

14. CHANCERY LANE RIGHT OF WAY

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The purpose of this report is to present an opportunity for the Council to secure a formal easement for public thoroughfare in perpetuity through Chancery Lane and to seek a decision on whether or not to pursue this prospect.

This report was initially considered at the May meeting of the Committee but deferred to enable a legal opinion to be obtained from the Legal Services Manager on the possibility securing an equitable easement to protect the public rights of access.

BACKGROUND

Chancery Lane has been a means of public access between Cathedral Square and Gloucester Street for many years. The lane itself is in private ownership and subject to private rights of way in favour of adjoining properties. Rights of access are a matter of custom only and not protected by legal grant. Notwithstanding the public may have exercised those rights over many years, it is not possible to obtain an easement over land in New Zealand by prescription (i.e. by years of use). Therefore if the Council wishes to preserve rights of public access over Chancery Lane on a perpetual basis, something more than what currently are perceived to be existing rights is required to secure those rights. By contrast Strand Lane on the opposite side of the Square ensures public access to Hereford Street by virtue of Council ownership. However in saying this there is no commonality in respect of ownership and access rights to the numerous lanes throughout the city. Ownership and access rights appear to have historically come to fruition on the basis of circumstances and a "horses for courses" approach.

In 1997 the Council considered a report that sought to:

"Inform Councillors of an opportunity to secure a public right of way through the existing Chancery Arcade and to seek approval to proceed with negotiations to secure a public right of way for the benefit of the citizens of Christchurch".

Prior to this, and until recently, Chancery Lane has been in multiple private ownership and subject to a number of private rights of way in favour of adjoining properties. The 1997 consideration was initiated by a developer seeking to purchase the adjoining properties that had an interest in the lane and to redevelop the site.

This created a potential opportunity for the Council to secure some public property rights on favourable terms and conditions. It was also viewed as an opportunity to create a better structure for maintenance and upgrade of the lane which over the years had been somewhat neglected. Unfortunately the developer did not proceed with those plans as the consequent status quo of multiple ownership proved too difficult in reaching a common accord. Subsequently nothing materially has happened since to resolve this issue.

CURRENT PROPOSAL

Recently, however, the Council has been approached by R F D Investments Ltd, whose sole director and shareholder is Mr Dave Henderson. Mr Henderson advises that R F D Investments Ltd have purchased the various properties that comprise Chancery Lane and that they are working to substantially upgrade these properties and the lane. It intends to "immediately extend the glass canopy the entire length of the lane; resurface the lane to a similar standard to the Square paving; install new lighting the length of the lane; and generally create a more acceptable ambience and public access way. It also intends to institute new standards with the cleaning contractors for the cleaning and maintenance of the lane".

In presenting its proposal R F D Investments Ltd enlisted C B Richard Ellis to provide a preliminary indication of value for the exchange of property rights (public access). Their findings and advice indicated a value that is outlined in the public excluded portion of this agenda with provision for an annual fee for lane use and maintenance.

ISSUES

Below are comments from key stakeholders units of the Council:

Libraries Manager

- The cessation of public access through the lane would affect library customers considerably.
- The main library doors are orientated to the lane.
- There is a pedestrian crossing link across Gloucester Street between the lane and main library entry doors.
- It is considered that a good portion of library customers utilises the lane.

City Streets

There are two access links between Cathedral Square and Gloucester Street both in private ownership. If one of these access links is closed the desireline will transfer to the adjacent one. At present Chancery Lane enjoys a higher level of patronage than the adjacent one. There is commercial advantage for the link to be retained and therefore the only possible loss of public access will be outside normal business hours. The link has a history of social and high maintenance problems with the after-hours access. If the lane is closed better use can be made of Club Lane rather than Gloucester Street and Cathedral Square for servicing. The possible loss of public use of the lane will be of benefit to other retailers on Worcester, Oxford, Colombo and Gloucester Streets. A consequence of the relocation of buses from Cathedral Square is that this link no longer provides direct access to the public transport system.

This link would have a low priority for any funding from any of the City Streets budgets.

Central City Team

- Chancery Lane is a very important linkage into and out of Cathedral Square. The Cathedral Square team has identified that for the Square to work well, good linkages and plenty of activity around and outside of the Square is essential. Closure of Chancery Lane would be detrimental to both the Square and central city revitalisation as a whole. Such closure could be partial – e.g. outside business hours and this may not be in the best interests of the city – this proposal would give the Council the opportunity to determine opening hours taking into account the city's wider interests.
- A source of funds would need to be found. This should not be from the Cathedral Square project, or existing central city allocated funding.

