

6. FORESHORE LAND AT REDCLIFFS

General Manager responsible:	General Manager City Environment Jane Parfitt
Officer responsible:	Acting Greenspace Manager
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PURPOSE OF REPORT

1. To seek Council's approval for action relating to land occupied but not formally "owned" by Council on the foreshore at Main Road, Redcliffs.
2. This anomaly can be rectified, and therefore Council's approval is sought to undertake the process.

EXECUTIVE SUMMARY

3. For over 100 years 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). Council has always treated the land as Council owned, however ownership is uncertain. The land is not a reserve or owned by 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 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 Council secures Lots 1 and 2 a continuous strip of Council owned land will exist from Main Road to the boat ramp.
5. 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 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

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 Council as at the date of this report.
12. These uncertainties can and should be resolved by Council initiating a statutory process to bring the land under the Land Transfer Act. The outcome of this process, if successful, will be that Council has a guaranteed title immune from other claims and this would enable 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 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) Council can assert that Council's rights override any other rights and that a Land Transfer Act title should be issued for the land in Council's name.
14. The process requires an application to the Registrar General of Land by Council to have 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 Council's claim or by evicting 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 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 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 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, they seeing 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.

STAFF RECOMMENDATION

That the Board recommend to the Council to 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.

CHAIRPERSON'S RECOMMENDATION

For discussion.

BACKGROUND

23. The Council has occupied this land for many years, spending monies on maintaining and developing the area, as elaborated upon below:
- (a) The bus shelter, sea wall, and garden plots were built by the Sumner Borough Council, about 1934, as identified by the foundation stone laid in the bus shelter by the then Council in 1934. The Sumner Borough Council area has since been amalgamated into the present Christchurch City Council area.
 - (b) Before local body amalgamation in 1989, this area was maintained on a regular basis being on the mowing schedule to ensure that the area was kept tidy, this work being budgeted for in the Estuary Foreshore maintenance budget as a line item in the Parks and Recreation Department Budget of the time.
 - (c) Since local body amalgamation this area has been maintained on a regular basis, initially being paid for out of the Estuary Foreshore maintenance budget, and latterly being included in the schedule for the Greenspace Eastern Area Maintenance Contract.
 - (d) During 1995 the Council undertook major capital upgrading work to the area which by this time had become eroded by the action of waves in the Estuary. Some of this work required resource consent to be obtained from Environment Canterbury before the work could be commenced. The work is outlined below:
 - Bank protection work including the regrading of the beach.
 - Installation of two seats, two rubbish bins, two interpretation signs, and extension to the Estuary walkway.
 - Planting out, and the grassing of the remainder of the area.
 - (e) The public have used this land for many years treating it and assuming that it is Council owned land when in fact its status is uncertain.

OPTIONS

PREFERRED OPTION

24. To make a formal claim for the land, and defend against any challenge that may be made against our claim. Council's legal advice is that there is an excellent prospect that it would be a successful application.

Officers are of the view that the Council has a greater right than any other party to make an adverse possession claim for the land. By making such a claim Council is actively pursuing the communities wishes on the matter, which is in accordance with the ethos of Council and Government policies of maintaining public access to foreshore areas. If the claim is successful, the Council is avoiding having to address potentially dangerous traffic verses pedestrian conflicts that would arise if a third party made a successful claim for the land. This action would ensure public criticism of the Council is largely avoided should a third party make a successful challenge against the Council claim for the land.

Status Quo

25. To not make a claim for the land.

If the Council decided to challenge a third parties claim to the land, should one eventuate, officers are of the view that the Council's position would not be as strong as if they made the claim in the first place. By not making such a claim Council is not actively pursuing the communities wishes on the matter, which is not in accordance with the ethos of Council and Government policies of maintaining public access to foreshore areas. If a third parties' claim is successful, the Council will need to address potentially dangerous traffic verses pedestrian conflicts that would arise. The Council is very likely to come into a great deal of public criticism if a third party makes a successful claim for the land, and the Council has not made an earlier claim, or decides not to make a claim for the land.

ASSESSMENT OF OPTIONS

The Preferred Option

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.

