

### 13. HEATHCOTE RIVER ESPLANADE RESERVE DEVELOPMENT

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Corporate Plan Output: Waterways and Wetlands Restoration	

The purpose of this report is to provide the Board with an opportunity to reconsider its previous resolution from its June 1999 meeting (regarding development of the Heathcote River esplanade reserve opposite Centennial Park between Rose Street and the recreation reserve leased to the Scout Association) in the light of a legal opinion from the Council's solicitor clarifying the Council's powers in respect of the reserve land. A copy of the Board's resolution is attached.

#### INTRODUCTION

An esplanade reserve approximately 350m long and generally 8-10m wide was created on the west bank of the Heathcote River opposite Centennial Park between the recreation reserve at 211 Hoon Hay Road and Rose Street when land east of Hoon Hay Road was subdivided in 1946 and 1953.

From early 1996 the Water Services Unit began to work with individual developers and residents on the 13 adjoining properties to fence the common boundary and carry out restoration planting on the esplanade reserve as each adjoining owner re-subdivided their land into smaller lots. Restoration planting had been carried out on the reserve between the river and eight of the 13 properties by early 1999 when all work was stopped to allow time for further consultation with residents directly affected and while legal clarification of the Council's powers in respect of the reserve land was sought. Now that the legal opinion is available earlier resolutions on this issue by the Community Board need to be re-considered in the light of this information.

#### SEQUENCE OF EVENTS

- 1996 to 1999 planting on the reserve carried out in accordance with landscape plans prepared in consultation with individual adjoining property owners as subdivision occurred. Work halted early 1999.
- October/November 1998 some of the adjoining property owners raised strong concern with Community Board members about proposed removal of fences across the esplanade reserve to facilitate maintenance access and limited public access to the reserve from Rose Street.
- February 1999 – the Community Affairs Committee of the Community Board considered all the issues and recommended that an independent facilitator be appointed to consult directly with the owners of each of the 13 adjoining properties.

- March 1999 – the Community Board endorsed the recommendations of its Community Affairs Committee.
- June 1999 – the Community Board considered both the officer's and the independent facilitator's reports and resolved that Option 2, as identified in the facilitator's report, be supported on the basis of the project being staged over not less than a two, and not more than a five, year period. Under Option 2 adjoining neighbour access along the reserve was to be provided immediately by removing the lateral fences crossing the reserve, planting of the reserve was to be completed only during the first stage. Public access to the reserve from Rose Street was to be provided for after a set interval.
- June 1999 – a letter from a resident at 207a Hoon Hay Road was received by the Mayor and tabled at the Council meeting. The author questioned whether public access was available through the recreation reserve occupied by the Scouts in terms of their lease, sought clarification on whether a bridge across the Heathcote River to Pioneer Stadium was proposed, and other issues.
- June 1999 – the Council resolved that the Board's report and the correspondence received be referred back to the Community Board for further consideration. The Council also directed that the Board's next recommendation on the issue be referred back to the Council via the Parks and Recreation Committee because in the Council's view, the issue is one of metropolitan significance.
- July 1999 – the Community Advocate sought clarification from the office solicitor of the Council's powers in respect of the reserve land.
- March 2000 – the legal opinion was received by the Community Advocate and the Water Services Manager. This information clears the way for reconsideration of the issues by the Community Board and the Council.

#### **THE PRESENT PROPOSAL**

The present proposal is a staged one in accordance with the Community Board resolution at the June 1999 meeting.

Stage 1: complete planting on the esplanade reserve and remove the internal fences which cross the esplanade reserve from private property boundaries to the Heathcote River. Planting has been completed on the reserve between private properties and the river adjacent to eight of the adjoining properties. The planting is in accordance with landscape plans developed through consultation with the adjoining property owners. The intention is to complete planting adjacent to the remaining five adjoining properties, once again, in consultation with adjoining owners.

Stage 2: in 2-5 years' time, once the planting has become established, install an unobtrusive opening in the existing fence at the Rose Street end of the reserve to provide access. An informal grassed access track will be maintained along the length of the reserve.

It is not intended that access from the esplanade reserve to the recreation reserve leased by the Scouts will be provided at this stage. The specific conditions of the existing lease agreement with the Scouts may preclude public access across the leased land. When, or if, the lease is re-negotiated in future the issue of public access should be considered.

A pedestrian and cycle bridge across the Heathcote River from the recreation reserve leased by the Scouts to Centennial Park is not part of this proposal. An early concept plan of the esplanade reserve development proposal identified a bridge across the Heathcote River as a future opportunity. No money has been allocated to any unit's budget for a bridge, and any bridge proposal in future is dependent upon re-negotiation of the lease with the Scouts.

