

7. 7. 2005

**HAGLEY/FERRYMEAD COMMUNITY BOARD  
22 JUNE 2005**

**A meeting of the Hagley/Ferrymead Community Board  
was held on Wednesday 22 June at 12:30 pm**

**PRESENT:** Bob Todd (Chairperson), David Cox, Anna Crighton,  
John Freeman, Brenda Lowe-Johnson and Brendan Smith.

**APOLOGIES:** An apology for absence was received and accepted from  
Yani Johanson.

Brenda Lowe-Johnson was absent for clause 9 and part of clause 1.

Anna Crighton departed at 1.35 pm and was absent for clause 3, 9,  
11, 12 and 13.

The Board reports that:

**PART A – MATTERS REQUIRING A COUNCIL DECISION**

**1. HUMPHREYS DRIVE - INITIATING ROAD STOPPING TO A PARCEL OF SURPLUS ROAD LAND**

<b>General Manager responsible:</b>	General Manager City Environment
<b>Officer responsible:</b>	Transports and City Streets Manager
<b>Author:</b>	Weng Kei Chen, Asset Policy Engineer, DDI 941-8655

**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 request the Council's approval to commence road stopping procedures, for a parcel of surplus road, section 1 approx 65m<sup>2</sup>, as indicated on the attached plan, SM1463-03. The plan for the extension of roading work is also attached, "Humphreys Drive".

**EXECUTIVE SUMMARY**

2. Resource consent has been granted to Sailview Development, with a condition for the access onto the site being to widen the carriageway to allow for dedicated turning lanes as shown on the plan.
3. This development creates an opportunity for the Council to extend its footpath network and at the same time address the issue of public access on private property. The position of the proposed footpath requires a minor alteration to the approved car parks layout.
4. The surplus road land is required for the relocation of three car parks and also makes up the shortfall of the landscaped area with the construction of a footpath.

**FINANCIAL AND LEGAL CONSIDERATIONS**

5. Staff have indicated to the developer that the Council will contribute to the cost of construction of a 2 metre wide footpath and a safe pedestrian crossing from Tidal View. The additional road widening work further south is required to provide extra road width and is ahead of the work for the Humphreys Drive and Ferry Road intersection.
6. The estimated cost of the work is approximately \$25,000 and this will be met within the existing budget in the Transport and City Streets subdivision code.
7. The Surplus Road Land "Section 1" - plan SM1463-03 will need to be stopped and transferred to Sailview Development and the Council securing the public rights of access onto Sailview Development for its footpath network.

7. 7. 2005

**Hagley/Ferrymead Community Board 22.6.2005**

**1 Cont'd**

**BACKGROUND**

8. Resource consent was granted to Sailview Development with a condition for access to the development requiring road widening and installation of traffic management as indicated on the plan.
9. This extensive roading work for access is required for the city arterial route.
10. The proposed roading work provides an opportunity for the Council to extend its footpath network in the area and at the same time carry out the changes needed prior to the planned work at the Humphreys and Ferry Roads intersection.
11. The physical constraint in the existing legal road will require a footpath to intrude onto adjoining properties.
12. The proposed footpath does create conflict with the approved landscaping and car parking layout. However, a satisfactory outcome can be achieved with minor alterations.
13. Three car parks were required to be relocated and an area identified for the relocation is the road land indicated as Section 1, SM1463-04. The balance area will be landscaped to make up the shortfall of the landscaped area being occupied by the proposed footpath.
14. This parcel of road land is slightly below the current roadway and the shape factor compromises its usefulness for transport functions and hence is redundant for roading purposes.
15. This parcel of redundant road land will be favourably considered for the relocation of three car parks and landscaping requirement for the minor variations to the resource consent.
16. Sailview Development has agreed that they will enter into negotiation on land ownership with the Council for the public footpath.
17. For this project to proceed, a favourable recommendation from the Board to the Council is required.

**OPTIONS**

18. The physical constraint and with an approved resource consent for the development options are limited. Two options were considered:
  1. Status quo.
  2. To enter into a joint project with the developer with the construction of the footpath and minor widening of carriageway.

**PREFERRED OPTIONS**

19. The preferred option is option two. This option will address and guarantee a public footpath along the development.

**BOARD RECOMMENDATION**

That approval be given for the commencement of the road stopping procedure to stop the parcel of Surplus Road Land Section 1, as indicated on plan SM 1463-04.

7. 7. 2005

Hagley/Ferrymead Community Board 22.6.2005

2. FORESHORE LAND AT REDCLIFFS

<b>General Manager responsible:</b>	General Manager City Environment
<b>Officer responsible:</b>	Acting Greenspace Manager
<b>Authors:</b>	John Allen, Policy and Leasing Administrator, DDI 941-8699 Chris Gilbert, Legal Services Manager, DDI 941-8561

**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 640m<sup>2</sup>.
4. A second portion of land Lot 1 of about 125m<sup>2</sup> 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.

