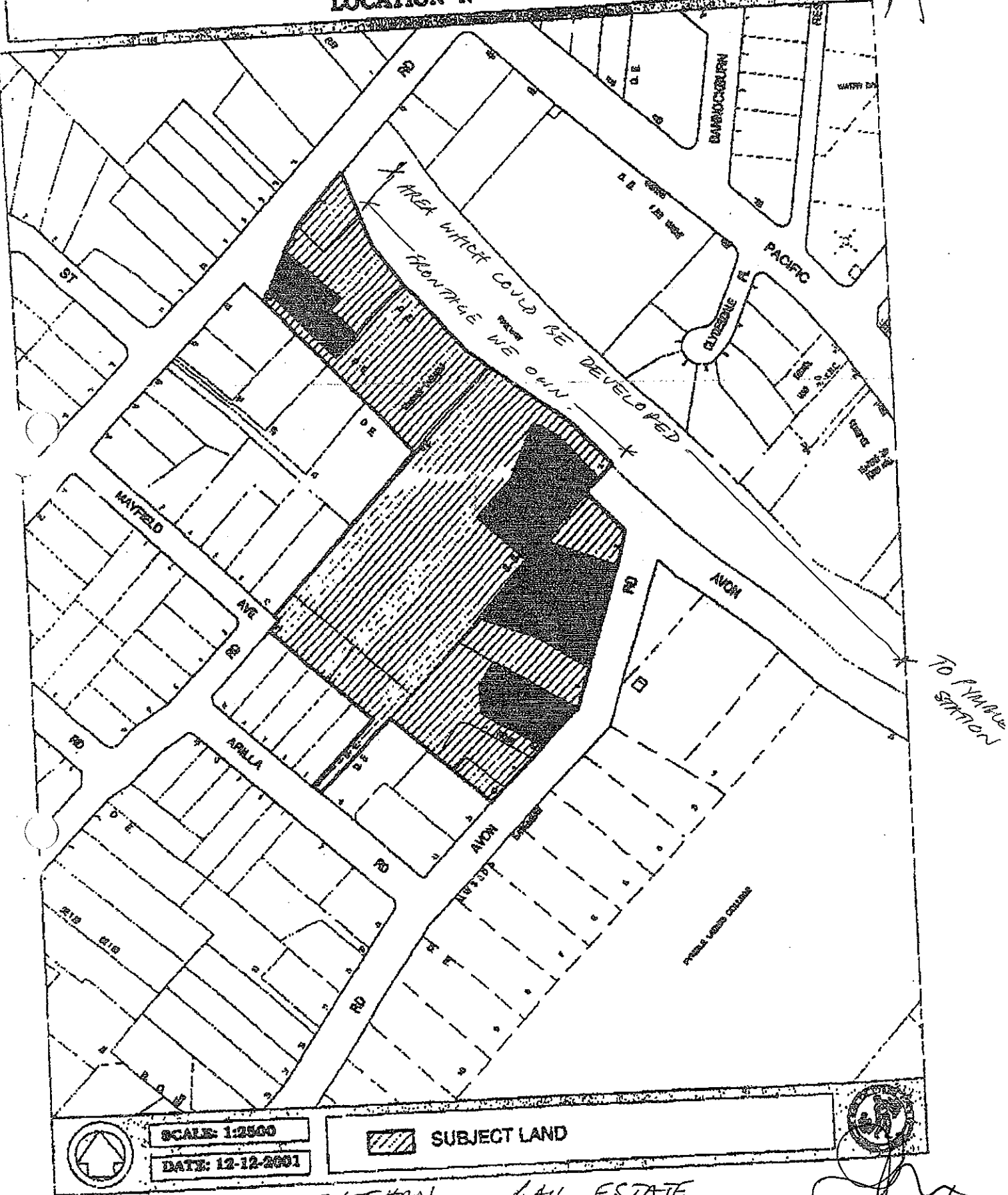
3 Clydesdale Place, PYMBLE.



