

**STRATEGY AND RESOURCES COMMITTEE
SUPPLEMENTARY AGENDA**

**14 APRIL 1998
AT 4.00 PM**

**19. TAYLORS MISTAKE ROAD
VEHICULAR ACCESS**

RR 7490

Officer responsible Legal Services Manager	Author Peter Mitchell
Corporate Plan Output: Legal Advice	

The purpose of this report is to seek the reappointment of a sub-committee to act on behalf of the Council in respect of litigation brought against the Council.

In November 1990 the Hagley/Ferrymead Community Board accepted the recommendation of a Hearings Panel it had appointed to consider an application by J P & L M Thompson and R N Watkins for the grant of a right-of-way by the Council to those persons over a reserve held by the Council which runs between Taylors Mistake Road and a Crown grant road running along the cliff face between Sumner Head and Taylors Mistake.

The applicants were wishing to obtain an easement for vehicular access over this reserve to enable them to go ahead with a subdivision on a headland above Smuggler's Cove.

Their application was publicly notified and the Community Board resolved that the application be granted subject to a number of conditions. For present purposes the relevant condition was that the easement was to not extend over 1 metre of the reserve where it adjoined the Crown grant road. Effectively this meant that the applicants could not use the reserve to drive from the reserve over the Crown grant road and then into the subdivision.

Under the Reserves Act 1977 the Council's decision, as made by the Hagley/Ferrymead Community Board acting under delegated authority, was required to be forwarded to the Minister of Conservation for his approval before the easement could be granted. Shortly after the Community Board's decision the officers were advised that the applicants did not intend to proceed with the subdivision and consequently the Council's decision has not been forwarded to the Minister of Conservation.

It now appears that the applicants wish to proceed with the subdivision and they have now applied to the High Court for a judicial review of the Council's decision as it relates to a condition 1(a) providing that the applicants could not use the 1 metre of reserve adjoining the Crown grant road.

The applicants argue in their statement of claim that this condition is ultra vires because it is unreasonable, capricious and that the Council took into account in its decision matters irrelevant to the exercise of its powers under section 48 of the Reserves Act.

19 Cont'd

The applicants seek an order from the High Court setting aside that particular condition.

Discussions were carried out between the Council and the subdividers involving alternative means of access from Taylors Mistake Road to the subdivision, however, they did not result in any proposal that was acceptable to either party.

The matter was set down to be heard by the High Court in October 1993 but was adjourned indefinitely at that time with the consent of the subdivider.

In 1993 the Council had resolved that its decision be defended on the basis that condition 1(a) was lawfully imposed, or, that if the Court found the decision to be unlawful, that the Council's decision must fall in its entirety and the matter be reheard.

The subdivider is now seeking to have the matter set down for hearing by the High Court but as a preliminary procedural matter, must obtain the consent of the Court to the proceedings being "reactivated" as no steps have been taken in this matter for the previous twelve months.

The Council had previously appointed a subcommittee consisting of Councillors Close and O'Rourke and then Councillor Arbuckle with power to act in respect of any matters arising out of this litigation which requires an immediate decision by the Council.

- Recommendation:**
1. That the Taylors Mistake Road Sub-Committee be appointed.
 2. That the Sub-Committee be delegated the power of the Council to defend these proceedings on the basis that condition 1(a) is legally valid and its decision remains unaltered.
 3. That if the Court was to find that condition 1(a) was invalid then the Council argue that the condition cannot be severed from the December 1990 decision and the decision must fall in its entirety.
 4. That the Sub-Committee have the power to act in respect of any matters arising out of this litigation which requires an immediate decision.

Chairman's

- Recommendation:** That Councillors Close, Murray and O'Rourke be appointed as members of the Sub-Committee.