

20 April 2023

**FILE NO.:** 9373-002

**VIA EMAIL TO:** [cityclerk@delta.ca](mailto:cityclerk@delta.ca)

Office of the City Clerk  
City of Delta  
4500 Clarence Taylor Crescent  
Delta, BC V4K 3E2

**Attention: Michelle Jansson, City Clerk**

Dear Sirs & Mesdames:

**Re: Proposed City of Delta Resolutions under section 132 of the  
*Land Title Act* in Response to Petition to Cancel Part of 90th  
Street Dedicated on Plan BCP27703**

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## **I. INTRODUCTION**

1. We are legal counsel for 667895 B.C. Ltd. (the “**Owner**”), which owns property with a civic address of 8910 River Road, Delta, British Columbia (the “**Property**”).
2. We write to set out the Owner’s positions in response to the Engineering Department’s 11 April 2023 report to council (the “**Engineering Department Report**”) and, in particular, to oppose the recommendations in that document.<sup>1</sup> We request that these submissions be provided to members of Council in advance of the regular council meeting scheduled for 24 April 2023.
3. Before turning to the submissions, the Owner would like to provide some relevant procedural background for the members of Council, in the event they are not aware of it.

<sup>1</sup> Please be advised that, in respect of any steps taken by Council under section 132 of the *Land Title Act* in connection with the Owner’s petition under Part 8 of the *Land Title Act*, the Owner’s address for service of any notice is c/o Eyford Partners LLP, Attn. Ryan W. Parsons, 1744 - 1055 Dunsmuir Street, Vancouver, BC V7X 1L2, [rparsons@eyfordpartners.com](mailto:rparsons@eyfordpartners.com).

4. On 13 April 2023, in accordance with the relevant bylaw,<sup>2</sup> the Owner requested that it be allowed to appear as a delegate at the 24 April 2023 regular meeting. Mayor Harvie denied the Owner's request two days later and refused to provide the Owner with any reasons underlying that decision. Consequently, as these written submissions are the Owner's only opportunity to present its positions and ensure that Council members are made fully aware of the relevant legal and factual context in which the Engineering Department is recommending that Council pass a resolution under section 132 of the *Land Title Act*, these submissions are more detailed and lengthier than the Owner originally intended.

## II. SUMMARY OF OWNER'S POSITION OPPOSING RESOLUTION

5. The facts and all of the available evidence overwhelming support a decision by Council to reject the recommendations in the Engineering Department Report.

6. By way of brief overview, in 2006 the Owner dedicated a parcel of its land 4.38m wide and 387.5m long, running north-south along the Property's eastern border (the "**Unimproved Road Area**"), so that the City of Delta ("**Delta**") could widen and improve 90th Street.

7. However, in 2015, nearly a decade after that dedication, Delta city staff, including the then-Chief Administrative Officer (now Mayor) George Harvie, and the Department of Engineering (*per* Steven Lan), determined that 90th Street had "served its purpose and was no longer needed". It recommended that 90th Street be closed and the resulting fee simple lot sold.

8. Council accepted staff's determination. In 2016 Council adopted Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 (the "**90th Street Closure Bylaw**"). The Owner was not happy that Delta was seeking to sell and profit from the land it had received for free through the 2006 dedication. It successfully applied to the Supreme Court of British Columbia to have the bylaw quashed.

9. Over 16 years after the Owner dedicated the Unimproved Road Area, 90th Street still hasn't been widened or otherwise improved to the standards the Owner reasonably anticipated when it made the dedication. It remains a largely gravel road used primarily by the Owner and the users of 8970 River Road, with no public access beyond its southern end: see the colour photographs, satellite images, and video recording attached, respectively, as Appendices H, I, and J to these submissions.

10. Because Delta had unequivocally and publicly confirmed that 90th Street *in its entirety* was no longer needed as a public area, in 2018 the Owner applied to the registrar of land titles to cancel the dedication of the Unimproved Road Area—and only

<sup>2</sup> Being section 11.1 of Council Procedure Bylaw No. 5000, 2000 and the Delegation Protocol.

that public area—under paragraph 122(1)(b) of the *Land Title Act* (the “**Petition**”). The Petition is set for hearing on 16 May 2023.

11. In 2015, the Engineering Department supported staff’s recommendation that 90th Street was no longer needed and should be closed and sold. Now, in 2023, it recommends that Council oppose the Petition through a resolution declaring that the Unimproved Road Area is required for highway purposes. What changed in the intervening eight years? *Nothing*.

12. There has been no material change in circumstances, including in Delta’s land use planning and zoning bylaws, since 2015-2016. Moreover, the Petition, if successful, would leave unaffected the only portion of 90th Street that has ever been used as a public highway. That result sufficiently responds to each reason why the Engineering Department suggests the Unimproved Road Area is still required for highway purposes.

13. Ultimately, the reasoning in the Engineering Department Report rings hollow and lacks substance. The conclusions in it are completely undermined by staff’s previous and unequivocal recommendations, the adoption of the 90th Street Closure Bylaw, and the bases upon which Delta unsuccessfully defended that bylaw in court. Frankly, it smacks of bad faith for the Engineering Department now to urge Council to act on recommendations so contrary to the factual record, a record with which that department and its Director, Steven Lan, are intimately familiar.

14. In all of the circumstances, Council ought to decline to pass a resolution opposing the Petition, for the reasons set out in detail below.

15. These submissions are organized as follows:

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**III. RELEVANT FACTUAL BACKGROUND**

16. In this section we summarize the key features of the factual context in which the Engineering Department is urging Council to exercise its discretion to pass a resolution under section 132 of the *Land Title Act*.

**A. THE PROPERTY AND ROAD-WIDENING COVENANT**

1. Owner Purchases Property to Operate Local Business

17. The Owner purchased the Property in April 2003 and has remained the owner ever since. The Owner’s parent company, Abbotsford Concrete Products Ltd., was a local family-owned business that used the Property to manufacture various concrete products, including paving stones, retaining walls, patio slabs, and other landscape products.

18. The Property is roughly rectangular in shape. It is long and narrow, being over 400m long and over 100m wide. It is bordered by River Road on the north and 90th Street on the east.

19. 90th Street runs north-south, terminating, on the north end, at River Road. 90th Street also terminates on the south end in that there is, at that end, going from north to south:

- (a) a locked metal gate on which two signs are posted, facing south-bound traffic: one sign, advises “Danger Keep Out Private Property”; the other advises “Ocean Trailer Private Property Authorized Personnel Only”;
- (b) a stop sign, below which are posted signs indicating “Private Crossing” and “No Trespassing”, a railway right-of-way crossing, and a semi-trailer freight parking area, on which several 40-foot trailers are parked;
- (c) a semi-trailer freight parking area, on which several 40-foot trailers are parked;
- (d) an earthen embankment, on top of which large sits a Trappers Transport yard, on which dozens of semi-trailers are parked; and

(e) provincial Highway 17.<sup>3</sup>

2. Road-Widening Covenant

20. When the Owner purchased the Property is was subject to a registered covenant, in favour of Delta, that contemplated possible future improvements to widen River Road and 90th Street (the “**Road-Widening Covenant**”). Specifically, Under the Road-Widening Covenant, the Owner agreed to the following dedication to widen 90th Street:

a strip of the said lands along the entire frontage thereof on the existing road dedication which is directly adjacent to the east property line of the said lands ... sufficient to provide dedicated road on the west side of the existing dedication 12 metres in width measured from the east boundary of the existing dedication (the “**90th Street Dedication Area**”).

21. In total dimensions, the 90th Street Dedication Area was 4.38m wide and 412.753m long.

**B. OWNER DEDICATES UNIMPROVED ROAD AREA**

22. In late 2006, Delta advised the Owner that it intended to enforce the Road-Widening Covenant, and that it would require the Owner to effect, among other things, the dedication of the 90th Street Dedication Area.

23. The Owner’s dedication of the 90th Street Dedication Area was registered in the land titles office December 2006.

24. Although Delta subsequently made substantial improvements to the northern-most 25m section of 90th Street (including the northern-most 25m-long section of the 90th Street Dedication Area), it did not widen or otherwise at all improve the western border of 90th Street.