# RESIDENTIAL DEVELOPMENT STRATEGY TASK FORCE RECOMENDATION TO COUNCIL 12-12-2001

LOCATION 'N'

A



TO: MR CHARES SHEEHAN - HAIL ESTATE  
This is the land we discussed today (5.2.02).  
We would appreciate your comments as to how we might  
exploit the opportunity to develop the land - if it will not  
be likely to recur for 100 years. Regards  
JIM NEACE 9489 6112 35 FOX VALLEY RD WARRONGA 2071



# Department of Planning

8"

Mr W I Taylor  
Town Clerk  
Ku-ring-gai Municipal Council  
818 Pacific Highway  
GORDON NSW 2072

Attn: Mr C Young

Planning Centre  
171 Victoria Street Sydney 2000  
Tel: (02) 391 2100  
Fax: (02) 391 2101

Telephone: (02) 391 2000 ext. 2190  
Fax: (02) 391 2101

C. Veech

S92/00687/001

FOR 3275

31 JUL 1992

Dear Mr Taylor,

1 and 5 Avon and 4 and 8 Beechworth Roads, Pymble

Recent discussions have been held between Messrs Chris Young and David Ryan of Ku-ring-gai Municipal Council, the Department's Assistant Director, Mr. Sean O'Toole and other officers from the Department and Mr. J. Neale and Mr. T. la Groew concerning the future of land which Mr. Neale owns at Avon and Beechworth Roads, Pymble.

I enclose a copy of recent advice sent to Mr. Neale concerning this matter. I would appreciate it if the Council would facilitate the progress of the rezoning of Mr. Neale's land. The Department will monitor progress on this matter because the site is considered appropriate for medium density housing and it is important that the opportunity for providing such housing should not be lost.

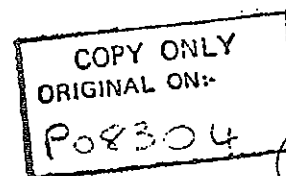
Should you have any enquiries concerning the above please contact Ms. Kate Veech of the Urban Consolidation and Design Branch on 391 2190.

Yours sincerely,

*Sean O'Toole*

Sean O'Toole  
Assistant Director

KU-RING-GAI  
MUNICIPAL COUNCIL  
Aug 6 9 39 AM '92



*[Handwritten signature]*

ETP

9/6/8/92

C1

Petula Samios, Ron Baker, Matthew Prscalo, Matthew Pullinger

DUAP

By Fax 19/3/02

RE 1 AVON RD (site 2)

It is becoming increasingly clear to me that we can plan the Avon Rd project better if the isolated land holdings are included. This was suggested by DUAP at the site meeting and I now fully support it.

I have contacted all the owners that DUAP prompted (2 and 6 Beechworth, 3 Avon) and have had discussions with two other neighbours whose land was included in the proposed Council RDS (7 Avon and 12 Mayfield).

All these landowners are being difficult or impossible in varying degrees. I have resolved to make them an offer in writing that is indisputably generous on a "take it or leave it" basis within a week. That offer needs to respond to their genuine concerns and some modification of the terms may ensue.

I have attached the proposed agreement for your information because some of the adjoining landowners, probably encouraged by those opposed to any development, think they can either hold me to ransom or destroy or diminish the whole project.

Minister and I will achieve a better result if these agreements go ahead and I want it to be on the record and beyond dispute that I did everything reasonably possible to support the Minister's aim of achieving the best result.

If you suspect that in any way the offer might be less than generous to them I would appreciate it if you could find a way to let me know.

The following proposal will eventually be put into legal terms.

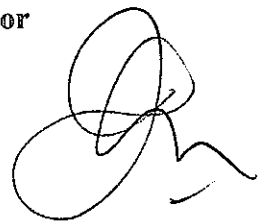
"The parties acknowledge;

That the adjoining "1 Avon Rd" site is being considered for rezoning because

- (a) it is very large - about 30 times as large as your site
- (b) it is largely undeveloped, that is vacant land
- (c) the majority of the vacant land is not near the street and therefore permits a higher density of housing than the street frontages.

2. That the Neales have amalgamated the site at a present value cost in excess of \$20,000,000 and that the technical studies, applications to Council, mediation, applications and liaison with DUAP, and numerous other activities have a present value if undertaken at today's cost in excess of \$250,000.

3. That your site is not capable of viable medium density development on its own within the foreseeable future, and that the removal of the present improvements in order to develop it would make the project marginally profitable or



C2

unprofitable. The consultants costs and application fees payable to Council for the application would be a large multiple of that sought here.