General Comments

- It appears that the developer, in the short term, is going to continue with and improve public access through the lane, supporting existing retail in the lane, irrespective of the outcome of this deliberation.
- In the short term the market is unlikely to support an integrated development of this site which disposes of the mall/lane. Currently the site without the pedestrian access arcade is likely to be less valuable and more difficult to support redevelopment.
- Without a formal easement the risk of closure and the Council's inability to influence use, access and maintenance always exists.
- The offered value of exchange appears too excessive.
- Negotiations over an easement present opportunities to secure other benefits e.g. heritage retention – Sevicke Jones Building, control standards for maintenance, redecoration and repair, etc.
- There is a mutual benefit arising from public thoroughfare through the lane and therefore practical commonsense should dictate its continued use in this matter.

BUDGET

There is no budget provision for this purchase, nor would any revenue accrue to offset funding. In actual fact the opposite applies in that a liability for ongoing operating expenses and possible long-term future capital upgrade costs is likely to be incurred.

The purchase would be funded by way of substitution from the central city infrastructure asset improvements output in the City Streets budget.

ADVANTAGES AND DISADVANTAGES

Outlined below are the advantages and disadvantages to securing formal registration of a public pedestrian easement over the lane:

Advantages

- Access option for library customers.
- Opportunity to negotiate control standards.
- Provide certainty over public access in perpetuity i.e. eliminates the threat of future closure.

Disadvantages

- Unknown prioritisation.
- Unbudgeted cost.
- Incurring a share of ongoing maintenance and repair/re-decoration obligations is likely.
- The short-term intentions of the developer are likely to see the existing arrangement persisting. Therefore short term such expense may not be warranted and will likely not be guaranteed.
- Could create a significant precedent for other privately owned properties commonly utilised for public thoroughfare e.g. Crystal Plaza, Press Lane, Westpac Lane, Shades Arcade and Colonial Lane, etc.
- There are other alternative pedestrian routes from the Square to Gloucester Street in close proximity e.g. Oxford Terrace, Colombo Street and especially Crystal Plaza which would benefit through increased pedestrian traffic should the lane close.

SUMMARY

The primary reason for considering purchasing an easement is to provide certainty of public access rights in perpetuity. Compensation in exchange would be warranted, though the current offer is considered excessive.

It is perceived that there is no immediate or short term risk of the current informal public pedestrian usage being disrupted, although such an eventuality is always a potential risk and this is an opportunity to secure certainty.

Opinion is diverse in respect of whether the risk of actually losing the pedestrian access over the lane will ever eventuate and if it did whether there would be any significant detriment.

The options for the Council are to:

- Do nothing and rely on the market, common sense and the issue of mutual benefit to prevail in the lane continuing to be available for public thoroughfare.
- Negotiate formal access rights.

NEW INFORMATION

In the course of seeking legal advice on the possibility of securing an equitable easement the current adjoining owners of the AMP site ("Emmons"), that is the building to the west of Chancery Lane at the southern (Square) end, entered into litigation with RFD Investments Limited. One of the aspects of this case that had some relevance to the issues facing the Council was the fact that Emmons were arguing for an easement in gross in favour of the public. We therefore held off on bringing this matter back to the Committee until the outcome of this case was known. Unfortunately, this argument was not upheld by the Court.

We are, however, now aware that Emmons do have a right-of-way over contiguous parts of Chancery Lane from the Square to Gloucester Street. This was not understood at the time of the May report. Although these rights are not over the full width, they do slightly reduce the risk of RFD's ability to totally close the lane. This could only occur with Emmons' approval or if RFD were also to purchase Emmons' property.

Our legal advice is that:

- *“No grounds exist to enable the Council to successfully argue that there is already an equitable easement in gross over Chancery Lane.*
- *It is not possible for Council to “piggyback” on the rights enjoyed by Emmons”.*

COST

In an effort to assist Council's deliberations we have also endeavoured to agree a price for the easement with RFD Investments. The outcome of these discussions are included in the public excluded section.

After considering the staff reports, the majority of the Committee concluded that the Council should pursue the purchase option to protect public access rights to Chancery Lane.

Recommendation: That the Council offer to purchase an easement on the terms detailed in the public excluded section of this agenda.