

5. ROAD LEGALISATION, ROAD STOPPING OF UNFORMED ROAD AND OCCUPATION OF ROAD AIRSPACE OUTSIDE 1 WHITEWASH HEAD ROAD

General Manager responsible:	General Manager City Environment
Officer responsible:	Transport and City Streets Manager
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PURPOSE OF REPORT

1. The purpose of this report is to seek the Board's recommendation to the Council:
 - (a) To commence road stopping procedures in relation to approximately 59m² of unformed legal road outside 1 Whitewash Head Road as shown in the attached plan.
 - (b) To commence the formal process to dedicate the existing formed carriageway presently situated on land owned by the owners of 1 Whitewash Head Road as legal road. This process is consequential to the Court Order 6152280.
 - (c) To permit the owners of 1 Whitewash Head Road to occupy approximately 90m² of legal road as airspace.
 - (d) To require the owners of 1 Whitewash Head Road to enter into a Deed of Licence to permit their continued use of their existing garage situated on that part of their existing land intended to vest in the Council as legal road.

EXECUTIVE SUMMARY

2. The first 20m of Whitewash Head Road from the Scarborough Road intersection is in fact situated on private land owned by the owners of 1 Whitewash Head Road and is not legal road. It appears to have been formed in this way in the early 1900's by the old Sumner Borough Council.
3. Whitewash Head Road landowners and residents have access rights over part of the land secured by various right-of-way easements. However, the formed carriageway does not follow the course of the legal right of way easement and in fact it intrudes significantly into land owned by the owner of 1 Whitewash Head Road which is not the subject of any easement rights. In short, approximately half of the formed carriageway has been formed on land which is not legal road and which does not have the benefit a legal easement.
4. In addition, the easement rights that do exist do not include any rights of public access. The right-of-way easement merely creates rights of access for the private landowners and residents of Whitewash Head Road and does not extend to members of the public. This issue was raised in the recent High Court proceedings when Mr Brankin applied to the Court for access from Whitewash Head Lane to his property in Flowers Track.
5. The public accesses this part of the carriageway to Nicholson Park and similarly various public utilities have been installed in the carriageway without the benefit of formal easement rights. It is therefore essential that the Council formalise public ownership of this part of Whitewash Head Road.
6. The owners of 1 Whitewash Head Road have been in discussion with Council staff and have agreed to vest ownership of 202m² of their land in the Council as legal road and have requested:
 - (a) That Council enters into a Deed of Licence with them to allow their continued use of their existing single garage which is situated on that part of their land intended to be vested in the Council as legal road.
 - (b) That the 59m² portion of unformed Whitewash Head Road below the property at 1 Whitewash Head Road which they already partially occupy be formally stopped as road and transferred to them.
 - (c) That the Council permits the occupation of road airspace for the proposed new dwelling to be erected on the site.
 - (d) That the Council take the necessary steps to arrange for the surrender of the existing defective right-of-way easements over the land to vest in the Council's ownership as legal road.

7. The proposed road stopping of approximately 59m² of unformed legal road and the legalisation of the formed carriageway on 1 Whitewash Head Road have already been canvassed in detail with all the Whitewash Head Road landowners affected. Of the 24 landowners affected as at the date of this report 18 have responded positively to the proposals.
8. Accordingly, it is proposed to use the Public Works Act procedure for the road stopping as the road stopping proposal essentially is of the nature of an exchange of unformed road for a formed road with continuity of the present position. The public access along the frontage has not been compromised.
9. The owner is already occupying part of the road to be stopped. The existing dwelling's foundation entry porch, pond, gateway and fence are already encroaching on road land.
10. The owners of 1 Whitewash Head Road propose to build on the site a dwelling with four floors. At the ground floor level the ensuite and bedrooms will occupy the area identified as "road to be stopped" and the remaining three floors contain some elements of encroachment onto the unformed road airspace.
11. The details of the proposed encroachments onto the unformed legal road airspace along the northern frontage of the property are as follows:
 - (a) First floor - the area of encroachment is approximately 90m² consisting of portions of entry porch, balcony, dining/living and terrace space.
 - (b) Second floor - the area of encroachment is approximately 46m² consisting of portions of bathroom, balcony, sunroom and terrace space. Part of the proposed ramp to the garage will also occupy 21m² of the unformed legal road.
 - (c) Third floor - the area of encroachment is approximately 21m² consisting of portions of roof, terrace and chimney space.
12. It is unlikely a road will ever be constructed along the property's frontage and in any event the proposed airspace encroachments would have an insignificant effect on the road scene.
13. The proposed granting of permission to use of airspace above the unformed legal road will not compromise the access presently available to the general public along the existing pathway erected below 1 Whitewash Head Road due to the steep terrain. The existing formed pathway is 5.0m away from the proposed dwelling and 7.0m below.

FINANCIAL AND LEGAL CONSIDERATIONS

14. The initiation of the required road stopping procedures under the Public Works Act 1981 and the approval of the use of the unformed road airspace will require the Council's decision.
15. The cost for the road legalisation and road stopping is likely to be \$30,000 and funding is provided for.

OPTIONS

16. Leaving the status quo unchanged - this option will not resolve the important public access right issues up Whitewash Head Road nor correct the legal problem of the existing carriageway not following the path of the legal right-of-way easements.
17. Taking the private land upon which the first 20m of Whitewash Head Road is erected for a public work (ie legal road) under the Public Works Act - this would require the use of the Public Works Act procedures to compulsorily acquire the rights of the owner of 1 Whitewash Head Road and the holders of the rights-of-way easements. The negotiated outcomes achieved by Council staff and the affected parties as proposed and recommended by this report would avoid the need to embark on this type of lengthy, expensive and potentially acrimonious procedure.
18. Preferred option - the proposal as recommended by this report will achieve the outcomes identified by Council staff as being necessary and will allow the owner of 1 Whitewash Head to develop a new dwelling on what is a very difficult site. In addition the proposed stopping of part of the unformed legal road and disposal of that land will reduce costs to the Council and allow for a more efficient management of the surplus road land.

STAFF RECOMMENDATIONS

That the Board recommend to the Council:

- (a) To commence road stopping procedure under the Public Works Act 1981 for an area of approximately 59m² of unformed legal road below the property at 1 Whitewash Head Road as indicated on attached plan.
- (b) To commence and undertake the necessary road legalisation procedures to legalise the current position of the carriageway currently situated on private land at 1 Whitewash Head Road.
- (c) To permit the owners of 1 Whitewash Head Road to occupy approximately 35m² of unformed legal road airspace (excluding the unformed legal road area proposed to be stopped and transferred to the owners of 1 Whitewash Head Road).
- (d) To require the owner of 1 Whitewash Head Road to enter into the Deed of Licence to allow them to continue using their existing garage erected upon that part of their land intended to vest in the Council as legal road.
- (e) All existing built structures on unformed legal road be removed eg pond and fence.

CHAIRPERSON'S RECOMMENDATION

For discussion.