4. That you have not in any way contributed to the above costs 3. above nor to any costs expended by the Neales.

5. That I have liaised with you since (insert date) at no cost to you.

6. That the State Government Planning Department (DP) has required me to notify them immediately of the boundaries of the land for which I have authority to commit to a planing concept and require me to produce evidence that I either own the land or have an option to acquire it.

7. That the Neales do not presently have the capacity to service the debt that would be involved in acquiring any further lands.

8. That if your land is included as part of the development I will be obliged to exercise the option in order to discharge my commitment to DP or face a considerable difficulty with DP as the consent authority.

9. That the commercial effect of a medium density rezoning in this area is to greatly enhance the value of vacant land and to reduce the value of improvements such as houses to zero.

10. That the principal objective of the Minister, his Department and myself is to achieve an ideal development of the whole area and that this is best achieved by not leaving isolated small houses within the medium density development.

The parties agree;

1. (a) You will pay a share of all the costs of the rezoning from the date the Minister indicated he would consider rezoning (Jan 2002). This may be paid in advance as a lump sum\* to satisfy all such obligations.

That sum will cover all future consultants costs and application fees and will be less than the DUAP application fee alone if you were to proceed independently.

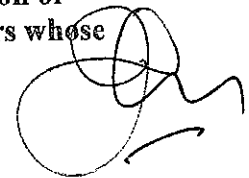
1 (b) I will make available to the Planning Department all the previous work done in relation to the site at no cost to you.

2. In consideration of the works already done by me on behalf of your site which have resulted in the possibility of its rezoning you will grant me an option to acquire (the subject property) on the following terms;

(a) the term of the option shall be five years from the gazettal of the rezoning.

(b) the option may be exercised at any time during its term.

(c) the exercise price of the option shall be determined when the land is required for development. It will be 160% of the then market value of the land as an unimproved single dwelling site, as determined by valuation or agreement. I understand that there are taxation advantages to owners whose



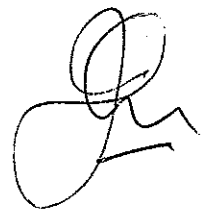
C3

subject property is their principal residence.

Regards,

Jim Neale

\* (This cap would be \$5,000 to \$15,000 depending on the size of the site and the owners capacity to pay - however the amount is sensitive as some neighbours are wealthy and can pay it whereas others may not be so well placed and I want to exercise some discretion).

A handwritten signature in black ink, appearing to be 'J. Neale', located to the right of the main text block.

C4

Chris, at the end of the day the harsh reality is that DUAP and I are on the same side (that of excellent planning outcome) and the isolated landholders are on the other. They have a choice - join us or there is a big loss. That loss will hit me if DUAP goes overboard to protect them and create little house precincts within the project. It will hit them if DUAP says you stuffed this up and provides merely reasonable protection.

That is why I have to deal with them and make them a generous offer. That is why they should accept it and that is why it MUST be on the record. I have great respect for the way DUAP has handled this even if they are upset - their action and my response will improve the chances of a better result. They have the power and as long as they use it fairly I don't see how anyone can complain.

Any lawyer would have drawn such an agreement with recitals at the front referring to DUAP. Very few would have sent it to DUAP.

I have retained your original, copied it and then made the following modifications. By all means do the same if you disagree with anything, especially where you are expressing your own view and not mine. Also you may want to abbreviate some of my comments.

Jim

Thank you for expressing your concerns about the information Jim sent you.

Jim is responding to suggestions made on site that we should provide an opportunity to those sites whose inclusion might improve the planning outcome. My initial reaction was that was an unnecessary complication at this stage but a long term correct and sensible planning consideration and I wrote to Garth in those terms at the time. Jim had previously approached his neighbours, eight of whom joined in at the time in one way or another.

He was initially opposed to approaching them again. In the end it was his realisation that units will be the prevalent development in the area that caused him to have another go. Up until now some neighbours were clinging to the hope that the Coopers would win and his land would remain their park forever.

It seems obvious now that the three sites near the railway line will not in any way be enhanced by the adjoining development. They will become "out of character". Their value will not be likely to keep pace with other like houses and they will detract from Jim's efforts - especially if the consent authority goes to extremes to protect them.

They have now the window of opportunity to exploit the rezoning - but only if they join in on a realistic basis.

