

1. TRAFALGAR STREET ACCESSWAY – ENGLISH PARK



Officer responsible Leisure and City Streets Managers	Author Property Services Officer, Lewis Burn
Corporate Plan Output: Leisure – Stadia Leased – English Park City Streets – Net Assets (Fixed Assets)	

INTRODUCTION

The purpose of this report is to seek Council approval to sell a small part of the English Park title for amalgamation with an adjoining residential property and to acquire for road part of that property presently formed as footpath. The Shirley/Papanui Community Board is being asked to recommend to the Council the sale of Council land and acquisition for road as outlined in this report.

BACKGROUND

Board members will recall discussions and a site inspection with the parties early in 1999. The residential property at 78 Trafalgar Street adjoins an accessway to English Park from this street. The house on this property partly encroaches the accessway (not presently in use) while the frontage to the property, which is formed as footpath, has not been formally acquired and legalised. The encroachment came about when the house was originally built and not as a result of later subdivision or boundary realignment. The footpath status was discovered when ascertaining the survey and title considerations associated with the proposed accessway disposal. It was considered appropriate to tidy up both matters simultaneously. The subject land is shown as Lots 1 and 2 on plan S3019.

ADJOINING OWNERS

Discussion between Council officers and the owners of No. 78 Trafalgar Street (Mr and Mrs Tyler-Smith) have been ongoing for some time. Presently the house immediately abuts the accessway, which apart from the boundary encroachment issue, presents a potential security problem for the residential owners should the accessway be used for entry to English Park. There is no fence along the north wall of the house with the accessway, which has a locked gate at the front preventing access from Trafalgar Street. The accessway has not been used for some considerable time. The property on the north side of the accessway (No. 80) is fenced off for its entire depth. The owners of this property, although at one stage involved in the discussions, are not now involved in the negotiations over the accessway.

CANTERBURY SOCCER INCORPORATED

The accessway in question forms part of the lease to Canterbury Soccer who wish to maintain future use of the accessway on the following basis.

1. For use as an emergency exit from the ground should any untoward situation arise that limits the exiting of spectators from the normal appointed exit ways. This would also allow for an escape route from the ground for any person being accosted on the ground.

2. For use as a vehicle entrance/exit way for Council, soccer and other authorised persons on a limited basis. As an example it would allow food vendors to bring vehicles around the ground on major playing days.
3. The retention of the accessway also opens the opportunity to possible expansion of the types of events that could be accommodated on the ground. Examples that could be envisaged are other sporting events, cultural and community events.

The current accessway is some 5.5 metres wide. The retention of a three metre wide accessway following the proposed sale is sufficient width to meet the future needs of the Association and Council as an emergency alternative exit and entrance to the park grounds for authorised personnel and vehicles. It is not intended that this accessway be used for general pedestrian access to English Park. The proposal will necessitate a partial surrender of the soccer lease.

ENGLISH PARK REDEVELOPMENT

The Council at its meeting on 24 August 2000 adopted the concept design report for the redevelopment of English Park to create a new park for St Albans in association with a new soccer stand. This involves pitch relocation (including drainage and the stream relocation work) and the new stand including community facilities, landscaping and car parking development. The detailed design work is now under way and it is expected tenders will be called early in the year 2001 with completion currently programmed (subject to resource consent) for late that year.

ZONING

The access strip is zoned O3 with the adjoining property zoned L2 under the Council's proposed plan. The proposed sale of part of the accessway will mean amalgamation of O3 land within an L2 zone. As part of a resource (subdivision) consent the Council will be required to obtain a land use consent to allow the land being amalgamated with the adjoining title to be used for residential activity. It is not intended to change the position of the zone boundary at this point in time.

FENCING

It is proposed that only when a sale is unconditional, a new 1.8 metre paling fence be erected on the new boundary, the cost to be shared between the Council and the residential property owner on a 50/50 basis.