25. As a result, a significant part of the 90th Street Dedication Area 4.38m wide and 387.5m long, *i.e.*, the Unimproved Road Area, has remained undeveloped for road-widening purposes, despite the purpose of the dedication contemplated by the Road-Widening Covenant and 2006 dedication of the 90th Street Dedication Area. Accordingly, for over 16 years the area of 90th Street actually used as a public highway has not exceeded its original width of 7.62m.

<sup>3</sup> See, generally, the colour photographs, Google Satellite images, and video recording, each of which is described in detail below in paragraph 84 and attached, respectively, as Appendices “H”, “I”, and “J” to these submissions.

26. For ease of reference, the Unimproved Road Area is shaded orange on the Plan BCP27703 attached as Schedule A to the Petition. It is also reproduced on p. 2 and Appendix A (p. 12) of the Engineering Department Report.

**C. COUNCIL ADOPTS 90TH STREET CLOSURE BYLAW**

1. Staff Recommends Closing and Selling 90th Street

27. As the Engineering Department Report notes,<sup>4</sup> in 2014 Delta Council directed staff to identify potentially surplus lands within Delta that could be sold to generate revenue.

28. To that end, in late 2015 Delta's Legal Services Department (the "**LSD**") prepared a report to council recommending that Council adopt a bylaw, in accordance with section 40 of the *Community Charter*, to close 90th Street, cancel the dedication over the entire roadway, and create a fee simple parcel for sale (the "**2015 Staff Report**").<sup>5</sup>

29. The 2015 Staff Report was:

- (a) reviewed and approved by George V. Harvie, then Delta's Chief Administrative Officer; and
- (b) prepared it in consultation with Delta's Engineering Department (*per* Steven Lan), as well as its Community Planning & Development and Finance Department.<sup>6</sup>

30. The 2015 Staff Report set out the following under "Background" on p. 1:

This 12-metre wide road located south of River Road and north of the CN Railway/BNSF railbed, was created to allow municipal vehicle access to the lands south of the railbed. However, due to the creation of alternative routes and opposition to the use of the railbed crossing by BNSF Railway, the road is no longer needed. In recent years, this road, measuring approximately 0.468 hectares (1.16 acre), has been used primarily as vehicular access to the property at 8970 River Road. [underlining added.]

<sup>4</sup> See p. 3.

<sup>5</sup> A copy of the 2015 Staff Report (and its two attachments) is attached as Appendix "A" to these submissions.

<sup>6</sup> See 2015 Staff Report, pp. 1 and 3.

31. In addition to advising Council that the LSD was working with the Engineering Department to address statutory rights-of-way and notify utilities companies, the 2015 Staff Report contained the following under “Discussion” on p. 2:

As the road is no longer needed, Delta staff determined that it would be valuable to close up, cancel the dedication of, and raise title to the road so that it may be sold at fair market value. Given the elongated and narrow shape of the road, its utility as a standalone parcel is significantly limited and likely not buildable, restricting its uses to parking, landscaping or storage as examples. As such, staff approached the owners of 8910 and 8970 River Road to see if there was any interest in the acquisition of the potential lot. Both parties expressed interest in the road and submitted offers, but the highest offer was submitted by the owner of 8970 River Road. Pursuant to a contract of purchase and sale approved by Council on March 30, 2015, should this Bylaw be adopted, the newly-created lot will be transferred to the adjacent property owner and consolidated with the property at 8970 River Road. [underlining added.]

32. The report concludes by noting that “[90th Street] has served its purpose and is no longer needed.”<sup>7</sup>

2. Council Gives First, Second, and Third Readings to 90th Street Closure Bylaw

33. As recommended by the LSD, at its regular meeting on 19 October 2015 Council unanimously gave first, second, and third readings to the 90th Street Closure Bylaw and directed staff to do all things necessary for the registration of the bylaw (once adopted).<sup>8</sup>

34. Following three readings, Greg Vanstone, Delta’s Municipal Solicitor, prepared a memorandum dated 12 November 2015 to Mayor and Council regarding final consideration and adoption of the 90th Street Closure Bylaw (the “**November 2015 Memorandum**”).<sup>9</sup>

35. In the November 2015 Memorandum, Mr. Vanstone reiterated that 90th Street was “no longer needed” and that the purpose of the bylaw was to raise title to the portion of the closed road so that it can be sold to a third-party. Notably, Mr. Vanstone also advised Council that public notice of the proposed road closure and disposal had

<sup>7</sup> 2015 Staff Report, p. 2.

<sup>8</sup> A copy of the Minutes of the Regular Meeting of Delta Municipal Council held on 19 October 2015 (the “**October Meeting Minutes**”) is attached as Appendix “E” to these submissions.

<sup>9</sup> A copy of the November 2015 Memorandum (and its attachment) is attached as Appendix “B” to these submissions.

been published and “no public inquiries or comments” had been received in response to the notices.<sup>10</sup>

36. Mr. Harvie also reviewed and endorsed the November 2015 Memorandum.

37. On 12 November 2015 Abbotsford delivered a letter to Delta strenuously objecting to the 90th Street Closure Bylaw.<sup>11</sup>

### 3. Council Finally Considers and Adopts 90th Street Closure Bylaw

38. Mr. Vanstone prepared a further memorandum to Mayor and Council, dated 08 January 2016, regarding final consideration and adoption of the 90th Street Closure Bylaw (the “**January 2016 Memorandum**”).<sup>12</sup>

39. In addition to recommending adoption of the bylaw, Mr. Vanstone advised that staff had: (a) sought and obtained approval for the road closure from the Ministry of Transportation and Infrastructure, since the road was within 800 meters of an arterial highway (Highway 17); and (b) advised operators of utilities whose transmission or distribution facilities might be affected by the road closure.

40. Mr. Harvie also reviewed and endorsed the January 2016 Memorandum.

41. At its regular meeting on 11 January 2016, with both Mr. Harvie, as Chief Administrator, and Mr. Lan, as Director of Engineering, present, Council unanimously gave final consideration and adopted the 90th Street Closure Bylaw.<sup>13</sup>

### **D. COURT QUASHES 90TH STREET CLOSURE BYLAW**

42. The Owner and Abbotsford, as petitioners, applied for judicial review to the Supreme Court of British Columbia. They challenged the validity of the 90th Street Closure Bylaw on a number of grounds.

<sup>10</sup> November 2015 Memorandum, p. 1. A copy of the public notice of intention to close 90th Street, cancel the dedication over it, and sell it to a third party for \$1.7M (the “**Public Notice**”) is attached as Appendix “C” to these submissions.

<sup>11</sup> A copy of Abbotsford’s 12 November 2015 letter is found at Attachment B (p. 295) to the Engineering Department Report.

<sup>12</sup> A copy of the January 2016 Memorandum (and its attachments) is attached as Appendix “D” to these submissions.

<sup>13</sup> A copy of the Minutes of the Regular Meeting of Delta Municipal Council held on 11 January 2016 (the “**January Meeting Minutes**”) are attached as Appendix “F” to these submissions.

43. Delta opposed the application for judicial review of the 90th Street Closure Bylaw.<sup>14</sup> In doing so, among other things, Delta acknowledged that the majority of 90th Street remained an unpaved gravel road.<sup>15</sup> In paragraphs 11 through 13 of Part 1 of Delta's Response to Court Petition, Delta advised the court of the following facts:

11. Several years following the events described above, Delta's long-term traffic plan for the area was fundamentally affected by the construction of Provincial Highway 17, in or about 2013. Highway 17 runs parallel to River Road, a short distance to the south. The construction of Highway 17:

- (a) obviated the need for River Road to be the principal thoroughfare in this area of Delta;
- (b) cut off 90th Street from other municipal road to the south of the highway; and therefore
- (c) limited the utility of 90th Street as a component of the municipal road system.

12. In addition, a railway right of way is located to the south of the properties in issue, between those properties and Highway 17. At present, Delta has a private crossing agreement which permits Delta to use the railway crossing but requires Delta to ensure the crossing is secured from use by unauthorized users, namely the general public. Further, the owners of the right of way have taken the position that that [sic] they oppose any expansion in the use or users of the crossing to include use by the general public.