Jim wants to have on the record at Planning NSW a copy of the offer so that it cannot later be justified that he tried to take advantage of those neighbours. He is certain that they, or the protesters, will say he did.

He is not seeking endorsement of it by PNSW however he may want to refer to it later on if his project is damaged by conditions required to unduly protect those neighbouring sites. He sees the quality and fairness of the offer as being of critical importance and wants it on the record.

Jim sees the process, and I agree with him, as being one through which the site developers and The Minister achieve the best outcome measured in urban planning terms and in no other way.

The draft agreement sent to you by Jim would not have the preamble above the " marks.

In regards to the draft agreement the feedback even in your strongest terms has been



constructive and Jim will make changes. It was a first draft.

Jim will delete the words after "street" in the first line of clause 1(c). Where the context permits DP or DUAP will be changed to "the consent authority".

All the others I do not see any problem as they state facts. If you see a different interpretation or one which you see an implication unreasonably for the dept please advise and it will be changed.

Jim has no problem with deleting Clause 3 of the acknowledgement.

Its purpose is to say "if you don't acknowledge this you should not sign the agreement", indeed that is the purpose of the acknowledgements in general. They say "check this out before you sign - if your checking causes you to disagree don't sign - don't sign up and then complain you didn't consider this".

I think rezoning of single existing blocks of relatively small size will not achieve the desired urban design outcome which is possible with a larger amalgamated block. Demolition of existing substantial single dwellings is a very high cost to spread over a small site. Jim says it destroys the smaller lots viability, This is well supported and explained in the financial viability study provided by Mirvac to DUAP. If the site is not in the rezoning now it is certainly not capable of viable medium density in the near future as it will remain Res 2(c) until Council changes it, if it ever does.

Clause 6 is a fact put to us at the site inspection and repeated in writing to me by Garth and communicated in writing to Jim. We agree it is necessary to get the best outcome for all concerned, including for those neighbours provided Jim can show that they are much better off by accepting his offer than by staying there.

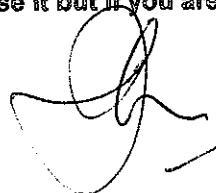
Clause 8 could be deleted or reworded. However the neighbours need to know what incentive Jim has to exercise his option. He believes that the main one is that he will have to do so to discharge his commercial and legal obligations to the consent authority which he sees as reasonable and necessary to obtain the best result, and he bases this on what you have written to him.

He has also provided another incentive for early exercise namely that the 60% loading applies to the increase in value of the land while he is waiting.

Again the purpose of seeking this acknowledgement is to bring it to the other party's attention. If they don't acknowledge that, or have a different opinion, then they should not sign up.

It is not our intention for you to write the agreement nor endorse it but if you are concerned please advise us and it will be changed.

Regards Chris Young





Quality  
Endorsed  
AS 9002  
Lic 11388



All mail to be addressed to:  
Rail Estate  
PO Box K349  
HAYMARKET NSW 1238

Office located at:  
Level 2, West Wing, Central Station  
SYDNEY NSW 2000

DX 390 SYDNEY

ABN: 73 997 983 198

Mr Jim Neale  
35 Fox Valley Road  
WAHROONGA 2071

Telephone: 93796140  
Facsimile: 93796160  
Contact: Charles Sheehan  
Ref: 011107  
Date: 8 April, 2002

Dear Sir

**RE: PURCHASE OF AIR SPACE - RAIL CORRIDOR BEING GENERAL  
BOUNDED BY BEECHWORTH ROAD AND PACIFIC HIGHWAY  
PYMBLE AS DELINEATED ON THE ANNEXED PLAN.**

We advise that at this juncture the air space is not available for sale.

When State Rail Authority would wish to dispose of the air space it would list the property on the open market.

Yours sincerely

**CHARLES SHEEHAN  
CONTRACT MANAGER DEVELOPMENT  
RAIL ESTATE**

A.

Anne Bolton  
3 Avon Rd  
PYMBLE

2 Beechworth Rd  
PYMBLE  
18th March 2002

Dear Anne,

Officers of the State Government Planning Department prompted us to contact you. As I understand it, their concern is that a large area will be rezoned and they want to see an excellent and coherent result.

They thought it prudent to contact the two or three neighbours whose land was within the proposed area for development before developing a concept for building. They have assured me that such discussions will not be allowed to delay the project.