	Benefits (current and future)	Costs (current and future)
Social	<ul style="list-style-type: none"> • Ensures that the general public have continued access to the Estuary foreshore in this part of the Estuary. • Ensures that the Navy Cadets from TS Cornwell have continued vehicle access to their jetty and slipway across the foreshore land. • Ensures that people have continued access around the Estuary without the need to cross the Main Road, which would be less than satisfactory from a traffic/pedestrian management point of view. • Ensures that the Communities aspirations that this land remains in Council public ownership is met. 	
Cultural	<ul style="list-style-type: none"> • Ensures Maori have continued access to this part of the Estuary, the Estuary being very important to them historically as a food gathering area. 	
Environmental	<ul style="list-style-type: none"> • Ensures that views of the Estuary at this point where the Estuary and Main Road abut one another are not built out. • Ensures that the intrinsic value of the area, and openness to the Estuary are maintained. 	
Economic		<ul style="list-style-type: none"> • Continued maintenance of the area will be required, this already being budgeted for in the Greenspace Eastern Area Maintenance Contract. • A one-off cost of \$10,000 may have to be expended if the Council's claim for adverse possession of the land is challenged. Money is available in the Greenspace Property Administration Fees budget to pay for any legal challenge that may be made to the Council's claim.

Extent to which community outcomes are achieved:

The Community aspirations to retain the land in Council ownership is achieved. Potentially dangerous alternatives (crossing Main Road twice) to enable pedestrians to walk around the Estuary are avoided.

Impact on Council's capacity and responsibilities:

There will be no further impact upon the Council's capacity and responsibilities than there is at present, except for the one-off cost of defending a legal challenge to the Council's claim for adverse possession, if a challenge is made.

Effects on Maori:

Will ensure that Maori are able to continue to have access to this part of the Estuary.

Consistency with existing Council policies:

Consistent with the ethos of Council and Government policies of maintaining public access to foreshore areas, thereby ensuring the general public's enjoyment of foreshore areas.

Views and preferences of persons affected or likely to have an interest:

It has been clearly indicated by the Avon/Heathcote Estuary Trust, the Christchurch Estuary Association, and other residents' groups that the retention of this area in public ownership is very important.

Other relevant matters:

Nil.

Maintain The Status Quo (If Not Preferred Option)

Maintaining the status quo, by doing nothing.

	Benefits (current and future)	Costs (current and future)
Social		<ul style="list-style-type: none"> • The general public's continued access to the Estuary foreshore in this part of the Estuary can't be assured if someone else makes a claim to the land. • The Navy Cadets from TS Cornwell may not have continued vehicle access to their jetty and slipway over the foreshore land if someone else makes a claim to the land. • The general public may not have continued access around the Estuary without the need to cross the Main Road twice, which would be less than satisfactory from a traffic/pedestrian management point of view, if a third parties claim is successful. • Does not ensure that the communities aspirations that this land remains in Council ownership are met.
Cultural		<ul style="list-style-type: none"> • Does not ensure that Maori have continued access to this part of the Estuary, the Estuary being very important to them historically as a food gathering area.

Environmental		<ul style="list-style-type: none"> • Does not ensure that views of the Estuary at this point where the Estuary and Main Road abut one another are not built out. • Does not ensure that the intrinsic value of the area, and openness to the Estuary are maintained.
Economic	<ul style="list-style-type: none"> • Potentially a saving is made in the amount of money needed to be budgeted annually for the Greenspace Eastern Area Maintenance Contract if the Council loses its rights to the land. • A one-off cost of \$10,000 will not have to be expended if the Council decides not to challenge another claimants claim to the land, should another party other than Council make a claim for the land. 	Council may still decide to challenge another claimants claim to the land in which case the legal fees would still be incurred, however the Council would not be in such a strong position (controlling the process) as they would be if they put the claim in first.

Extent to which community outcomes are achieved:

The Community aspirations to retain the land in Council ownership are not being actively acted upon, and therefore are more at risk of not being achieved. Potentially dangerous alternatives (crossing Main Road twice) to enable pedestrians to walk around the Estuary are not being actively protected against.

Impact on Council's capacity and responsibilities:

There may be less impact upon some of the Council's capacity and responsibilities than there is at present in some respects (budgets), however in other respects there may be more impact on Council capacity and responsibilities for example minimising possible conflicts between traffic and pedestrians. The Council may decide to make a legal challenge against a third parties claim for the land in which case monies will still be required to mount the legal challenge.

Effects on Maori:

The do nothing option does not ensure that Maori are able to continue to have access to this part of the Estuary if a third party makes a claim for the land.

Consistency with existing Council policies:

Not making a claim for title to the land is inconsistent with the ethos of Council, and Government policies of maintaining public access to foreshore areas, which is to ensure the general public's enjoyment of foreshore areas.

Views and preferences of persons affected or likely to have an interest:

By not actively making a claim for title to the land, the Council is not acting on the wishes of the community for the retention of the land in public ownership as has been clearly indicated by the Avon/Heathcote Estuary Trust, the Christchurch Estuary Association, and other community groups, that the retention of this area in public ownership is very important.

Other relevant matters:

Nil.