

2. FORESHORE LAND AT REDCLIFFS

General Manager responsible:	General Manager City Environment
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PURPOSE OF REPORT

1. This report was referred to the Board for its consideration and recommendation to the Council. The purpose of this report is to obtain the Council's approval for action relating to land occupied but not formally "owned" by the Council on the foreshore at Main Road, Redcliffs.
2. This anomaly can be rectified, and therefore the Council's approval is sought to undertake the process.

EXECUTIVE SUMMARY

3. For over 100 years the Council has maintained and administered as public open space a parcel of land known as Part RS 309 at Main Road, Redcliffs (see attached plan). The Council has always treated the land as Council owned, however ownership is uncertain. The land is not a reserve or owned by the Council in the conventional sense. The area is grassed and landscaped being used by the public as a link to and along the foreshore. The location is shown on the attached plan as Lot 2 with an area of about 640m².
4. A second portion of land Lot 1 of about 125m² with no immediate public access, shown on the attached plan, warrants consideration at the same time. Between Lots 1 and 2 there is an area of foreshore, owned by the Council as Local Purpose (Esplanade) Reserve, that is not affected by the Foreshore and Seabed Act, which is shown on the plan as Lot 3. If the Council secures Lots 1 and 2 a continuous strip of Council owned land will exist from Main Road to the boat ramp.
5. The Council previously considered this issue in June 2004 resolving then to await the passage of the Government's Foreshore and Sea Bed Bill before determining what steps to take. This Bill is now law and affects only those parts of the land below the mean high water mark. Lots 1, 2 and 3 are above the mean high water mark and therefore not affected by the Act.
6. Given the long public use and public utility of this land the Council should now determine on further action to secure ownership once and for all of this land. Local residents' interest groups including the Avon/Heathcote Estuary Trust and the Christchurch Estuary Association have expressed a strong interest in protecting the area as a vital link from Main Road to the Estuary.

FINANCIAL AND LEGAL CONSIDERATIONS

7. There was some uncertainty about land fronting the foreshore owing to the Foreshore and Seabed Bill which is now law. However, the land the subject of this report is not affected by that legislation.
8. Lots 1 and 2 are not presently "owned" by the Council in the normal sense. Although occupied by the Council and treated as Council land, the Council does not have a conventional guaranteed legal title under the Land Transfer Act. The land is what is known as "Deeds" land, the legal title for which is always uncertain and subject to challenge. There are many pockets of land of this nature in the city.
9. Under the deeds system of land ownership a party who by deed (ie by documentation) or by virtue of continuous possession can prove ownership, that party has a form of legal title. This is a "common law" system of land ownership originating from early British feudal land law. This form of land ownership is always subject to challenge. There is always a risk that a third party will try and assert ownership which could defeat the Council's rights. It is a redundant and outmoded form of land ownership. It is rare in New Zealand and usually occurs as a historical accident or as a result of survey error.