13. As a result of the facts describe [sic] in paragraphs 11 and 12, 90th Street became unnecessary and obsolete for Delta's purposes as a municipal road. Accordingly, in 2015 Delta Council resolved to market 90th Street for sale. Both the Petitioners and the owner of 8970 River Road were invited to submit bids for the land, and the ... owner of 8970 River Road submitted the higher bid, which was accepted by Delta. [underlining added.]

44. In a judgment pronounced on 16 December 2016, the Supreme Court of British Columbia quashed the bylaw and awarded costs to the petitioners.<sup>16</sup>

<sup>14</sup> A copy of Delta's Response to Petition filed on 02 June 2016 in Supreme Court of British Columbia Vancouver Reg. Action No. S163477 ("**Delta's Response to Court Petition**") is attached as Appendix "G" to these submissions.

<sup>15</sup> Delta's Response to Court Petition, para. 9.

<sup>16</sup> 667895 B.C. Ltd. v. Corporation of Delta, [2016 BCSC 2356](#), paras. 98-99.

45. On appeal, the Court of Appeal for British Columbia clarified the meaning of provisions of the *Community Charter* constraining Delta's power to close 90th Street.<sup>17</sup>

46. Council subsequently rescinded all readings of the 90th Street Closure Bylaw and, as far as the Owner is aware, has not taken any steps in respect of the status of 90th Street in over six years since that bylaw was set aside.

#### **E. OWNER FILES PETITION TO CANCEL DEDICATION OF UNIMPROVED ROAD AREA**

##### **1. Scope of Relief Sought in Petition**

47. In May 2018, the Owner filed the Petition, a copy of which, together with its supporting evidence, is included as Attachment A to the Engineering Department Report.

48. Because the "Discussion" section of the Engineering Department Report repeatedly refers to the function and uses (actual or potential) of 90th Street *generally* in its reasons for opposing the Petition, it is necessary to emphasize the scope of the relief that is actually sought in the Petition.

49. The Petition seeks to cancel only the dedication over *the Unimproved Road Area*, *i.e.*, the eastern 4.38m portion of the highway that has *never been used* for traffic of any kind. More specifically, the Petition seeks an order cancelling part of Plan BCP27703 more particularly known and described as:

the parcel of land immediately adjacent to the eastern border of Lot 15  
Except: Part Dedicated Road on Plan BCP22703, District Lot 132,  
Group 2 New Westminster District, Plan 62294, being a rectangular-  
shaped parcel 4.38m wide and 387.5m long (measured from the  
southeastern corner of Lot 15).

50. The Owner effected service of the Petition on interested parties (as identified and directed by the deputy registrar of land titles) in February 2023.

51. The Petition is currently set for hearing on 16 May 2023.

<sup>17</sup> 667895 B.C. Ltd. V. Delta (Corporation), [2018 BCCA 38](#), paras. 50-58.

## 2. Approving Officer Report

52. In response to the Owner's request, Marcy Sangret, Delta's Approving Officer, prepared a report dated 31 December 2018 for purposes of subsection 124(1) of the *Land Title Act* (the "**Approving Officer Report**").<sup>18</sup>

53. In her report, Ms. Sangret confirms a number of important and relevant details, including:

- (a) if the Petition is granted, the Owner's resulting lot, following consolidation, would comply with the applicable zoning bylaw and would not render any lot or building non-conforming with zoning;<sup>19</sup>
- (b) 90th Street does not have any direct access to Highway 17;<sup>20</sup>
- (c) the open portion of 90th Street includes no improvements such as a sidewalk, utility corridor, drainage improvements, or parking;<sup>21</sup>
- (d) at 12m, 90th Street's total width is less than half the 30m standard for industrial roads in the Delta Subdivision and Development Standards Bylaw No. 7162, 2015, so granting the Petition would merely increase 90th Street's non-conformity (by a further 15 percent) with applicable industrial road standards;<sup>22</sup> and
- (e) with regard to the actual condition and use of 90th Street, most (if not all) of the relevant requirements for subdivisions (even though no application to subdivide is extant or anticipated) would be met if the Petition is granted.<sup>23</sup>

## 3. Engineering Department Report

54. Following service of the Petition, Delta's staff prepared the Engineering Department Report recommending that Council oppose the Petition and pass a

<sup>18</sup> A copy of the Approving Officer Report is found as Attachment C (p. 298) to the Engineering Department Report.

<sup>19</sup> Approving Officer Report, p. 4.

<sup>20</sup> Approving Officer Report, p. 2. For the additional context regarding the current (and long-standing) features of 90th Street and its immediate and broader vicinity, see: (a) the seven colour photographs attached to these submissions as Appendix "H" and described in detail below in paragraph 84(a); (b) the five Google Satellite Images attached to these submissions as Appendix "I" and described in detail below in paragraph 84(b); and, finally, (c) the video recording attached as Appendix "J" to these submissions and described in detail below in paragraph 84(c).

<sup>21</sup> Approving Officer Report, p. 4.

<sup>22</sup> Approving Officer Report, pp. 2, 4

<sup>23</sup> Approving Officer Report, pp. 5-6.

resolution under section 132 of the *Land Title Act* declaring that the Unimproved Road Area is required for highway purposes.

55. Steven Lan, Director of Delta's Engineering Department, signed off on the Engineering Department Report (see p. 5).

56. As noted above in paragraph 29, Steven Lan also signed the 2015 Staff Report, confirming that the Engineering Department had been consulted by the LSD during the preparation of the 2015 Staff Report and concurred in that report's recommendations to close 90th Street, cancel the dedication over that entire public area, and create and sell the resulting fee simple lot.

#### **IV. ISSUE BEFORE COUNCIL**

57. At Council's regular meeting on 24 April 2023, the following issue is on the agenda, on which the Owner takes the following position:

Having regard to the constraints imposed by the legal and factual context, should Council exercise its discretion to pass the resolution and take the steps recommended in the Engineering Department Report?

No. Delta has previously and unequivocally maintained, through public notices, adoption of the 90th Street Closure Bylaw, and in proceedings in the superior courts, that 90th Street had "served its purpose and is no longer needed." There have been no material legal or factual changes that would justify the Engineering Department's conclusion that the Unimproved Road Area, unused as a road for over sixteen years, is now suddenly required for highway purposes.

#### **V. COUNCIL SHOULD DECLINE TO PASS A RESOLUTION OPPOSING THE PETITION**

##### **A. LAW AND PRINCIPLES GOVERNING COUNCIL'S DISCRETIONARY AUTHORITY TO PASS RESOLUTION OPPOSING PETITION**

58. Council's authority to pass a resolution and file a certificate opposing the Petition is found in subsection 132(1) of the *Land Title Act*, which provides as follows:

Except in the circumstances set out in section 135, a local authority by resolution declaring that a public area is required for the purpose for which

it is dedicated, may oppose the cancellation or alteration under this Part of the boundaries of the public area or any part of the public area.<sup>24</sup>

59. In the context of this case, the provision thus requires Council, on facts and information known to it, to declare, *i.e.*, make a formal statement, proclamation, or announcement to be embodied in a resolution and certificate filed with the registrar of the land titles, that the Unimproved Road Area *is* required for highway purposes.

60. The effect of a resolution passed under subsection 132(1) (and the consequent certificated filed under subsection 132(2)) is significant: the registrar of land titles must not make an order under Part 8, *e.g.*, cancel part of a plan, as sought in the Petition, without the written consent of the local authority: subsection 133(3).

61. Subsection 132(1) thus delegates a discretionary power to Council. Of course, Council's discretion is not absolute or untrammelled. In exercising their powers, including discretionary powers, the law has long recognized that municipal councils must act in good faith and for proper purposes. A court shows no deference to a council when reviewing impugned decisions for bad faith and, if it concludes that a council has acted in bad faith or for improper purposes, the municipal act is void.<sup>25</sup>

62. Under subsection 132(1), the only purpose for which the discretion could properly be exercised would be to preserve the dedication of a public area where the facts justify the conclusion that the public area is or may *actually* be needed for the purpose for which it was originally dedicated.

