

<p>Officer responsible Property Manager Parks Manager City Streets Manager</p>	<p>Authors Pam Ellis, Property Services Manager Chris Freeman, Parks Planning Team Leader Mike Calvert, Transport Engineer, Policy Dave Hinman, Principal Policy Analyst LO-017-001-219/03</p>
<p>Corporate Plan Output: Various</p>	

The purpose of this report is to seek the Council’s decision on a proposal for acquisition of land currently held in the Deeds Index and grant of access to Humphreys Drive. This report is referred to the Community Board for consideration and submission of comment and/or recommendation to the Parks and Recreation Committee and the City Services Committee. These Committees are asked to consider the report and make a recommendation to the Council.

BACKGROUND

The land known as Charlesworth Reserve between Charlesworth Street, Linwood Avenue, Humphreys Drive and Ferry Road contains three strips of land described as Part Rural Section 15 Parts Deeds Index C15 (4D/725) but more commonly referred to as Outbridge Street, Wharncliffes Road and Wortley Street. (See plan attached.) Although these areas are occupied by the Council, they are not owned by the Council, are not legal road or formed as such and do not have title under the Land Transfer Act.

At various times since as far back as 1975, the Council’s solicitors have taken steps towards acquiring these strips of land but without completion. The most recent investigations led the Solicitors close to tracing original ownership in the United Kingdom but no conclusion was reached.

In late 1997 however the District Land Registrar, Christchurch, received an application by Sir Basil Edward Rhodes and Charles Edward Robert Christian Rhodes to bring the land under the Land Transfer Act on the basis that they purported to be the current owners of the Deeds Index land as descendants of the original owner (Wharncliffe Estate). In response to public notice of this application, the Council’s solicitors were instructed to lodge a caveat forbidding this action on the basis of the Council’s possession and occupation of the land over many years. This has been followed by an application to the High Court for Council to acquire title to the land on the basis of adverse possession, seeking to extinguish the Wharncliffe title, and restraining the Rhodes’ application to bring the land under the Land Transfer Act.

Outbridge Street on its southern boundary adjoins the Council’s former Ferry Road works yard which was sold in 1995. The current owner of this land, Mr P D Sloan, has recently obtained planning consent to develop part of the site for a supermarket. It is Mr Sloan who has traced the descendants of the Wharncliffe Estate and who has an agreement with them for purchase of the Deeds Index land if it is brought under the Land Transfer Act. Mr Sloan’s particular interest is in acquiring Outbridge Street which adjoins his property to obtain access to Humphreys Drive from his development site. He has no interest in the two other strips of land other than for negotiation purposes with the Council.

The High Court application has not yet been heard pending negotiations with Mr Sloan on a possible agreement with the Council which would meet the desired outcomes of both parties and avoid the need for the litigation

Negotiations

When the Council sold the Ferry Road land, it encumbered the title with a restrictive covenant imposing a 9 metre building setback on the northern boundary (ie Outbridge Street) and 2 metre setback from the western boundary. That purchaser also agreed not to make a claim on the deeds land but this agreement was not enforceable against subsequent owners who unfortunately followed on quickly behind the original transaction. The Council also retained ownership of a 10 metre wide lot on the western boundary of the old yard property (Lot 3 DP68725) as access and public walkway link from the Charlesworth Reserve through to Ferry Road.

Discussions and negotiations with officers of the Parks, City Streets and Property Units, have canvassed ways of achieving a satisfactory agreement, and the following proposal has been received from Mr Sloan:

On the basis that the deeds index land will come under the Land Transfer Act and will transfer from Wharncliffe Estate to Mr Sloan:

1. Sloan will transfer freehold title to the Council at no cost all of Wortley Street, most of Wharncliffe Road and part of Outbridge Street, as shown on the attached plan.
2. Sloan will accept ownership of the existing planting on that part of Outbridge Street which is to be owned by Sloan.
3. If required by the Council, Sloan will provide a right of way over the north eastern corner of Lot 1 DP68725 in favour of Pt Lot 1 DP 12424, at no cost to the owner of Lot 1 DP12424.
4. Council will permanently authorise a new crossing on Humphreys Drive to Outbridge Street for the purpose of serving Sloan's Lot 1 DP 68725 and the right of way referred to in 3 above. The proposed crossing will be approved by Council regardless of whether Humphreys Drive is finally declared to be a limited access road or not. There will not be any right turn exit manoeuvres to Humphreys Drive.
5. Sloan will pay for all costs in providing safe access to the Humphreys Drive crossing to the City Streets Unit satisfaction.
6. Council will withdraw the caveat and any related legal proceedings in relation to land owned by the Wharncliffe Estate.
7. Council will remove the restrictive covenant on the title to Sloan's Lot 1 DP68725.
8. Council will transfer ownership of Lot 3 DP68725 to Sloan.
9. Council will not oppose a future application by Sloan to rezone his portion of Outbridge Street to Business 4 which zoning is the same as his adjoining lot.