I'm sure you would agree that it is not good urban design to leave a single house out of the planning process for nearly 10 acres of medium density. Even with the best will in the world there are bound to be difficulties for all concerned during the construction phase.

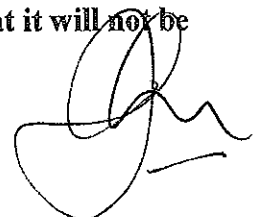
Our rezoning application had been recommended by Council Staff when you purchased the house. The previous owner had requested that the land be included in the rezoning, however we understood that you did not wish to be included.

We would like you to know that the agreements being discussed involve an option to purchase your land at the time it is required for development for 160% of its then market price. We understand that premium would be tax free to a principal resident.

As you know we had the opportunity to buy your property several times over the years but, with Council as the consent authority saw no possibility of it playing a serious part in the development.

Accordingly we do not envisage any benefit accruing to us as a result of this payment other than that it will lead to a more coherent development of the area, and we know of no other way to achieve that result. While the Department has the power to rezone land they have indicated that they would only use that power without the owners consent in very exceptional circumstances.

The concept for the development of the area will, legally, be produced by me and my consultants - however - the reality is that the Minister has a very competent planning department who will ensure that the final concept is satisfactory to them. They insist that the land be defined at the outset. I understand that it will not be easy, nor even possible, to include isolated sites later.



"E<sub>2</sub>"

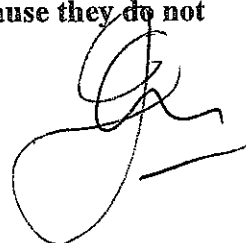
I will send you a copy of the (early) draft agreement and I feel obliged to formally offer it to you. I am concerned to be able to assure the Minister, through his Department, that I have done everything possible to ensure the best outcome from an urban affairs standpoint.

I have not as yet discussed this with the Planning Department because they do not wish to be involved.

I am available any time on 9489 6112.

Regards,

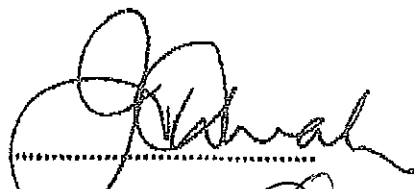
Carol and Jim Neale.

A handwritten signature in black ink, appearing to be 'J. Neale', written over the signature line.

Re 6 Beechworth Road

13th August 1996

1. I authorise you to include my land in the proposed rezoning, on the basis that the application will be for my land (including the land transferred, referred to in this letter), and not withdraw the application for three years from the date of this agreement. However I am not willing to agree to an open ended three years. That is, I will agree to this three year period as long as you are pursuing the application diligently. I would not be willing to be locked in while you are sitting on it.
2. This authority is also conditional on us successfully swapping the land as shown on the attached plan, so as to square up our land. I give you 'A', you give me 'B'. The triangular section of ROW which will remain over my land after the land swap will be extinguished. So there is no doubt, but relying on the accuracy of the attached survey copy, the new boundary will extend the line of the Northern side of the current ROW to No 4, which is parallel to the southern boundary of No 6, to the West until it intersects the drive to No 8, and to the East until it intersects the Southern extension of the Eastern boundary of No 6.
3. On success of your Avon Road project rezoning application, you will transfer the driveway 'C' to me, in exchange for a right of way to your dwelling at No 8. The ROW will be extinguished within a year of rezoning. We agree to consult with each other, if either of us develop DA's or BA's in respect of any of No's, 4, 6 and 8.
4. That the application will include in the concept plan my purchase of the land marked 'D' from the council to square off the northern boundary of No 6, and my willingness to improve the footpath to the standard of No 10 Beechworth, at my cost.
5. You will allow and pay your share (50%) of reasonable fences to the intended new common boundaries, and agree to assist me to improve the amenity of the area, particularly in regard to my tenants parking on No's 4 and 6.

  
.....  
E.P. Goodwin  
.....  
L.J. Goodwin  
.....  
J.W. Neale  


Subject: RE: Beechworth Rd/Avon Rd Development

Thanks for your email.

Ok, I am not going to critique your offer. If you want an immediate yes/no, the answer is no.

I have already made comments in past correspondence on the whole range of concerns, assessments of likely prices and costs, that we have to try and understand regarding the situation my wife and I find ourselves in. But suffice to say, that our replacement cost for everything we have now is our primary concern, not what the land component say, is worth to anybody else.