#### **LEGAL OPINION**

The legal opinion from an office solicitor is attached. The opinion clarifies the following points:

- (a) The esplanade reserve is divided into three lots and is a local purpose reserve in terms of Section 23 of the Reserves Act. It was not vested in the Council under Section 239 of the Resource Management Act. For this reason it does not satisfy the definition of esplanade reserve in that Act.
- (b) The City Council has the power to carry out planting and the other works proposed on the reserve land.
- (c) The public have a right of access over the reserve unless the Council determines that access should be prohibited or restricted to preserve the stability of the land or the biological values of the reserve.

#### **CORRESPONDENCE TO THE MAYOR**

The letter to the Mayor tabled at the June 1999 meeting of the Council is attached. The letter raises many issues including the following:

- (a) Good public access to the Heathcote River already exists on the opposite bank in Centennial Park.
- (b) Public access through the recreational reserve leased by the Scouts may not be available in terms of the conditions of the lease.
- (c) Consultation with riverside property owners north of the Scout leased land has been inadequate.
- (d) The bridge across the Heathcote River should not be proceeded with.

Considering these points one at a time, the public have the right of access to the esplanade reserve from Rose Street, notwithstanding the convenient access along the opposite bank through Centennial Park. The legal opinion has made this clear.

It is accepted that in terms of the present lease agreement with the Scouts public access should not be provided through the recreation reserve as part of the current proposal. Riverside residents, including the correspondent, are therefore not directly affected by the esplanade development proposal. The lack of consultation with these property owners was a direct consequence of the express wish of the 13 directly affected property owners that consultation be limited to themselves. This wish has been respected by the Community Board and Council staff to date in order to resolve differences expeditiously. However, wider consultation throughout the local community, including community groups, would have been more consistent with the Council's 'Seeking Community Views' policy.

The bridge is not part of the present proposal and the correspondent's wishes are accepted on this issue.

## **DISCUSSION**

The owners of the 13 private properties adjoining the esplanade reserve generally support completion of the planting on the reserve. This is confirmed in the April 1999 report written by the independent facilitator. Understandably, adjoining residents fear that providing public access to the esplanade reserve will compromise the privacy and security of their properties. Consequently, most adjoining owners would prefer that public access was not provided for, and many owners are strongly opposed to any public access.

The dilemma for the Community Board and the Council is how to meet the genuine concerns of adjoining property owners while satisfying a legal obligation to the general public in terms of access to the reserve. Some of the riverside residents' fears and concerns should be allayed by the confirmation that neither public access through the recreation reserve leased by the Scouts, nor a cycle and pedestrian access across the Heathcote River from the recreation reserve are part of the present proposal. All practical design opportunities have been taken and will be decided in consultation with adjoining owners to limit perceived and real adverse effects. For example, an open style of boundary fencing will be encouraged, an unobtrusive opening in the Rose Street boundary of the reserve will be designed, and an informal grassed track only will be maintained along the esplanade reserve. Pedestrian traffic will be strongly encouraged to use the sealed pathway on the east bank of the Heathcote River through Centennial Park. It is anticipated that pedestrian traffic on the informal grassed track along the reserve will be very limited comprising local residents adjoining the reserve, Council maintenance personnel, and the occasional person from further afield.

The Community Board at its June 1999 meeting resolved to support Option 2 in the independent facilitator's report. Option 2 comprised two stages. Stage 1 involved providing neighbourhood access immediately along the reserve by removing the lateral fences and completion of the planting on the reserve. The second stage involved providing an access point to the reserve from Rose Street at a time between Year 2 and Year 5. Although this option was not the one preferred by the adjoining property owners, it did gain some support from them. The other options ranged from Option 1 which involved completing the project now as a single stage including the provision of public access to Option 5: abandoning the esplanade reserve development project and reverting to the pre-1996 situation with individual adjoining property owners occupying and maintaining the esplanade reserve between their boundary and the river. Option 2 is the 'best fit' compromise which recognises the genuine concerns of adjoining property owners while satisfying the Council's legal responsibilities in the medium term. The estimated cost to complete the planting is \$12,000 and the Council's share of fencing costs should not exceed \$3,000. Funding is available within the line item "esplanade reserve development" in the Water Services Unit's budget.

A recommendation is sought from the Community Board. In terms of the Council's June 1999 resolution the Board's recommendation will be referred to the Parks and Recreation Committee for their consideration.

**Recommendation:** That the Board confirm its June 1999 resolution to support Heathcote River Esplanade Reserve development opposite Centennial Park Option 2. (Option 2 involves completing planting of the reserve as Stage 1 and providing for limited public access from Rose Street between Years 2 to 5 at a total estimated cost of \$15,000).