Issues Arising

1. The Deeds Index land known as Outbridge Street is approx 10 metres in width of which Mr Sloan seeks to retain half this along its length but widening at its

junction with Humphreys Drive. The Council will acquire all the remainder of the Deeds Index land known as Wortley Road and Wharncliffe Street within the Charlesworth Street Reserve boundaries.

2. All of Outbridge Street is included as part of Ecological Heritage Site 19.01. A small triangle of this site includes a locally very rare stand of coastal ribbonwood shrubland. It is undesirable for any further encroachments to occur into this area. The ribbonwood stand is botanically important in its own right but also acts as a buffer protecting areas of higher wildlife value to the north east.

If part of Outbridge Street is owned by Mr Sloan the Council would have to be assured by way of covenant or some other mechanism that the conservation area and existing planting is maintained and not damaged in any way. Much of the planting in this area was sponsored by Countdown as a community planting scheme.

- 3,4,5. The Transport Engineer (Policy) reports that Humphreys Drive is a major arterial road with proposed limited access provisions. There is currently no access at Outbridge Street and Mr Sloan is seeking an authorised crossing point to service his land. A report from Traffic Design Group shows that a properly designed access onto Humphreys Drive at this point would not adversely affect the safety and efficiency of the road network. Due to the proximity of the proposed access to an existing adjoining driveway, provision for a right of way to service the adjacent land is required.

There is however a wider issue which has arisen, viz the future of Humphreys Drive as an arterial access. Consideration is currently being given to the future of the Ferrymead Bridge and the Green Edge concept from the Bridge to the Avon River. The option of closing Humphreys Drive has also been suggested. Allowing a new access at this stage could be seen as premature until all options have been thoroughly investigated.

7. The purpose of the restrictive covenant on CT 40A/744 is to protect the visual amenity of the adjoining land. In effect it provides an added buffer between the Business 4 zone and Outbridge Street and the adjoining open space.
8. Transfer of Lot 3 to Mr Sloan is not considered to be a major loss as Council has secured a 7 metre right of way from Charlesworth Reserve to Ferry Road through the nearby Waterman subdivision. This provides an alternative link from Charlesworth Reserve to the lower Heathcote River esplanade reserves. In addition, Mr Sloan's proposed supermarket development will include parking areas which will provide further public access through that area.
9. The Council is unable to support this clause as the Proposed City Plan will not entertain rezoning at this stage. Further the Council should not commit itself to take a particular stand on a future rezoning or resource consent application where new issues may arise. Each case should be considered on its merits at the appropriate time.

Options

There are two options available to the Council:

1. Accept Mr Sloan's proposal in principle but suitably modified by negotiation on areas of disagreement.

2. Reject the proposal and pursue the Council's adverse possession claim through the High Court.

Discussing these options:

1. Acceptance of the proposal in principle would resolve the longstanding difficulties in obtaining ownership of these strips of Deeds Index land with relatively low cost to the Council.

As discussed above, the loss of the access lot (Lot 3) on the western boundary can be adequately compensated by alternative linkages nearby.

Removal of the restrictive covenant will mean that the building setbacks from the new Outbridge Street boundary may be less but landscaping requirements will still apply in accordance with City Plan requirements. However while Mr Sloan accepts ownership (and presumably maintenance) of the existing planting on half of the land to be acquired from Outbridge Street, there is no guarantee that this will occur unless a landscape or conservation covenant and/or bond is imposed.

The proposed traffic access to Humphreys Drive and grant of right of way to the adjoining owner could be acceptable to the City Streets Unit subject to detailed design considerations. However the guarantee sought regarding future limited access road classification should not bind the Council to retain access in the event of adoption of other roading proposals which are the subject of current investigation by the Council.

Areas of disagreement or modification should therefore include

- Landscaping or conservation covenant and/or bond on Outbridge Street
- Reducing the splay on Outbridge Street where it meets Humphreys Drive to protect natural and existing plantings.. This may necessitate negotiations by Sloan with the adjoining owner.
- Indemnity to Council in respect of future roading proposals, other than limited access road, which may affect Humphreys Drive.
- Council will not commit itself to support the rezoning of Outbridge Street.

2. By rejecting the whole proposal, the Council will need to immediately continue the adverse possession claim through the High Court and, although indications are that prospects of success are good, there can be no guarantees. Should the Council not succeed in its claim, the total loss of Outbridge Street and existing plantings would be significant. Costs to complete these proceedings are also significant although some of this cost would have been incurred in any case in the Council's acquisition of this land.

Conclusion

While acknowledging that negotiations with Mr Sloan have proceeded to some measure of conditional agreement between the parties, the wider issue of the future of Humphreys Drive has now arisen. This suggests that it would be inappropriate to proceed with any arrangement which commits the Council to allow a new access to Humphreys Drive. To protect the Council's position and also acknowledging its belief that it has a legitimate claim to the deeds index land (yet to be tested), it is considered that option 2 would be the prudent course of action at this stage.

Recommendation: That the Council reject the proposal from Mr Sloan and pursue its adverse possession claim for ownership of the deeds index land.

**Chairman's
Recommendation:** Not seen by Chairman