Hagley/Ferrymead Community Board 22.6.2005

2 Cont'd

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.

**Hagley/Ferrymead Community Board 22.6.2005****2 Cont'd**

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 765m<sup>2</sup>.

**3. SETTLERS CRESCENT STORMWATER EASEMENT VARIATION**

<b>General Manager responsible:</b>	General Manager City Environment
<b>Officer responsible:</b>	Acting Greenspace Manager
<b>Author:</b>	Chris Freeman, Senior Parks and Waterways Planner, DDI 941-8638

**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 request that the Council partly surrender a right of way and a variation of a stormwater pipe easement to enable the owners of 8 Settlers Crescent (Timothy Investments) to create a better development on their property. A public walkway and planting redevelopment is also proposed.

**EXECUTIVE SUMMARY**

2. The Council has two easements for rights of way from Settlers Crescent to the Heathcote River. One for a stormwater pipe and maintenance access (3.09 metres wide) currently used by the private owners as a driveway and planted area. A pedestrian right of way for the public 3.45 metres wide, is beside the stormwater easement and is currently a grassed walkway.
3. Timothy Investments proposes to develop offices and residential accommodation on its property at 8 Settlers Crescent. While alternative layouts have been considered the best design from the company and the Council's perspective, involves building over an existing stormwater pipe for 10 metres (using engineered foundations) and providing an alternative route for the pipeline next to the existing easement should this ever be required and compensation to the Council for the easement variation and possible future pipe relocation costs.

7. 7. 2005

**Hagley/Ferrymead Community Board 22.6.2005**

**3 Cont'd**

4. The alternative pipeline route utilises a 3.45 metre wide pedestrian route beside the 3.09 metre wide stormwater easement. While compensation to the Council is sought for the future pipe relocation and partial easement surrender, it is considered unrealistic to replace the existing pipe now, as it still has a 50 years plus life expectancy (this life expectancy could exceed the proposed buildings). Refer DP347589 plan attached. The walkway will be formed and planting revised as part of the development (see attached plan).



*Settlers Crescent Walkway  
Proposed building and pipeline route to left of the picture*

**FINANCIAL AND LEGAL CONSIDERATIONS**

5. The applicant will meet the costs of survey and subdivision involved in the easement variation (see attached easement plan).
6. The compensation as outlined in the in public excluded section being paid to the Council for any possible pipe replacement and partial right of way easement surrender.
7. There is no delegation to the Board on this matter and a decision of the full Council is required.

**OPTIONS**

8. If the application is declined this would require the applicant to amend the design of the development to not build over the easement but this could create a wall 26 metres long as opposed to 10 metres. This would make, with the existing continuous concrete wall on the adjacent property, a very enclosed walkway to the Heathcote River from Settlers Crescent. The current plan while 3 metres closer still maintains a large 20 metre open vista into the site's car park and with proposed planting provides both a better development layout for the applicant and a safer and more aesthetic pedestrian route for the Council.

**PREFERRED OPTION**

9. The proposed design involves building over an existing stormwater pipe for a short length 8-10 metres (using engineered foundations) and also provides an alternative route for the pipeline next to the existing easement should this ever be required.
10. The general public have no rights of access to this existing easement area being currently formed as a private driveway and private garden area (access being only for pipeline maintenance). Maintenance access to the Esplanade Reserve is via the walkway.
11. While the preferred option's proposed buildings will replace a shrub border for 10 metres of the overall 67 metre long route from Settlers Crescent this is thought to be better than a wider planted gap of 3.1 metres but with a concrete wall for a possible building length of 26 metres if the easement is not changed.

7. 7. 2005

**Hagley/Ferrymead Community Board 22.6.2005**

**3 Cont'd**

12. Overall the development retains and enhances the walkway with a revised landscape plan. The development will not be fenced but planted on the boundary with good views into the site, providing good security for walkway users. While one building will come to the boundary (over the pipeline) for 10 metres this is opposite an open yard area on the adjacent property.

**BOARD RECOMMENDATION**

That the Council approve the application by Timothy Investments to make the following easement variations to enable building over 36m<sup>2</sup> of stormwater pipe in Settlers Crescent subject to:

1. A variation to Easement T7913678 (Right to Drain Water in Gross) to allow the land owner (grantor) the right to build over that parcel shown as "Q" on DP347589.
2. The partial surrender of easement A185420.4 (ROW) in respect to parcels R,Q,G&N on DP3475589.
3. The Council accepting an easement for the right to drain water in gross over parcels J,H,F&M on DP347589.
4. Timothy Investments meeting all survey costs in implementing the proposed easement variations.
5. Timothy Investments paying compensation to the Council as outlined in the public excluded section of this report.
6. There being no structural loading placed on any part of the pipeline and the engineering design for the building over the pipeline being to the satisfaction of the Council.
7. An internal inspection of the pipeline being carried out by a registered structural engineer, with confirmation that the existing pipeline is in sound condition being a pre-requisite before any building over the pipeline is approved.
8. A special clause being incorporated in the easement variation exempting the Council from any liability resulting from flooding as a consequence of blockages or structural failure of the pipeline as a consequence of building collapse, tilting or ground settlement.
9. Timothy Investments undertaking the walkway upgrade and landscape work to the satisfaction of the Greenspace Manager as part of its reserve contribution for the development.

