

7. SUBCOMMITTEE REPORT
CHARLESWORTH STREET RESERVE: DEEDS INDEX LAND RR 9825

Officer responsible Property Manager	Author Pam Ellis, Property Services Manager
Corporate Plan Output: Various	

A report to the Committee at its May 1999 meeting outlined a proposal for the acquisition of land currently held in the Deeds Index and grant of access to Humphreys Drive. The report was referred to the Hagley/Ferrymead Community Board and to the Parks and Recreation Committee who have supported the resolution of this Committee to appoint a subcommittee to meet with the applicant and adjoining owner, Mr P D Sloan, and his legal counsel. A copy of the original report, setting out the background to the application and negotiations and discussions held with Council officers, is attached.

A subcommittee comprising the Chairmen of the City Services Committee, Parks and Recreation Committee and the Hagley/Ferrymead Community Board was subsequently appointed to discuss with Mr Sloan whether his objectives and the Council's objectives could both be achieved with regard to the reserve and access to Humphreys Drive; and only in the event that these discussions were unsuccessful that the Council pursue the adverse possession claim through the Court.

The subcommittee met with Mr Sloan on 15 June 1999 to discuss a proposed agreement between the parties. A key issue in the discussion was future roading planning for the wider area including limited access road and the option that Humphreys Drive may be stopped in part around the Estuary perimeter. As a consideration in authorising a crossing to Humphreys Drive, Mr Sloan was asked to give an undertaking not to object to any future proposal to formally stop Humphreys Drive. Other matters discussed included landscaping covenant, costs of survey and construction, grant of right-of-way to adjoining property, restrictive building set-back covenant, and withdrawal of Council's claim by adverse possession.

Subsequent officer meetings with Mr Sloan and his legal and traffic planning advisers have resolved the outstanding issues and, subject to Council approval, agreement has been reached with Mr Sloan, on the following basis:

1. On the land coming under the Land Transfer Act and Mr Sloan becoming registered proprietor, Mr Sloan will transfer to the Council all of Wortley Street and the parts of Wharncliffe Road and Outbridge Street shown on the attached plan A.
2. The Council will transfer Lot 3 DP 68725 to Mr Sloan in consideration for receiving the land in 1 above, subject to Council's complying with the public notification provisions of Section 230 of the Local Government Act.
3. Mr Sloan will enter into a conservation covenant to protect existing planting on that part of Outbridge Street being retained by Mr Sloan.

4. Mr Sloan will at his own cost provide a right-of-way in favour of the adjoining owner (Pt Lot 1 DP 12424). This is to provide a crossing point if limited access road classification is considered in the future.
5. The Council will authorise a crossing point on Humphreys Drive at Outbridge Street for the purpose of serving Mr Sloan's land (Lot 1 DP 68725) and the right-of-way in 3 above. In the event that Council pursues the classification of Humphreys Drive as limited access road, it will authorise such crossing point onto Humphreys Drive in terms of Section 346(a)(ii) of the Local Government Act 1974. If legally possible, the Council requires this undertaking to be made binding on future owners.

The Council's agreement to authorise a crossing point will be subject to any other necessary statutory consents, e.g. Resource Management Act.

6. There will be no right turn exit manoeuvres into Humphreys Drive from Mr Sloan's property.
7. Mr Sloan undertakes that he will not object to any future proposal to formally stop Humphreys Drive under the Resource Management Act or the Local Government Act, except that this undertaking applies only to a proposal to stop that part of Humphreys Drive northwest of the crossing point.
8. Costs of constructing a safe access to the Humphreys Drive crossing (in accordance with a plan to be agreed between the Council and Mr Sloan) and survey work will be met by Mr Sloan.
9. The existing restrictive covenant, which provides for a 9m building setback from the Outbridge Street boundary, will remain but the setback will apply from the new boundary which is approximately the centre line of Outbridge Street.
10. The Council will withdraw the caveat and related legal proceedings.

The above conditional agreement satisfactorily meets the objectives of the Council and Mr Sloan and subject to compliance with statutory requirements will resolve a long outstanding land ownership difficulty without further legal action and little added cost to the Council. For these reasons the subcommittee recommends approval of this agreement.

The recommendation includes a formal resolution in terms of Section 230 of the Local Government Act regarding disposal of Lot 3 DP 68726 to Mr Sloan. Public notification of the Council's intention to consider this resolution was given on 7 August 1999.

The following submission was received on Monday 9 August 1999 from Dr P Mulhern of 50 Heberden Avenue:

1. “Mr Sloan intends to undertake not to object to stopping of Humphreys Drive northwest of the crossing point to Lot 1 DP 68725. There will, it is proposed, be no right turn exit manoeuvre into Humphreys Drive from Lot 1 DP 68725. If the road is stopped northwest of the crossing point, and vehicles were unable to turn right, then there would in effect be no egress from Lot 1 onto the residual (unstopped) part of Humphreys Drive. Is that the intent of the parties?
2. It appears that Mr Sloan’s major requirement is to obtain access to/from Humphreys Drive. The disposal to him of Lot 3 DP 68725 by the Council is not critical in achieving this. The Council should, in my view, not include this strip of land in the agreement but rather should dispose of it by its normal method of public tender (for which I would be interested in submitting a tender).”

The Committee noted on considering this submission that the proposed agreement with Mr Sloan provides that the “no right turn exit manoeuvre into Humphreys Drive” will no longer apply in the event that Humphreys Drive is closed to the northwest of the crossing point from Lot 1 DP 68725.

- Recommendation:**
1. That the Council enter into an agreement with Mr P D Sloan on the terms set out in the report.
 2. That the Council adopt the following resolution:

Resolution

Pursuant to Section 230 of the Local Government Act 1974 the Council resolves to dispose of the property described in the following Schedule:

Schedule

All that parcel of land containing 2012m² or thereabouts and being described as Lot 3 DP 68725 contained in certificate of title 40A/746.