

# EXECUTIVE COUNCIL

## RESTRICTED

**Title of Report:** Land swap with Robert Rowlands at Moody Brook Road

**Paper No:** 253/09

**Date:** 17 December 2009

**Report of:** Senior Crown Counsel

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### 1.0 Purpose

To consider proposals from the Lands Committee for FIG to enter into certain arrangements with Mr Robert Rowlands involving a land swap in the vicinity of Moody Brook Road.

### 2.0 Recommendations

The Lands Committee recommend that FIG enter into the following arrangements with Mr Robert Rowlands (referring to the coloured plan attached to this paper):-

- 2.1 FIG conveys to Mr Rowlands the two areas of land shown coloured dark purple and light purple on the plan (which areas of land are currently fenced as part of Mr Rowlands property) extending in total to 1.31 acres.
- 2.2 Mr Rowlands conveys to FIG the land shown coloured orange on the plan (and occupied by FIG as part of Stanley Common) extending to 0.56 acres.
- 2.3 Mr Rowlands conveys to FIG the land along Moody Brook Road shown coloured turquoise on the plan (previously taken by FIG for earlier roadworks) and shown coloured green on the plan (required for the present roadworks) extending in total to 0.58 acres.
- 2.4 Mr Rowlands conveys to FIG a 10-metre wide strip running along the eastern side of the land granted by Crown Grant 486, from Moody Brook Road until approximately 10 metres beyond the boundary between the Racecourse and the Racecourse Paddock.
- 2.5 FIG gives an undertaking (one) to bury or divert the overhead power lines running close to the eastern boundary of Mr Rowlands' land if FIG construct a road through the 10 metre wide corridor; or in the alternative (two) to bury or divert the power lines (or at FIG's option, having regard to FIG's manpower and plant capacity at the relevant time, to pay for Mr Rowlands' contractors to do so), provided (a) Mr Rowlands can demonstrate that the power lines are significantly interfering with the residential development of his land; (b)

planning permission has been granted for residential development of sufficient scale to justify the moving of the power lines; and (c) Mr Rowlands or as the case may be his developer or contractor proceeding with the development.

- 2.6 FIG gives an undertaking to divert the underground water main which runs through the north of Mr Rowlands' property onto a more convenient location on Mr Rowlands' land (or at FIG's option, having regard to FIG's manpower and plant capacity at the relevant time, to pay for Mr Rowlands' contractors to do so), provided (a) Mr Rowlands can demonstrate that the water main is significantly interfering with the residential development of his land; (b) planning permission has been granted for residential development of sufficient scale to justify the moving of the water main; and (c) Mr Rowlands or as the case may be his developer or contractor proceeding with the development.

### **3.0 Summary of Financial Implications**

There is no immediate cost but a possible future liability of up to £27,900 (at current prices).

### **4.0 Background**

- 4.1 Mr Robert Rowlands owns the land on the south side of Moody Brook Road, between the end of Ross Road West and the start of the Golf Course. His title comprises two Crown Grants, no. 388 issued in 1925, and no. 486 issued in 1938.
- 4.2 As part of the planned upgrade of Moody Brook Road, the Land Surveyor was asked to check land ownership and boundaries. The Land Surveyor identified a significant anomaly between the measurements in Mr Rowlands' two Crown Grants and the total area that Mr Rowlands is occupying. This anomaly was depicted by the Land Surveyor as the light purple strip on the attached plan, although according to Mr Rowlands' title deeds the two plots should be contiguous.
- 4.3 The anomaly between the measurements in Mr Rowlands' two Crown Grants and the total area that Mr Rowlands is occupying could be due to any of:-
  - 4.3.1 an error in Crown Grant 486;
  - 4.3.2 the fences of Crown Grant 388 having been erected too far to the west;
  - 4.3.3 the east boundary of Crown Grant 486 having changed over time.
- 4.4 The Land Surveyor also picked up other minor anomalies, involving land already taken by FIG along the Moody Brook Road, land beyond the southern boundary of Crown Grant 388 owned by FIG but fenced as part of the plot, and land inside the southern boundary of Crown Grant 486 owned by Mr Rowlands but fenced as part of Stanley Common.
- 4.5 The anomalies were drawn to Mr Rowlands' attention. He was asked for permission to enter onto his land for the purpose of upgrading the Moody

Brook Road, and proposals for a land swap were put to him. Mr Rowlands, after considering the matter, has said that he is agreeable in principle to a land swap provided FIG assist in the future development of his land by moving existing utility services.

4.6 Mr Rowlands and the Director of Public Services have agreed that the Highways Section will enter onto Mr Rowlands' land to carry out the planned upgrade of the Moody Brook Road. In return FIG, as part of the works, will:-

4.6.1 erect a new boundary fence;

4.6.2 install a pipe beneath Moody Brook Road at the lowest point of the land to facilitate drainage arrangements if Mr Rowlands' land is developed in future; and

4.6.3 construct up to four access points capable of taking a lorry across the ditch at the side of the road at locations to be agreed between Mr Rowlands and the Road Engineer.