SECTION 40 PUBLIC WORKS ACT

Buddle Findlay, solicitors, advise:

“Your letter did not detail the circumstances of the acquisition of this land. It is however clearly land held for recreation purposes and potentially subject to the application of Section 40 Public Works Act upon it becoming surplus to that purpose. The proposal to sell this part of the property to Mr Tyler-Smith has arisen in the context of Council taking part of Mr Tyler-Smith’s land for roading purposes. It is, however, relevant that the existing building on the Tyler-Smith property encroaches partly into the Council’s land. It seems to me most likely that if Mr Tyler-Smith applied to the Court for relief under Section 129 of the Property Law Act (which is concerned with encroachment of buildings on adjoining land) that an order vesting land in favour of Mr Tyler-Smith could be made.

In that background therefore Council proposes to transfer this parcel of land to Mr Tyler-Smith without the necessity for offer back. The shape of the land is such that it could never be held in a separate Certificate of Title. The transaction can only be completed in a practical sense pursuant to a resource consent requiring amalgamation of the land to be sold with the adjoining property owned by Mr Tyler-Smith. In that context I am satisfied that reasonable grounds exist for the Council to determine that an offer back to the former owner is excused on the grounds of either Section 40(4) or Section 40(2)(a) of the Public Works Act, in the latter case on the grounds of impracticality (a separate Certificate of Title could not issue to the former owner). You should ensure that after Council has resolved to sell this strip of land pursuant to Section 230 of the Local Government Act, a formal decision is made by the Council in respect of these matters, as a separate resolution.”

SECTION 230 LOCAL GOVERNMENT ACT

The subject land is held by the Council in a fee simple title under the provisions of Section 601 of the Local Government Act 1974. To proceed with disposal as recommended it will be necessary to formally pass a resolution as given in the recommendation. Public notice in accordance with Section 230 was given in the Christchurch Star on Friday 1 September 2000.

LAND FOR ROAD

The area required from the frontage of No. 78 Trafalgar Street (occupied as footpath) is shown as Lot 2 on the plan as 10 m² (subject to survey). Funds are held for this purchase which will legalise an overlooked anomaly.

AGREEMENT

Conditional agreement subject to Council approval is held with Mr Tyler-Smith on both transactions which have been formalised as two related, but not inter-dependent contracts prepared by Buddle Findlay. Details including financial consideration of both agreements are given in the public excluded section of this report.

COMMENT

This proposal is essentially about rectifying a boundary alignment that is of real concern to the adjoining property owners in terms of security, protection and enjoyment of their property particularly as being adjacent to the English Park Soccer facility. While the situation is not of the Council's making it is considered proper that the encroachment be rectified while at the same time formally securing the private land that has for a long time been formed and used as footpath. It seemed appropriate to address the matter of the accessway boundary in association with the redevelopment of English Park so that survey work is not duplicated.

Recommendation: 1. That the Council pass the following resolution:

Resolution

Pursuant to Section 230 of the Local Government Act 1974 the Christchurch City Council hereby resolves to dispose of the land described in the schedule below.

Schedule Canterbury Land District Christchurch City

All that parcel of land comprising 82 square metres (subject to survey) being part Lot 1 DP 6580 and being part of the land contained in Certificate of Title 5B/527.

2. Subject to 1 above the Council pursuant to Section 40(4) and 40(2)(a) of the Public Works Act 1981 determine that an offer back to the former owner is excused.
3. That subject to 1 and 2 the Council approve the sale of Lot 1 on plan S3019 for amalgamation with K S Tyler-Smith's title CT 370/118 on the terms and conditions contained in the public excluded section of this report subject to a surrender by Canterbury Soccer Incorporated of the subject land from its lease with the Council.

4. That the Council approve the acquisition for road that parcel of land formed as footpath shown as Lot 2 on plan S3019 being part of CT 370/118 held by K S Tyler-Smith on the terms and conditions outlined in the public excluded section of this report.