63. In the municipal context, the concept of bad faith covers a wide range of conduct, including, for example, conduct undertaken for an improper, indirect, or ulterior purpose, of acting without the necessary candour, frankness, openness, or impartiality required of it.<sup>26</sup>

## **B. NO PLAUSIBLE BASIS TO CONCLUDE THAT UNIMPROVED ROAD AREA IS REQUIRED FOR HIGHWAY PURPOSES**

64. The only proper purpose for which Council may exercise its discretion under subsection 132(1) of the *Land Title Act* is to preserve a dedicated public area because

<sup>24</sup> Subsection 121(1) defines "public area" as meaning "an area dedicated as a highway, park or public square<sup>4</sup> under this Act or the former Act".

<sup>25</sup> *Roncarelli v. Duplessis*, [1959] S.C.R. 129, pp. 140, 143; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, para. 28; *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326, p. 249; *Beedie (Keefer Street) Holdings v. Vancouver (City)*, 2021 BCCA 160, paras. 3, 8.

<sup>26</sup> *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee* (1995), 10 B.C.L.R. (3d) 121 (C.A.), paras. 153-154 (*per* Finch J.A., Wood J.A. concurring); *Romeo's Pizza & Steakhouse Ltd. v. Victoria (City)*, 1982 CanLII 283 (B.C.S.C.), paras. 19-20; *338186 B.C. Ltd. v. City of Vancouver*, 2011 BCSC 336, para. 80.

the public area in issue is actually (or plausibly in future may be) required for the purpose for which it was dedicated.

65. In respect of some petitions to cancel all or a part of dedicated public areas, a local authority's determination of the key issue under subsection 132(1) might involve the consideration of some unknowns or uncertainties about whether a public area is or may reasonably be required for the purposes for which it was originally dedicated.

66. Not so here.

67. The factual circumstances leave no room for doubt or uncertainty, and they point Council to only one, ineluctable conclusion on the issue before it: the Unimproved Road Area, which has *never* been used for highway purposes, "has served its purpose and it is no longer needed."<sup>27</sup>

68. That basic and determinative point is overwhelming supported by the record before Council, including:

- (a) the comments regarding 90th Street's purpose and the analysis of the LSD in the 2015 Staff Report unequivocally supporting adoption of the 90th Street Closure Bylaw, in which the Engineering Department (among other departments) consulted and concurred, and which were reviewed and endorsed by Mayor Harvie when he was Delta's Chief Administrative Officer;
- (b) the comments regarding 90th Street's purpose and analysis of Delta's Municipal Solicitor in the November 2015 Memorandum and the January 2016 Memorandum, both of which memoranda were also previously reviewed and endorsed by (now) Mayor Harvie;
- (c) Delta's Public Notice, in which it publicly announced its intentions to stop up, close, and cancel the dedication as highway of 90th Street, and then sell it for \$1.7M;
- (d) Delta's successful effort to obtain the approval of the 90th Street Closure Bylaw from the Ministry of Transportation and Infrastructure;<sup>28</sup>
- (e) the October Meeting Minutes (E.05), at which Council gave first, second, and third reading to the 90th Street Closure Bylaw;
- (f) the January Meeting Minutes (E.05), at which, with both George Harvie (then Chief Administrative Officer) and Steven Lan (Director of

<sup>27</sup> See, e.g., the 2015 Staff Report, pp. 1-3; and the November Memorandum, p. 1.

<sup>28</sup> January Memorandum, p. 2.

Engineering) present, Council finally considered and adopted the 90th Street Closure Bylaw;

- (g) the positions Delta took in the Supreme Court of British Columbia in opposing the application for judicial review of the 90th Street Closure Bylaw. See, in particular paragraphs 11 through 13 (inclusive) of Part 1 of Delta's Response to Court Petition. To repeat, in those paragraphs, Delta advised the court that, among other things:
  - (i) several years after 2007, Delta's long-term traffic plan for the area in the vicinity of 90th Street was fundamentally affected by the construction of Highway 17 in 2013. Specifically, the construction of Highway 17:
    - (A) obviated the need for River Road to be the principal thoroughfare in that area of Delta;
    - (B) cut off 90th Street from other municipal roads to the south of Highway 17; and, therefore
    - (C) limited the utility of 90th Street as a component of the municipal road system;
  - (ii) a railway right of way is located to the south of the Property (at the southern terminus of 90th Street), between that Property and Highway 17. Delta had a private crossing agreement, which permits Delta to use the railway crossing but requires it to ensure that the crossing is secured from use by the general public;
  - (iii) the owners of the right of way at the south terminus of 90th Street oppose any expansion in the use or users of the right of way crossing to include use by the general public; and
  - (iv) as a result of the facts summarized above in paragraphs 68(g)(i) through (iii), "90th Street became unnecessary and obsolete for Delta's purposes as a municipal road." [emphasis added.]

69. The Owner is not aware—and neither the Approving Officer Report nor the Engineering Department Report contains anything suggesting otherwise—of *any* material change in the relevant factual and legal context, including any material change in the relevant or applicable Delta bylaws, between 2015-2016, when Council considered and adopted the 90th Street Closure Bylaw on staff's recommendations, and 2023. There is, in short, nothing in the record that would support or justify the Engineering Department Report's dramatically different discussion of the issues and conclusion that the Unimproved Road Area is now required for highway purposes.

70. In all of the circumstances, Council should reject the recommendations in the Engineering Department Report and decline to pass a resolution under subsection 132(1) of the *Land Title Act* opposing the Petition.

**C. REASONS PROFFERED FOR OPPOSING PETITION WITHOUT MERIT AND SMACK OF BAD FAITH**

71. The only portions of the record that could be construed as supporting Council's passage of a resolution, *i.e.*, the Approving Officer's Report and the Engineering Department Report, were generated only *after* and *in response* to the Petition. Notably, Ms. Sangret prepared her report in consultation with the Engineering Department,<sup>29</sup> being one of the departments that had previously given its full-throated support to the reasons and efforts to close and sell 90th Street. Consequently, Council should carefully scrutinize the reasoning and conclusions in both reports.

72. To the extent that those two reports proffer reasons for opposing the Petition, both are rife with generalizations about Delta's road development and connection plans, industrial road standards, etc. Such speculations fail to confront Delta's actual (recent) historical consideration and treatment of 90th Street. Equally troubling, neither grapple with 90th Street's actual features: it is a pot-hole ridden, largely gravelled road bounded tightly on either side by private property for over sixteen years; and it terminates at a railway right-of-way across which the general public has (now or in future) no access. Consequently, neither report provides a persuasive or safe basis upon which Council could properly pass a resolution under subsection 132(1).

73. We will nonetheless briefly make two general points in response to those reports.

74. *First*, the scope of the relief sought in the Petition needs to be clarified because comments within the Engineering Department Report have the potential to create a misapprehension.

75. Specifically, in setting out the reasons why the Unimproved Road Area is required for highway purposes, the Engineering Department frequently refers to the need for 90th Street in general, that Delta should "retain 90th Street", etc., rather than focussing on the need for the Unimproved Road Area in particular.

76. Setting aside the dearth of evidence in the record in support of the notion that Delta has a genuine and continued need for 90th Street as a highway (and the mountain of evidence from Delta itself counting against that notion), the Petition is not seeking to cancel any portion of the highway dedication other than the Unimproved Road Area, being the portion of the road that has never been used as such.

<sup>29</sup> Approving Officer Report, pp. 2, 4.

77. If successful, the Petition would have no effect whatsoever on the factual status quo, and the Engineering Department's argument in support of its recommendations, proposing to save 90th Street from being closed, is a red herring.

78. *Second*, we must address the reliance of both Ms. Sangret and the Engineering Department on the requirements for industrial roads in Delta's Subdivision and Development Standards Bylaw No. 7162, 2015 and its Official Community Plan as bases upon which to pass a resolution under section 132. Those requirements in those bylaws have little or no application to 90th Street as it actual exists and should be irrelevant considerations of Council.

