

## 11. ROAD LEGALISATION, ROAD STOPPING OF UNFORMED ROAD OUTSIDE 1 WHITEWASH HEAD ROAD

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941-8656
<b>Officer responsible:</b>	Manager Transport and Greenspace
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### PURPOSE OF REPORT

1. The purpose of this report is to seek the Board's recommendation that the Council adopt formal resolutions pursuant to the Public Works Act 1981 to stop and declare land for road. The parcel of road to be stopped is 64m<sup>2</sup> in area and is denoted as Sec 3 on the **attached** Survey Office Plan 381098 and the land for road is 36m<sup>2</sup> in area and denoted as Section 1 on the Survey Office Plan 381098 (**attached**).

### EXECUTIVE SUMMARY

2. The Council, at its meeting on 6 March 2006, resolved to commence road stopping of an unformed portion of Whitewash Head Road and undertake the necessary road legalisation procedures to legalise the current position of the carriageway presently situated on and forming part of 1 Whitewash Head Road.
3. Council officers have negotiated an agreement with the owners of 1 Whitewash Head Road to give effect to the Council's resolution subject to all statutory obligations being fulfilled with the road stopping procedure.
4. The existing road carriageway is shown as Sec 1 and Sec 2 on the attached Survey Office Plan 381098. (See also topographical survey plan separately circulated).
5. The declaration of the land for road will need to proceed in two stages.
6. At this stage it is necessary to declare Sec 1 SO 381098 as road, but to delay dealing with Sec 2. This is because Sec 1 is unencumbered with other legal interests and may be dealt with immediately. Sec 2 is subject to multiple right of way easements in favour of the landowners above Whitewash Head Road and the rights of these owners will need to be dealt with before Sec 2 can be legalised as road.

## BACKGROUND

7. On 23 November 2005 a report was presented to the Board seeking the Board's recommendation to Council to:
  - (a) Commence road stopping procedures in relation to approximately 59m<sup>2</sup> of unformed legal road outside 1 Whitewash Head Road as shown in the attached plan 246913 prepared by Eliot Sinclair.
  - (b) 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) Permit the owners of 1 Whitewash Head Road to occupy approximately 90m<sup>2</sup> of legal road as airspace.
  - (d) 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 the part of their existing land intended to vest in the Council as legal road.

These recommendations were adopted at the Council's meeting on 6 March 2006.

8. An agreement has been reached with the owners of 1 Whitewash Head Road enabling this project to proceed.
9. The original proposal was to declare the land east of the existing carriageway amounting to an area of 202m<sup>2</sup> as legal road and for the Council to grant a Deed of Licence for the existing garage. However, this course was discarded due to the likely high cost of acquiring this larger area for road. Consequently, it has been agreed that only Sec 1 and Sec 2 will be acquired by the Council for road.
10. The declaration of land for road will need to occur in two stages. The first stage is to secure Sec 1 and dispose of the surplus road land to the owner of 1 Whitewash Head Road enabling the new development by the owner of 1 Whitewash Head Road to proceed.
11. Sec 2 is subject to easement rights in favour of the owners of the 25 properties along Whitewash Head Road. Before Sec 2 can be declared as road these easement rights need to be surrendered. It is expected that this process may take up to 12 months or more to achieve.
12. The demolition of the existing house has commenced allowing the stabilisation of the existing carriageway. This work is required to be completed prior to the construction of the new building. During the period of road work and construction of the new building vehicle access along the section of the carriageway will be interrupted intermittently. Road-works and emergency services will be given prior notice when these interruptions will likely occur.

## FINANCIAL AND LEGAL CONSIDERATIONS

13. The consideration for the road to be stopped and land required for road has been agreed on the basis of an assessment determined by registered valuer Simes and Co Limited. The agreed value of Sec 3 at \$4,000 per square metre is \$256,000. The agreed value of Sec 1 at \$4,000 per square metre is \$144,000.
14. The Council is contributing \$20,000 to the legal and surveying costs involved and budget for this work has been allowed in the Transport and Greenspace Subdivision budget.
15. The Road stopping and its disposal and the declaration of land for road will be in accordance of Public Works Act 1981 and the following sections will apply;
  - (a) Section 116 Public works Act 1981 - Stopping Roads

This Section provides that, subject to the written consent of the territorial authority and the owner(s) of the land adjoining the road, the road can be declared formally stopped by notice in the Gazette. There will be no loss of public access to this small section of unformed road and the final outcome is a formed legal road joining Scarborough Road and the upper portion of Whitewash Head Road.

- (b) Section 117(1) Public Works Act 1981 - Dealing with Stopped Roads

This Section provides that the Council may deal with roads stopped under the Public Works Act in the same manner as if the road has been stopped pursuant to the Local Government Act 1974. Subsection (3) provides that stopped road may be vested in or otherwise disposed of to the owner of any adjoining land if the Council considers it equitable to do so. The parcel of "stopped road" will be transferred to Lane Neave Nominec Ltd.

- (c) Section 120(3) Public Works Act 1981 - Registration

This Section provides for the road to be amalgamated with the adjoining land and vesting of the same in the registered proprietor for the time being of the land in that certificate of title.

- (d) Section 114 Public Works Act 1981 - Declaring Road to be Land

This Section provides that any land with the consent of the owner(s) and all other parties who have an interest, may be declared to be road. On publication of a notice in the gazette the land vests in the Local Authority.

#### STAFF RECOMMENDATIONS

That the Board recommends to the Council it adopts the following resolutions:

- (a) That pursuant to Section 114(1) of the Public Works Act 1981, the Council hereby resolves to declare as land for road that parcel of land shown on Survey Office Plan 381098 (**attached**) as Sec 1 being part of Lot 1 Deposited Plan 380733 being part of the land comprised in Certificate of Title 323256.
- (b) That pursuant to Sections 116(1), 117(3) (b) and 120(3) of the Public Works Act 1981, the Council hereby resolves to stop that parcel of road shown on Survey Office Plan 381098 (**attached**) and described in the schedule below and to amalgamate that parcel with the adjoining property. The Council certifies that it considers it equitable to vest the road described in the schedule below, when stopped, in Lane Neave Nominec Ltd being the adjoining owner.

#### SCHEDULE

Being	Adjoining	Title Reference	Area
Section 3	Lot 1 DP 380733	CT 323256	64m <sup>2</sup>

#### CHAIRPERSON'S RECOMMENDATION

That the staff recommendation be adopted.