

22. 5. 2003

**SUPPLEMENTARY REPORT BY THE
CHAIR OF THE STRATEGY AND FINANCE COMMITTEE**

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. BRANKIN PROPERTY LAW ACT APPLICATION - SCARBOROUGH HILL

Officer responsible Director of Legal and Secretariat Services	Author Peter Mitchell, DDI 941-8549
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The Council has been involved in an application of Mr T Brankin under the Property Law Act 1952 to obtain access to three sections he owns on Scarborough Hill adjoining Flowers Track.

Access to these sections has been a long-running issue for the Council and a previous High Court application involving access to Scarborough Lane and Nicholson Park.

Mr Brankin's application, although originally including Scarborough Lane, was amended to seek access over Whitewash Head Lane and then across a short part of Flowers Track. Nicholson Park was not included in the amended application by Mr Brankin.

In March 2002, the Council resolved to accept dedication of Whitewash Head Lane as a way of resolving the matter and gave delegated authority to the City Plan References Subcommittee, augmented by Ms Linda Rutland from the Hagley/Ferrymead Community Board, to provide instructions to the Council's lawyers during the course of the Court hearing.

The Whitewash Head Lane owners opposed Mr Brankin's application for access over Whitewash Head Lane and as a consequence there was a five-day hearing in the High Court in March/April this year.

The Court has now released its decision granting Mr Brankin access over Whitewash Head Lane on conditions still to be settled. The Court has asked the parties, including the Council, to respond to the Court by the end of this month regarding resolution of these outstanding issues.

Another issue that has now arisen is that the Scarborough Lane residents have applied to the Court for costs against Mr Brankin of \$76,500 relating to their initial involvement in the application. Mr Brankin has responded that as he was relying on advice from Council officers, then any order for costs made against him should also be made in whole or in part against the Council.

To manage this issue it is recommended that the City Plan References Subcommittee, augmented by Ms Rutland, be authorised to provide instructions to the Council's lawyers with regard to the settlement of this cost issue and also any other consequential matters that may arise out of the Court's decision which do not fall within the delegated authority of Council officers.

Staff

Recommendation: That the City Plan References Subcommittee, augmented by Ms Rutland, be authorised to make decisions on the costs issue for the Council and any other matter consequential to the Court's decision not within the delegated authority of Council officers.

Chair's

Recommendation: That the above recommendation be adopted.