79. Starting with the Approving Officer Report, Ms. Sangret candidly acknowledges the fact that, at 12m wide, 90th Street is already non-conforming for purposes of the 30m public industrial road standard set out in the Delta Subdivision and Development Standards Bylaw. Both Ms. Sangret and the Engineering Department appear to suggest that 90th Street's *further* non-compliance with the Delta Subdivision and Development Standards Bylaw, should the width of the road be reduced to 7.62m, is a consideration relevant to and, one seems invited to infer, weighing against the Petition.<sup>30</sup>

80. However, the Delta Subdivision and Development Standards Bylaw received final consideration and adoption on 25 May 2015, *i.e.*, over five months *before* the LSD advised Council in the 2015 Staff Report that 90th Street in its entirety was no longer needed. It is difficult to appreciate why reducing the width of a road by approximately 35 percent would now be more offensive to the road standards considerations and requirements arising under the Delta Subdivision and Development Standards Bylaw than was eliminating the road altogether in 2016.

81. Further, in citing and relying on the Delta Subdivision and Development Standards Bylaw, Ms. Sangret and the Engineering Department point to the relevance of Delta's Official Community Plan and potential future improvements to 90th Street, and appear to suggest that such potential improvements to 90th Street could include physical space for pedestrian and cycling infrastructure, such as "landscaped and treed boulevards, with placement of street furniture and the construction of bicycle lanes and pedestrian scale lighting",<sup>31</sup> all of which improvements would be jeopardized should 90th Street's width be narrowed.

82. For visual assistance in support of the point, Ms. Sangret includes as Attachment D to her report a copy of the industrial road standard cross-section (C-10). That document depicts, across a road's 30m width, among other things, two wide lanes, catch basins, bike lanes, curbs, sidewalks, street lamps, etc.

83. While C-10 may depict the standard, or at least ideal, features for improvements to other industrial roads in Delta, none of those aspirational objectives could plausibly

<sup>30</sup> Approving Officer Report, pp. 2, 4, 5; Engineering Department Report, p. 4.

<sup>31</sup> Engineering Department Report, p. 4; Approving Officer Report, pp. 3, 6-7.

be implemented or achieved in respect of 90th Street—an industrial road already deemed by Delta to be unnecessary—absent significant expropriations from the private properties on either side of it.

84. In actual fact, 90th Street is, as Delta has previously maintained to the public and in court, a road of limited utility. To give Council an accurate indication of 90th Street's current actual features and those properties and roads in its vicinity, we attach three appendices to this letter:

- (a) Appendix "H" comprises seven colour photographs taken, by drone by a representative of the Owner at approximately 7 p.m. on 11 April 2023, of 90th Street and its immediate surrounding area.

For reference when reviewing those photographs:

- (i) Photo No. 1 is taken from the north end of 90th Street, just south of the intersection at River Road, looking south on 90th Street, on which can be seen numerous large puddles;
- (ii) Photo No. 2, also taken from the north facing south down 90th Street, depicts that road and its proximity to the Property's eastern border to the right (west) of the road and the western border of 8970 River Road to the left (east) of the road;
- (iii) Photo No. 3 also faces south on 90th Street and depicts on the left (east) the southern access point to 8970 River Road off 90th Street, the southern terminus of 90th Street in the middle (south) of the photo, and the southern access point to the Property on the right (east) side of the photo;
- (iv) Photo No. 4 also faces south and depicts, from north to south, a closed metal gate, a stop sign, railway tracks, and parked semi-trailers all beyond the southern terminus of 90th Street;
- (v) Photo No. 5 is a close-up photograph of the two signs posted on the closed gate at the southern end of 90th Street;
- (vi) Photo No. 6 is a close-up photograph of the stop sign and "Private Crossing" and "No Trespassing" signs immediately north of the railway tracks at the southern end of 90th Street; and
- (vii) Photo No. 7 is a north-facing photograph taken above 90th Street from its southern end, depicting large puddles along its length, with the Property and 8970 River Road straddling 90th Street on the left (west) and right (east), respectively;

- (b) Appendix “I” comprises five colour Google Satellite Images of 90th Street and its immediate and broader vicinity:
  - (i) Image Nos. 1, 2, and 3 are from Google Earth and were retrieved from the internet by our office staff on 19 April 2023. For ease, we have added only two features to those Google Earth Images: (1) a red line running north-south, to depict the location of 90th Street, which is otherwise not expressly marked as such in Google’s satellite imagery; and (2) a marker to provide a compass bearing on each image; and
  - (ii) Image Nos. 4 and 5 are from Google Maps and also were retrieved from the internet by our office staff on 19 April 2023. We have modified these two images only in so far as we added a compass bearing to each image.
- (c) Appendix “J” is a 3:54 minute long video recording, also taken by drone by a representative of the Owner at approximately 7 p.m. on 11 April 2023, of 90th Street and its immediate surrounding area.

For reference when viewing Appendix J:

- (i) the video begins at the north end of 90th Street and is taken from above that road as it proceeds south and terminates at the gate, stop sign, and railway tracks that begin to appear at 2:46 of the video;
- (ii) the Owner’s Property is depicted along the west (right, when viewing the video) side of 90th Street, and 8970 River Road is depicted along the east (left, when viewing the video) side of 90th Street; and
- (iii) at 3:34 the video depicts the view north on 90th Street, from its south end.

85. As can be seen in the images in Appendices H, I, and J, 90th Street remains largely a gravel road, with large potholes, narrow enough that two industrial vehicles could only just pass by each other. And, on its southern end, it effectively ends at the southern border of the Property. Specifically, at that end one finds, from north to south:

- (a) a locked gate with signs warning of Danger and Private Property: see Appendix H, Photo Nos. 4 and 5; and Appendix J (at minute 2:58 of the recording);
- (b) a Stop sign warning of a “Private Crossing” and “No Trespassing”: see Appendix H, Photo No. 6; and Appendix J (at minute 2:58 of the recording);

- (c) a railway crossing right-of-way intended to bar, now and in future, and use or users of the crossing, including use by the general public: see Appendix H, Photo No. 6; and Appendix I, Google Maps Image Nos. 1 and 2; and Appendix J (at minute 2:58 of the recording);
- (d) parked and stored semi-trailers: see Appendix H, Photo No. 4; Appendix I, Google Maps Image No. 1; and Appendix J (at minute 3:15 of the recording);
- (e) an earthen embankment on top of which sits a large lot intended and used to store dozens of semi-trailers: see Appendix I, Google Earth Imagine No. 3 and Google Map Image No. 1; and Appendix J (at minute 3:45 of the recording) and
- (f) Highway 17, running east-west, south of which lies Burns Bog: see Appendix I, Google Earth Image Nos. 1 and 3;

86. Given, among other things,

- (a) the features at the south end of 90th Street and the 2013 construction of Highway 17;
- (b) the features limiting the prospects of making any improvements to the width 90th Street itself; and
- (c) the circumstances precluding the use or development of 90th Street as a north-south highway connector road,

it is small wonder that, in 2015, staff, including the Engineering Department, recommended and Council accepted that 90th Street had served its purpose: it was obsolete and was no longer needed as a road.

87. The record simply does not support and there is thus no merit to the Engineering Department's recommendations.

88. With no material changes between 2015 and 2023, it smacks of bad faith for the Engineering Department now to maintain the position that the Unimproved Road Area is required for highway purposes, that it is needed so that Delta has "options for future road alignment to develop and improve its road network."

89. There is no good faith basis upon which Council could properly exercise its discretion to pass the recommended resolution under subsection 132(1) of the *Land Titles Act* and, for that reason, it ought to decline to do so.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

EYFORD PARTNERS LLP

Per:



Ryan W. Parsons\*

\*Practising through a Law Corporation

**Appendix "A" to the Owner's Written  
Submissions**



The Corporation of Delta  
COUNCIL REPORT  
Regular Meeting

**E.05**

To: **Mayor and Council**

File No.: **LAN-14-978**

From: **Legal Services Department**

Bylaw: **No. 7421, 2015**

Date: **October 7, 2015**

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**Closure and Cancellation of a Portion of Road  
Between 8910 and 8970 River Road**

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The following report has been reviewed and endorsed by the Chief Administrative Officer.