If you want a counter offer I could accept, it follows, and it is subject to my wife agreeing with the concept, and my lawyer the fine print.

I do confirm firstly that I could agree within seven days.

I will ask for a 10% deposit on exercise of any option.

I will allow a six month settlement, as I am going to build in the time cost of money into my offer, (and if you did not come through with the balance, we would not settle anyway).

If you paid within 4 weeks of exercise of your options (immediate settlement), I would agree a 5% discount on b and c.

a. Following gazettal of your land being rezoned, I want a put option to enable to me to sell you my property for \$1.75M. I have based this on estimating the market value in 18 months (the maximum time before I may get my cash), and adding a small share of the benefit you will get from the value increase of the rezoning.

b. I will grant you a call option to buy my property any time within the next two years for \$2.45M. This I have based on what value I believe my property will bring to the development (\$1.7M) divided by two (\$850k), + what it may be worth now, plus my estimate of an increase in value between now and 30 months time. (The fact that you may or may not be the one that makes the development profit in the end is not my concern, just aiming for 50% is).

c. The option to buy my property any time after two years and less than three, I value at \$2.55M. Similar logic, plus my estimate of an increase in value between now and 42 months time.

I suspect from your offer below this is a fair way from what you were thinking, but you've asked what I would accept, and this is it.

regards,

Peter

-----Original Message-----

**From:** jim neale [mailto:jimn@ihug.com.au]

**Sent:** Wednesday, 17 April 2002 8:44

**To:** Peter Goodwin

**Subject:** Re: Beechworth Rd/Avon Rd Development

Peter Goodwin



22/04/2002

11

FAX

To : Mr. Jim Neale  
From : Swarup Dutta  
Date : 17 April 2002-04-17  
Re : Rezoning Avon Road  
cc. Planning NSW

Dear Mr. Neale,

Thank you for your fax received today. As promised, I respond accordingly.  
In reference to your fax proposal, I wish to highlight the following and regard other points you have noted as irrelevant to our discussion:

1. We will require full names and details of the option exerciser (J. and C. Neale?) in any agreement we enter into, in relation to our land, 12 Mayfield Avenue, Pymble. We will be advised by our solicitor and proceed accordingly on the details of the commercial agreement you will subsequently submit to us.
2. We, the land owners, cannot accept any vague "ifs" and "buts" in any agreement.
3. In the fax, you value our LAND only at \$600,000 and note that will take an option at 220% times of this value, which equates to \$1,920,000. Yet, you note in your fax this amount to be \$1,320,000 which is 2.2 times the value and not 220%.
4. The property, with no rezoning, will be around \$1,320,000 in 3 years time with the existing house, ceramic tiled swimming pool, close to schools and transport.
5. **Your proposal is dependant on a 3 year option with no cash deposit being placed by you, as you stated on the phone you lack cash liquidity.**
6. In that case, I suggest you take a Deposit Bond from your lender, like many developers in a similar situation would do, and place a deposit of 10% on the agreed option value. The cost to raise a 12 month Deposit Bond is \$5465.00
7. We will then grant you an option for 6 months, by which time rezoning should be completed.
8. On receipt of your deposit, we will contribute 1/30<sup>th</sup> of the new rezoning fees commencing from 1 April 2002. Since the rezoning is a new application, we will need to sight all invoices for fees paid in relation to this new rezoning application to PlanningNSW (1/30<sup>th</sup> based on your verbal value of our land in comparison to whole development).
9. If the consolidated rezoning application is unsuccessful within 6 months, we will return the Deposit Bond less the fees we paid you. We are being generous and fair by agreeing to refund the Deposit Bond, less fees we paid you, as commercial options are non refundable. This will then motivate you to develop/rezone the property efficiently in accordance with PlanningNSW reasonable wishes.
10. We estimate our land can generate 6-7 units in a quality development. The current sale price for such sites is \$300 -350,000/ unit.
11. We will require you to settle in full within 3 months, after permission is granted for rezoning, otherwise you will forfeit the full deposit and the option we grant.

FAX.



Mr Swarup Dutta

Dear Swarup,

In our discussion this morning you were kind enough to say that if I were to put an offer to you by fax you would respond to it today. Here it is.