10. The "Torrens" system of land registration and title guarantee, such as exists in New Zealand, plays a very significant part in economic and social development. In less developed countries land ownership issues are a critical impediment to social and economic development. A Land Transfer Act title is described as indefeasible as that title is immune from challenge as there is a guarantee (or certification) of title and right to possession by the Crown under the Act. This is the "**certificate**" element of a **Certificate of Title**. By contrast with "Deeds" land any occupier can claim rights to a common law title by virtue of documentation or continuous possession.
11. There is a claimant to Lots 1 and 2 who claims that he has purchased the land by transfer of deeds establishing title from the preceding owners and will apply to bring the land under the Land Transfer Act. We have reviewed his claim and it is probably of little merit. No formal claim to bring the land under the Land Transfer Act has been lodged by him. Nevertheless he is a potential claimant. If his title is proven the public could be excluded from the land by using the trespass processes. He is also asserting that he will seek a building consent for Lot 1 although an application for a consent has not been received by the Council as at the date of this report.
12. These uncertainties can and should be resolved by the Council initiating a statutory process to bring the land under the Land Transfer Act. The outcome of this process, if successful, will be that the Council has a guaranteed title immune from other claims and this would enable the Council to use trespass processes to exclude the other claimant.
13. As occupier of the land for many years, the Council can make a claim for the legal title based upon the concept of "adverse possession". This is a well established process applicable for non Land Transfer Act land. As the Council and its legal predecessors have been in continuous occupation for a period well in excess of the 12 year minimum (possibly over 100 years) the Council can assert that the Council's rights override any other rights and that a Land Transfer Act title should be issued for the land in the Council's name.
14. The process requires an application to the Registrar General of Land by the Council to have the Council's rights, as legal occupier, recognised by the grant of a title to the Council. If any other person with a claim does not intervene either by taking court proceedings to defeat the Council's claim or by evicting the Council, the Council as the party in adverse possession obtains good title against the rightful owner.
15. A successful outcome will be the grant of a Land Transfer Act certificate of title to the Council. That will defeat all other claimants and secure the lands as a public asset.
16. To clarify, the Council is not purchasing the land and at common law already occupies it. The only direct financial costs to the Council will be the survey and legal costs involved in the application to the Registrar General of Land and possibly defending any action seeking to defeat this process. An estimate of these costs if defending action is required to be taken is approximately \$10,000. There would be a "cost" to the Council and the citizens should the other claimant successfully assert his title as the public would be excluded from land that to all intents and purposes is 'public' at present. Money can be found within current budgets (Greenspace Property Administration Fees) to pay for the claim, and defend any action necessary.

ASSESSMENT BY GREENSPACE UNIT

17. Lot 2 currently has the sea wall, bus shelter, three raised garden areas, Estuary Walkway, two interpretation panels, two litter bins, and two garden seats located on it, this area being the start of the continuation of the Estuary Walkway to Sumner, which continues around much of the Estuary.
18. During 1995, because the area was being badly eroded by wave action, the Council undertook the following upgrading work, some of which required a resource consent from Environment Canterbury before it was undertaken:
 - (a) Bank protection work, including the regrading of the beach.
 - (b) Installation of the above mentioned garden furniture and signs.
 - (c) Planting out and the grassing of the remainder of the area.

19. TS Cornwell is a Navy cadet training establishment which has a jetty and slipway into the Estuary, abutting Lot 1 to the north. All vehicle access to the jetty and slipway is across Lots 1, 2, and 3, as shown on the attached plan, because there is no vehicle access from Main Road, the Navy building being built the width of the section, and there is no vehicle access through the building. Major alterations would therefore need to be undertaken to the building to gain vehicle access to the jetty and slipway if vehicle access was not available across Lots 1, 2, and 3.
20. Part of the reason for the upgrading work being undertaken during 1995, was because there is not room for a footpath to be built between the sea wall and Main Road, therefore if the walkway was not available for the public to use on the Estuary side of the wall the public would need to cross to the footpath on the other side of the road, until they were approximately opposite the Christchurch Yacht Club, when they could again cross to the footpath on the seaward side of the road, and continue to Sumner Beach. This would not be a desirable situation from a traffic/pedestrian management point of view.
21. The local residents' association/groups, including the Avon/Heathcote Estuary Trust and the Christchurch Estuary Association, have expressed a strong interest in protecting the area as a vital link from Main Road to the Estuary, as they see this area as an integral part of the Estuary environs. The land is also shown in the City Plan maps contained in Volume 3 of the City Plan as being within the Coastal Marine Area.
22. In summary therefore it is important that the Council makes a claim for legal title for the land, based upon "adverse possession" and obtains a proper title to the land which is an integral part of the Estuary environment.

BOARD RECOMMENDATION

That the Council proceed forthwith with an application to the Registrar General of Land for a claim of adverse possession to land on the foreshore at Main Road, Redcliffs being part of the land described as Part RS 309, which is shown as Lots 1 and 2 on the plan attached to this report, the area of both lots being approximately 765m².