▪ **RECOMMENDATIONS:**

- A. THAT Council give first, second and third readings to Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 (Attachment A); and
- B. THAT the Municipal Solicitor and the Lands Solicitor be authorized to do all things necessary for registration of the above-mentioned Bylaw (once adopted) and accompanying plans in the Land Title Office.

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▪ **PURPOSE:**

The purpose of this report is to present Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 (the "**Bylaw**") to Council for first, second and third readings. This Bylaw will cancel the dedication as road of a portion of the road between 8910 and 8970 River Road and create a fee-simple lot as shown in Attachment B.

▪ **BACKGROUND:**

This 12-metre wide road located south of River Road and north of the CN Railway/BNSF railbed, was created to allow municipal vehicle access to the lands south of the railbed. However, due to the creation of alternative routes and opposition to the use of the railbed crossing by BNSF Railway, the road is no longer needed. In recent years, this road, measuring approximately 0.468 hectares (1.16 acre), has been used primarily as vehicular access to the property at 8970 River Road.

**Council Policy:**

The closure and cancellation of a road must be authorized by bylaw.

▪ **DISCUSSION:**

As the road is no longer needed, Delta staff determined that it would be valuable to close up, cancel the dedication of, and raise title to the road so that it may be sold at fair market value. Given the elongated and narrow shape of the road, its utility as a standalone parcel is significantly limited and likely not buildable, restricting its uses to parking, landscaping or storage as examples. As such, staff approached the owners of 8910 and 8970 River Road to see if there was any interest in the acquisition of the potential lot. Both parties expressed interest in the road and submitted offers, but the highest offer was submitted by the owner of the property at 8970 River Road. Pursuant to a contract of purchase and sale approved by Council on March 30, 2015, should this Bylaw be adopted, the newly-created lot will be transferred to the adjacent property owner and consolidated with the property at 8970 River Road.

**Implications:**

Financial Implications – There are some administrative fees involved in adopting the Bylaw, such as fees to obtain a survey of the road area and reference plans to accommodate statutory rights-of-way and filing fees to register the plans and Bylaw with the Land Title Office. These fees are estimated to total less than \$7500.

Public Notice - The *Community Charter* requires that public notice be given of the road closure and that interested persons be given an opportunity to make representation to Council on the proposed Bylaw. If Council gives the Bylaw three readings, a public notice will be published once a week for two consecutive weeks in a newspaper circulating in the area. Council will be advised of any comments received when the Bylaw is returned for final adoption.

Requirement to Notify Utilities – There are known improvements owned by Delta as well as the Greater Vancouver Water District (“**GVWD**”) within that portion of road that is being closed. Legal Services is working with Delta’s Engineering Department and directly with GVWD to register statutory rights-of-way agreements to protect our respective interests. Delta’s Engineering Department will also notify all third-party utility companies who might have improvements in the area of the closure in accordance with the *Community Charter*.

Requirement to be approved by the Ministry of Transportation and Infrastructure - As the road closure will be within 800 metres of an arterial highway (Highway 17), the Bylaw must be approved by an authorized representative of the Ministry of Transportation and Infrastructure. This approval will be sought after third reading but before final adoption of the Bylaw.

▪ **CONCLUSION:**

This portion of road has served its purpose and is no longer needed. The sale of this road is subject to Council's review and adoption of the Bylaw. Therefore, it is recommended that Council give first, second and third readings to the Bylaw and that the Municipal Solicitor and the Lands Solicitor be authorized to do all things necessary

Closure and Cancellation of a Portion of Road  
Between 8910 and 8970 River Road  
LAN-14-978

October 7, 2015




for registration of the Bylaw (once adopted) and accompanying plans in the Land Title Office.



Greg Vanstone  
Municipal Solicitor

Department submission prepared by: Samien Safaei, Lands Solicitor  
SS/ss

This report has been prepared in consultation with the following listed departments.

Concurring Departments		
Department	Name	Signature
Community Planning & Development	Jeff Day	
Engineering	Steven Lan	
Finance	<i>for</i> Karl Preuss	

▪ **ATTACHMENTS:**

- A. Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015
- B. Preliminary Road Closure Plan EPP52174

**THE CORPORATION OF DELTA**

**BYLAW NO. 7421**

*A Bylaw to close certain portions of a public highway  
and cancel the dedication of such highway*

---

WHEREAS pursuant to Section 40 of the *Community Charter* SBC 2003, c. 26 as amended, a Municipal Council may, by Bylaw, close all or part of a highway that is vested in the municipality to all or some types of traffic and may remove the dedication of a highway that has been or is being closed by the same bylaw;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF DELTA, IN OPEN MEETING ASSEMBLED, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as **Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015.**
2. That portion of public highway marked as road closure area 0.468ha on the Reference Plan prepared by Warren Barnard, B.C. Land Surveyor of Watson & Barnard B.C. Land Surveyors, dated September 14, 2015, a reduced copy of which is attached hereto as Schedule "A", (the "Closed Road") is hereby stopped up and closed to all traffic.
3. The dedication of the Closed Road is hereby cancelled and removed.
4. The Closed Road shall cease forever to be a public highway and title thereto shall be vested in The Corporation of Delta.
5. Schedule "A" attached hereto shall form part of this bylaw.
6. The Mayor and the Municipal Clerk of The Corporation of Delta are hereby authorized to execute such conveyances, deeds, maps, plans, receipts and documents on behalf of The Corporation of Delta as may be required in connection with the aforesaid purposes and to affix the Corporate Seal of The Corporation of Delta thereto if necessary.

READ A FIRST TIME the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

READ A SECOND TIME the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

READ A THIRD TIME the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Bylaw No. 7421

Public Notice of Intention to proceed posted in the public notice posting place on and since the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Public Notice of Intention to proceed advertised in the \_\_\_\_\_ Newspaper on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Approved by the authorized delegate of the minister responsible for the Transportation Act the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

FINALLY CONSIDERED AND ADOPTED the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

Lois E. Jackson  
Mayor

---

Robyn Anderson  
Municipal Clerk

Bylaw No. 7421

This is Schedule "A" to Delta Road Closure and Cancellation  
(Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015

REFERENCE PLAN TO ACCOMPANY  
DELTA ROAD CLOSURE AND CANCELLATION  
(PORTION OF ROAD BETWEEN 8910 AND 8970 RIVER ROAD)  
BY-LAW No.7421, 2015

TO CLOSE PARTS DEDICATED ROAD ON PLAN BCP27703 AND PLAN 62294  
DISTRICT LOT 132, GROUP 2,  
NEW WESTMINSTER DISTRICT  
PURSUANT TO SEC. 120 OF THE LAND TITLE ACT AND SECTION 40 OF THE COMMUNITY CHARTER

B.C.G.S. 92G.005

SCALE 1:1250

THE INTENDED PLOT SIZE OF THIS PLAN IS  
565m N x 570m W BY 664m IN HEIGHT  
WHEN PLOTTED AT A SCALE OF 1:1250 (S/25)