For the option to be correctly priced it must achieve two things after the conditions for its exercise have been achieved (in this case gazettal of a rezoning and approval of the purchase funds by the lender so that the exerciser can complete the contract).

1. The granter of the option must receive considerably more for his property than it would have been worth if the option had not been granted. In our case this is achieved because, once I have an option your land will be included in a much more profitable development than it could ever be on its own. It will also marginally improve the outcome for the development of my land. So we can both profit from its inclusion, in your case with certainty and in my case probably.

2. The owner of the option would profit substantially by exercising it. That is, by the time the owner of the option exercises it the subject property will be worth considerably more, to him, than the exercise price. The option holder will therefore want to exercise it. If he cannot do so the extra value may well revert to the property owner who granted the option.

I propose that you grant me a three year option. On exercise, which may be at any time, we enter into a contract with 3 months settlement.

That the exercise price be computed from my assessment of the current land value which is \$600,000 for 12 Mayfield.

That it is assumed that rezoning may increase this threefold. The report on financial viability of potential medium density sites by Mirvac implies that this assumption is exceptionally generous to the vendor.

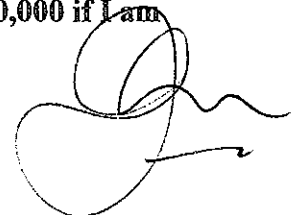
That the option price reflects a distribution of that increase partly to the vendor and partly to me (as the increase is impossible at all without my adjoining land).

That the exercise price be the land value multiplied by 220%. That is 2.2 times my current estimate of the land value. That is \$1,320,000.

This offer is conditional on your paying 1.25% of the exercise price towards application fees, past and future consultants reports and the other past costs of achieving the opportunity to obtain the proposed rezoning including the necessity to amalgamate such a large site.

I am prepared to increase this by a further \$50,000 to \$1,370,000 provided a binding agreement is entered into within seven days, provided the contribution is paid, and providing you are the first to sign such an agreement.

As a protection for you I am prepared to purchase your property at any time following gazettal of a viable rezoning at its market value as a residence plus \$50,000 if I am reasonably able to do so.



I know that as a developer yourself you understand that we are obtaining a rezoning. That does not even get us to a point where we have "a unit site" for valuation purposes. To obtain "so much per unit site" we need a DA. "Cum DA" adds about 25% to the site value. Then a developer employs a builder and both make further profits by taking very substantial risks and investing further capital.

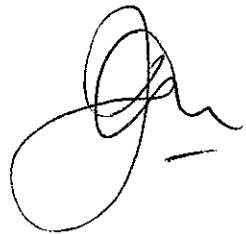
Comparable agreements will be presented to other neighbours.

Having provided such an incentive for you to proceed now I hope you understand that I must ensure that you cannot profit at my expense by delaying or by holding out for an even better offer. Accordingly I must resolve that no matter how attractive it may be for me or Planning NSW to include your site I will not make an offer with a higher net present value than the one made now.

As you know I am very concerned to establish with Planning NSW that I am doing everything I reasonably can to ensure the best overall development and to that end I will be communicating this, and other such offers to them, even though they have not asked me to do so.

Regards,

Jim Neale. 17/4/2 - by fax to 9402 6631



**jim neale**

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**From:** John Whitfield [whitsol@ozemail.com.au]  
**Sent:** Tuesday, 31 March 2009 12:50 PM  
**To:** 'Jim Neale'  
**Subject:** No 7 Avon Road

"J"

Jim,

I have now carried out searches in relation to Milan Tusek and find as follows:

- That as you note from your search the owner of this property is TDM property Group Pty Limited. A search of that company shows that the only director and secretary is a person by the name of Dragan Markovic. There is no mention of Mr Tusek.
- TDM has a mortgage to Nichols Constructions for \$4.3 million. One would presume that this property is part of some type of collateral security.
- The previous owner of the property Gek Ngoh Yeo has a caveat in relation to a mortgage back when the property was purchased by TDM on the 25<sup>th</sup> October 2007. The amount of that unregistered second mortgage cannot be ascertained.
- Oakland Investments (AUS) Ltd has a caveat pursuant to a written agreement but there is no way of ascertaining the nature of that written agreement.