4.7 The proposed land-swap is as follows (referring to the coloured plan attached to this paper):-

4.7.1 FIG conveys to Mr Rowlands the two areas of land shown coloured dark purple and light purple on the plan (which areas of land are currently fenced as part of Mr Rowlands property) extending in total to 1.31 acres.

4.7.2 Mr Rowlands conveys to FIG the land shown coloured orange on the plan (and occupied by FIG as part of Stanley Common) extending to 0.56 acres.

4.7.3 Mr Rowlands conveys to FIG the land along Moody Brook Road shown coloured turquoise on the plan (previously taken by FIG for earlier roadworks) and shown coloured green on the plan (required for the present roadworks) extending in total to 0.58 acres.

4.7.4 Mr Rowlands conveys to FIG a 10-metre wide strip running along the eastern side of the land granted by Crown Grant 486, from Moody Brook Road until approximately 10 metres beyond the boundary between the Racecourse and the Racecourse Paddock.

4.8 The Director of Public Services requested a 10-metre wide strip of land, running from Moody Brook Road up to Stanley Common, but Mr Rowlands is only prepared to give access up to the Racecourse Paddock, on the basis that if FIG needs to build a road, it can do so on its own land (ie. the Racecourse Paddock) rather than on the southern section of Mr Rowlands' land. The difficulty from FIG's perspective is that the Racecourse Paddock is subject to a title restriction preventing any development on the land, which would include road construction, until 1 January 2023. The Lands Committee has suggested that FIG could exercise its power under the Crown Grants to resume the additional land required.

- 4.9 The proposed land swap is intended to achieve the following aims:-
- 4.9.1 provide future road access between Moody Brook Road and Stanley Common to the south (in place of or in addition to the proposed road construction corridor identified at the east end of Stanley golf Course);
  - 4.9.2 remove the minor boundary anomalies between FIG and Mr Rowlands' land;
  - 4.9.3 document the resumption of land by FIG along Moody Brook Road; and
  - 4.9.4 resolve the major anomaly between the measurements in Mr Rowlands' two Crown Grants and the total area that Mr Rowlands is occupying on the ground.
- 4.10 Mr Rowlands has requested, in return for the land swap, that FIG provide assistance with the future development of his land by re-routing existing overhead power lines and an underground water main if these are interfering with development plans.
- 4.11 The Director of Public Services has proposed a compromise, which has been accepted by Mr Rowlands and approved by the Lands Committee, subject to ratification by Executive Council. The compromise is intended to avoid FIG incurring any expenditure unless justified by the scale of the proposed development (or subsumed into other FIG works).
- 4.12 It is proposed by the Director of Public Services that FIG gives an undertaking (one) to bury or divert the overhead power lines running close to the eastern boundary of Mr Rowlands' land if FIG construct a road through the 10 metre wide corridor; or in the alternative (two) to bury or divert the power lines (or at FIG's option, having regard to FIG's manpower and plant capacity at the relevant time, to pay for Mr Rowlands' contractors to do so), provided (a) Mr Rowlands can demonstrate that the power lines are significantly interfering with the residential development of his land; (b) planning permission has been granted for residential development of sufficient scale to justify the moving of the power lines; and (c) Mr Rowlands or as the case may be his developer or contractor proceeding with the development.
- 4.13 It is further proposed that FIG gives an undertaking to divert the underground water main which runs through the north of Mr Rowlands' property onto a more convenient location on Mr Rowlands' land (or at FIG's option, having regard to FIG's manpower and plant capacity at the relevant time, to pay for Mr Rowlands' contractors to do so), provided (a) Mr Rowlands can demonstrate that the water main is significantly interfering with the residential development of his land; (b) planning permission has been granted for residential development of sufficient scale to justify the moving of the water main; and (c) Mr Rowlands or as the case may be his developer or contractor proceeding with the development.

- 4.14 Mr Rowlands had also requested that FIG remove the old telephone duct which runs through the north of his land (Mr Rowlands having previously been informed that this was FIG's responsibility). The advice from the Director of Public Services was that the telephone duct belongs to Cable & Wireless, not FIG, and this has now been confirmed to Mr Rowlands by Cable & Wireless' Manager of Engineering Justin McPhee.
- 4.15 Executive Council have delegated to the Lands Committee (paper 166/06) authority to determine all applications to purchase, lease or use Government land where the Committee is satisfied that the site in question has no strategic value and has a calculated value no greater than £10,000. Even though the land involve in the land-swap has no strategic value and is not worth more than £10,000 the matter must still go to Executive Council because of the budgetary implications for PWD of the final two recommendations.
- 4.16 The proposed relocation of the services also supports the Housing Strategy by encouraging Mr Rowlands to consider releasing his land for residential development.

## **5. Financial Implications**

Contingent liability arising from recommendations 2.5 (moving power lines) and 2.6 (moving water main) and based on existing prices is estimated by the Director of Public Services at:-

Power lines	£15,600
Water main	£12,300

## **6. Legal Implications**

The proposed land swap will resolve certain title anomalies, and document the resumption of land by FIG from Mr Rowlands and his predecessors in title for the purpose of widening and improving the Moody Brook Road.

## **7. Human Resources Implications**

There are no Human Resources implications.