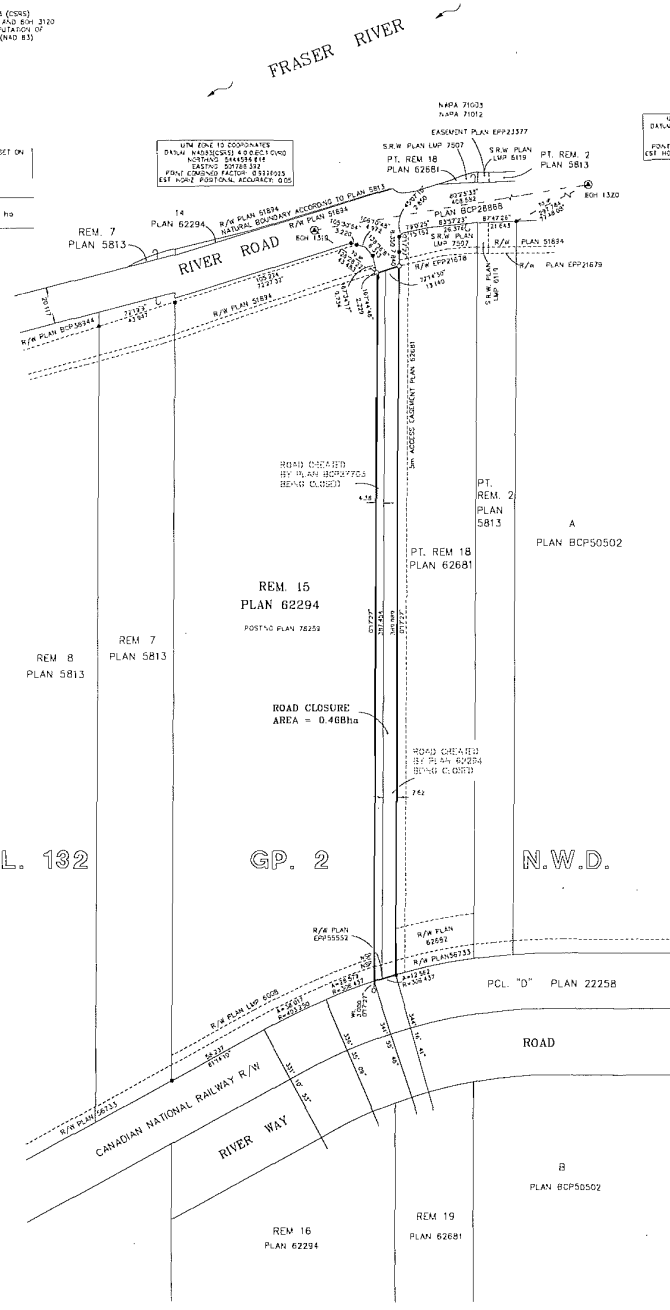
LEGEND (S/25)  
-ALL DISTANCES ARE SHOWN IN METRES  
-THIS PLAN LIES WITHIN INTEGRATED SURVEY AREA NO. 13 "05/14", N4083 (S/25)  
-BEARINGS ARE GRID BEARINGS AND ARE DERIVED FROM CANADIAN DATUM 83 AND CANADIAN DATUM 83  
-THIS PLAN SHOWS GROUND LEVEL MEASURED DISTANCES. PRIOR TO CONSTRUCTION OF U.T.M. COORDINATES, MULTIPLY BY A CORRECTION FACTOR OF 0.995 623 (NAD 83)

ROAD PLANS  
⊙ DENOTES INTEGRATED CONTROL MONUMENT  
○ DENOTES STANDARD IRON POST  
WT DENOTES WITNESS  
P+ DENOTES PEGS  
A+ DENOTES ANGLE  
R+ DENOTES RADIAL LENGTH  
NSP DENOTES NOT SUITABLE TO POST

NOTE: THIS PLAN SHOWS ONE OR MORE WITNESS PEGS WHICH ARE NOT SET ON THE TRUE CORNER(S)

TABLE OF REFERENCE	
ROAD CLOSURE TOTAL AREA	0.468 ha
PORTIONS OF ROAD CREATED BY PLAN BCP27703 AND PLAN 62294	

THIS PLAN LIES WITHIN THE JURISDICTION OF THE APPROVING OFFICER FOR THE MUNICIPALITY OF DELTA



WATSON & BARNARD  
B.C. LAND SURVEYORS  
1524-55th STREET  
DELTA, B.C. V4E 2A6  
TEL: 941-8433 FAX: 941-0421  
E-mail: wab@wbsurveyors.com

THIS PLAN LIES WITHIN THE GREATER VANCOUVER REGIONAL DISTRICT - MUNICIPALITY OF DELTA

FIELD SURVEY REPRESENTED BY THIS PLAN WAS  
COMPLETED: SEPTEMBER 15th, 2015  
WARREN E. BARNARD, BOLS (695)

FILE: 24076P\_RD  
PLOT: 2015/09/16  
MAP: L-4(S)

**Appendix "B" to the Owner's Written Submissions  
November 2015 Memorandum**

**E.03**



The Corporation of Delta  
Legal Services

**MEMORANDUM**

To: **Mayor and Council**

From: **Greg Vanstone, Municipal Solicitor**

Date: **November 12, 2015**

Subject: **Final Consideration and Adoption of Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015.**

File No.: **LAN-14-978**

CC: **George V. Harvie, Chief Administrative Officer**

---

The following report has been reviewed and endorsed by the Chief Administrative Officer.

▪ **RECOMMENDATION:**

THAT Bylaw No. 7421 be finally considered and adopted.

▪ **BACKGROUND:**

Bylaw No. 7421 (Attachment A) would stop up and close a 0.468ha portion of road located between 8910 and 8970 River Road. As this road is no longer needed, the purpose of this road closure and cancellation is to raise title to this portion of closed road so that it can be transferred to the owner of the adjacent 8970 River Road property pursuant to a purchase and sale agreement.

Bylaw No. 7421 received first, second and third readings on October 19, 2015. In accordance with the *Community Charter*, public notices of the road closure and disposal were published in both the Surrey-North Delta Leader and the Delta Optimist on October 30, 2015 and November 6, 2015. As of the date of this memorandum, no public inquiries or comments have been received in response to the notices.

As the road closure is within 800 metres of an arterial highway, Bylaw No. 7421 was submitted to the Ministry of Transportation and Infrastructure and received approval for the road closure on October 26, 2015.



The Corporation of Delta  
Legal Services

Subject: Final Consideration and Adoption of Delta Road Closure and Cancellation  
File No: LAN-14-978

Page 2 of 2

In accordance with the *Community Charter*, notice was delivered on October 27, 2015 to the operators of utilities whose transmission or distribution facilities or works may be affected by the road closure and the terms of statutory rights-of-way agreements have been finalized with the affected utilities.

A handwritten signature in blue ink, appearing to read "G Vanstone".

Greg Vanstone  
Municipal Solicitor

Department submission prepared by: Samien Safaei, Lands Solicitor

▪ **ATTACHMENT:**

A. Bylaw No. 7421

[g:\lan-14-978\mt council re final adoption 2015-11-05.docx](#)

**THE CORPORATION OF DELTA**

**BYLAW NO. 7421**

*A Bylaw to close certain portions of a public highway  
and cancel the dedication of such highway*

---

WHEREAS pursuant to Section 40 of the *Community Charter* SBC 2003, c. 26 as amended, a Municipal Council may, by Bylaw, close all or part of a highway that is vested in the municipality to all or some types of traffic and may remove the dedication of a highway that has been or is being closed by the same bylaw;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF DELTA, IN OPEN MEETING ASSEMBLED, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as **Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015.**
2. That portion of public highway marked as road closure area 0.468ha on the Reference Plan prepared by Warren Barnard, B.C. Land Surveyor of Watson & Barnard B.C. Land Surveyors, dated September 14, 2015, a reduced copy of which is attached hereto as Schedule "A", (the "Closed Road") is hereby stopped up and closed to all traffic.
3. The dedication of the Closed Road is hereby cancelled and removed.
4. The Closed Road shall cease forever to be a public highway and title thereto shall be vested in The Corporation of Delta.
5. Schedule "A" attached hereto shall form part of this bylaw.
6. The Mayor and the Municipal Clerk of The Corporation of Delta are hereby authorized to execute such conveyances, deeds, maps, plans, receipts and documents on behalf of The Corporation of Delta as may be required in connection with the aforesaid purposes and to affix the Corporate Seal of The Corporation of Delta thereto if necessary.

READ A FIRST TIME the 19<sup>th</sup> day of **October, 2015.**

READ A SECOND TIME the 19<sup>th</sup> day of **October, 2015.**

READ A THIRD TIME the 19<sup>th</sup> day of **October, 2015.**

Bylaw No. 7421

Public Notice of Intention to proceed posted in the public notice posting place on and since the **28<sup>th</sup>** day of **October, 2015**.

Public Notice of Intention to proceed advertised in the Delta Optimist Newspaper on the **30<sup>th</sup>** day of **October, 2015** and on the **6<sup>th</sup>** day of **November, 2015** and in the Surrey North Delta Leader on the **30<sup>th</sup>** day of **October, 2015** and on the **6<sup>th</sup>** day of **November, 2015**.