In summary it would appear that you are dealing with a person who has no interest in this land on the face of the record. If he does have an interest in the land it is heavily encumbered unless there has been part payments of the mortgages recorded on title in 2007.

To use his land in the way that you are proposing I would suggest would involve dealing with all these people. The only other thing that occurs to me is that maybe Tusek has only recently acquired it and the paperwork to register his interest has not been lodged. There are no unregistered dealings on title.

John.

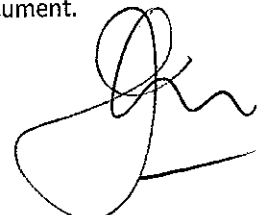
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jim neale

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**From:** Jim Neale [jimnea@optusnet.com.au]  
**Sent:** Wednesday, 18 March 2009 9:09 AM  
**To:** 'Milan Izidor Tusek'  
**Subject:** RE: 7 Avon Rd Pymble

Dear Milan,

I would like to talk to you as we are neighbours and I am about to develop the property next door.

Please contact me any time on 9489 6112.

I would have liked to buy the whole of your property however it is probably too late for that.

Regards,

 Jim Neale.

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**From:** Milan Izidor Tusek [mailto:milantdm@bigpond.com]  
**Sent:** Tuesday, 17 March 2009 6:28 PM  
**To:** jimnea@optusnet.com.au  
**Subject:** 7 Avon Rd Pymble

Dear Mr Naele

Nelson Chiu has given me your contact as I am the current owner of 7 Avon rd Pymble as of last year.

Nelson tells me that you are interested in purchasing part of 7 Avon Rd.  
To be honest I am NOT interested in selling any part of it, however make me an offer and we will talk.

Best wishes

 *Milan Tusek*



Paul and Kay O'Sullivan  
3 Avon Rd  
PYMBLE

1 Avon Rd, PYMBLE  
18th March 2002

Dear Paul and Kay,

Thank you for your letter of 14th March.

We wrote to you only because officers of the State Government Planning Department prompted it. As I understand it, their concern is that a large area will be rezoned and they want to see an excellent and coherent result.

They thought it prudent to contact the two or three neighbours whose land was within the proposed area for development before developing a concept for building. They have assured me that such discussions will not be allowed to delay the project.

I'm sure you would agree that it is not good urban design to leave a single house out of the planning process for nearly 10 acres of medium density. Even with the best will in the world there are bound to be difficulties for all concerned during the construction phase.

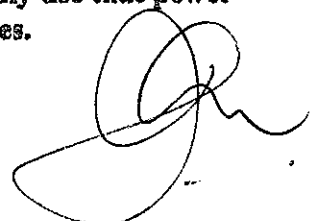
Our rezoning application was submitted at the end of 1995, and was being considered by Council Staff when you purchased 3 Avon. If I correctly recall the discussions in 1997/98 that you referred to, your inquiries at the time did not disclose this important fact. Had you been aware of our plans we would have been happy to discuss them prior to your purchase.

As you have rejected our approach out of hand we have not had a chance to explain the proposition, and out of respect for your position will not go into details here.

We would like you to know that the agreements being discussed involve an option to purchase your land at the time it is required for development for 160% of its then market price. We understand that premium would be tax free to a principal resident.

As you know we had the opportunity to buy your property several times over the years but, with Council as the consent authority saw no possibility of it playing a serious part in the development.

Accordingly we do not envisage any benefit accruing to us as a result of this payment other than that it will lead to a more coherent development of the area, and we know of no other way to achieve that result. While the Department has the power to rezone land they have indicated that they would only use that power without the owners consent in very exceptional circumstances.



"K2"

The concept for the development of the area will, legally, be produced by me and my consultants - however - the reality is that the Minister has a very competent planning department who will ensure that the final concept is satisfactory to them. They insist that the land be defined at the outset. I understand that it will not be easy, nor even possible, to include isolated sites later.

I will send you a copy of the (early) draft agreement and I feel obliged to formally offer it to you. I am concerned to be able to assure the Minister, through his Department, that I have done everything possible to ensure the best outcome from an urban affairs standpoint.

I have not as yet discussed this with the Planning Department because they do not wish to be involved. Nevertheless I think your circumstances are unusual and Ron Baker of the Department might be sympathetic to your position. You could give him a ring.

I am also available any time on 9489 6112.

Regards,

Carol and Jim Neale.