**PART B - REPORTS FOR INFORMATION**

**4. COMMUNITY BOARD PRINCIPAL ADVISER'S UPDATE**

The Board **received** the information.

**5. DEPUTATIONS BY APPOINTMENT**

**5.1 CYCLIST SAFETY**

Heather Bushaway, a resident of Sumner, addressed the Board regarding cyclist safety in the Sumner to Mt Pleasant neighbourhood.

A report on improving cyclist safety, prepared by local residents, is scheduled to be given to the Mayor in July.

The Board **received** the information and agreed to forward the report to the General Manager City Environment for consideration and a report back to the Board addressing safety concerns raised including suggestions on possible remedying through signage and road markings colouring.

7. 7. 2005

**Hagley/Ferrymead Community Board 22.6.2005**

**5 Cont'd**

**5.2 FORESHORE LAND AT REDCLIFFS**

Kevin O'Connor, a local resident, and Kathleen Guy on behalf of the Clifton Neighbourhood Association addressed the Board and expressed their support and encouragement for the Council to proceed with an application to the Registrar General of Land for a claim of adverse possession to land on the foreshore at Main Road, Redcliffs.

The Board **received** the information.

The Board's decision in relation to this matter is recorded in clause 2 of this report.

**PART C - REPORT ON DELEGATED DECISIONS TAKEN BY THE BOARD**

**6. CONFIRMATION OF REPORT**

The Board **resolved** that the report of the ordinary meeting (both open and public excluded) held on Wednesday 8 June 2005 be confirmed.

**7. HAGLEY/FERRYMEAD COMMUNITY BOARD FUNDING ACCOUNTABILITY REPORT – 2004/05**

The Board received a report of accountability for its 2004/05 Project and Discretionary funding allocations and was asked to consider how it would like to spend the remaining balance of unspent funds.

The Board **resolved**:

1. That the Project and Discretionary funding accountability matrix of information be received.
2. To revoke its 10 February 2004 decision to grant \$5,000 to Board Community Communication and that the money be transferred and added to its Discretionary fund for reallocation to other projects.
3. To refer the application by the Kimihia Learning Centre to the Metropolitan Community Discretionary Fund.
4. To approve the allocation of \$2,008 from its Discretionary fund to Kidsfirst Kindergartens Bromley for funding to replace their children's drinking fountain.
5. To defer the application from the Charleston Neighbourhood Association for further funding to help the Association cover costs involved with the Leopard Coachlines resource consent hearing until further financial information is supplied.
6. To approve the allocation of \$3,606 from its Discretionary fund to the Sumner Life Boat to help fund digital locks for the lifeboat station at Scarborough and that a cheque be presented to the organisation by the Chairperson at the opening of the station on Sunday 3 July.
7. To approve the allocation of \$3,000 from its Discretionary fund to the Sumner Surf Life Saving Club to help replace the roof of their clubhouse.
8. To rescind its 1 April 2005 decision to fund Avebury House to the value of \$2,806 and the Salvation Army Youth Group of \$1,500 and that the total of \$4,306 be reallocated to the Board's 2005/06 Discretionary fund.
9. To approve the allocation of \$2,806 from its 2004/05 Discretionary fund to Avebury House.
10. To approve the allocation of \$1,500 from its 2004/05 Discretionary fund to the Salvation Army Youth Group.



7. 7. 2005

**Hagley/Ferrymead Community Board 22.6.2005**

**8. CRANMER SQUARE - PROPOSED 10 MINUTE PARKING RESTRICTION**

The Board **resolved** to defer consideration of this report until its meeting on 13 July when feedback from the Inner City Operations Neighbourhood Group, (ICON) would be available.

**9. REES STREET KERB AND CHANNEL RENEWAL**

The Board considered a report seeking its approval for the Rees Street kerb and channel renewal proceed to final design, tender and construction.

The Board **resolved** to grant approval for the Rees Street kerb and channel renewal proceed to final design, tender and construction.

**10. SUPPLEMENTARY REPORTS**

The Board **resolved** that the following supplementary deputation and report be received and considered at the present meeting:

1. Deputation by Appointment - Kevin O'Connor and Kathleen Guy.
2. Hagley/Ferrymead Community Board Funding Accountability Report 2004/05 - Additional Information.

**11. RESOLUTION TO EXCLUDE THE PUBLIC**

The Board **resolved** that the draft resolution to exclude the public set out on page 30 of the agenda be adopted.

The meeting concluded at 1.55 pm.

**CONFIRMED THIS 13TH DAY OF JULY 2005**

**BOB TODD  
CHAIRPERSON**