Approved by the authorized delegate of the minister responsible for the Transportation Act the **26<sup>th</sup>** day of **October, 2015**.

FINALLY CONSIDERED AND ADOPTED the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Lois E. Jackson  
Mayor

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Robyn Anderson  
Municipal Clerk

Schedule "A"  
to Bylaw 7421

PLAN EPP52174

REFERENCE PLAN TO ACCOMPANY  
DELTA ROAD CLOSURE AND CANCELLATION  
(PORTION OF ROAD BETWEEN 8910 AND 8970 RIVER ROAD)  
BY-LAW No. 7421, 2015  
TO CLOSE PARTS DEDICATED ROAD ON PLAN BCP27703 AND PLAN 62294  
DISTRICT LOT 132, GROUP 2,  
NEW WESTMINSTER DISTRICT  
PURSUANT TO SEC. 120 OF THE LAND TITLE ACT AND SECTION 40 OF THE COMMUNITY CHARTER

B.C.S. 826.005

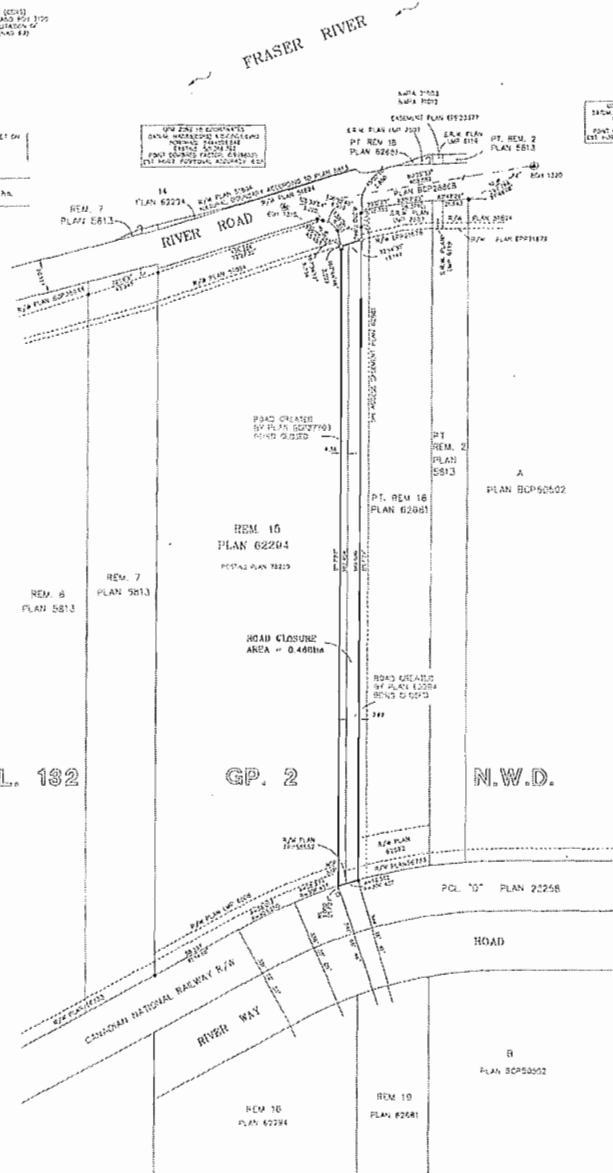
SCALE: 1:1250

THE HORIZONTAL SIZE OF THIS PLAN IS  
200m x 100m BY REFERENCE TO THE  
PLAN PLOTTED AT A SCALE OF 1:1250 (2015)

NOTES:  
- ALL DIMENSIONS ARE SHOWN IN METRES  
- THIS PLAN USES THE "INTEGRATED SURVEY AREA NO. 13" (S.I.A.) (2015)  
- READERS ARE ADVISED THAT THIS PLAN IS A REFERENCE PLAN AND DOES NOT  
- THIS PLAN SHOWS DIMENSIONS AND AREAS DERIVED FROM THE SURVEY AND NOT FROM  
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ROAD CLASSIFICATION  
- ALL DIMENSIONS AND SHOW IN METRES  
- THIS PLAN USES THE "INTEGRATED SURVEY AREA NO. 13" (S.I.A.) (2015)  
- READERS ARE ADVISED THAT THIS PLAN IS A REFERENCE PLAN AND DOES NOT  
- THIS PLAN SHOWS DIMENSIONS AND AREAS DERIVED FROM THE SURVEY AND NOT FROM  
- THE PLAN SHOWS DIMENSIONS AND AREAS DERIVED FROM THE SURVEY AND NOT FROM

TABLE OF REFERENCE	
ROAD CLOSURE TOTAL AREA	0.468 Ha.
PORTIONS OF ROAD CREATED BY PLAN BCP27703	0.272 Ha.
AND PLAN 62294	



THIS PLAN IS SUPERSEDED BY THE SURVEY AND CANCELLATION OF THE ROAD BETWEEN 8910 AND 8970 RIVER ROAD, DISTRICT LOT 132, GROUP 2, NEW WESTMINSTER DISTRICT, BY-LAW NO. 7421, 2015.

FIELD SURVEY REPRESENTED BY M.S. PLAN 805  
COMPLETED: SEPTEMBER 15th, 2015  
WARREN E. HANCOCK, INC. (6155)

WATSON & BERNARD  
1100 WEST 10TH AVENUE  
SUITE 100  
VANCOUVER, BC V6H 1T6  
TEL: 604-276-1111  
WWW.WATSONANDBERNARD.COM

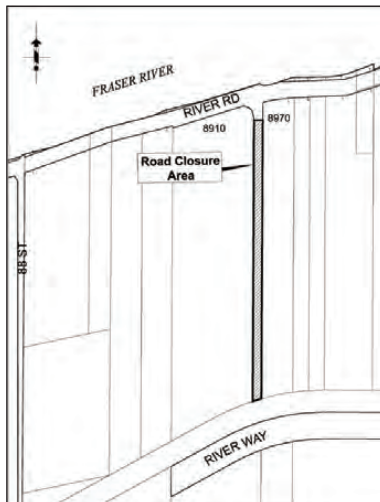
THE PLAN LIES WITHIN THE JURISDICTION OF THE ATTORNEY GENERAL FOR THE MUNICIPALITY OF DELTA

FILE: 2402015-03  
REG: 705/07/14  
MAP: 4-4(5)

## Appendix "C" to the Owner's Written Submissions

### Notice of Intention to Close a Road and Cancel the Dedication of the Road and Dispose of an Interest in Municipal Property (Pursuant to Sections 26, 40 and 94 of the *Community Charter*)

Take notice that The Corporation of Delta intends to stop up, close and cancel the dedication as highway of that 0.468ha portion of highway located as shown outlined in bold on the attached sketch that accompanies this Notice. Subsequently, The Corporation of Delta intends to dispose of its Fee Simple interest to 0789529 B.C. Ltd. pursuant to a purchase and sale agreement.



Parcel Identifier No.: N/A  
Description: Those parts dedicated road on Plan BCP27703 and Plan 62294 shown as Road Closure Area on Plan EPP52174 District Lot 132, Group 2, New Westminster District

The above property, located in the Tilbury Business Park, is currently designated as public highway, but will be closed pursuant to Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015.

The consideration to be received by The Corporation of Delta for the disposition of its fee simple interest in the above property is \$1,700,000.00.

THIS NOTICE IS FOR THE PURPOSE OF PUBLIC NOTIFICATION ONLY. IT IS NOT AN OFFER TO DISPOSE OF THE ABOVE PROPERTY TO ANY OTHER PARTY.

Copies of the relevant documents and plans may be inspected at the Municipal Hall at 4500 Clarence Taylor Crescent, Delta, B.C. Any inquiries should be made to Samien Safaei, Lands Solicitor, 604-946-3234, Monday through Friday (except statutory holidays) between the hours of 8:30 a.m. and 4:30 p.m.

If you feel that you may be affected by Bylaw No. 7421, you may notify Council by submitting written comments to the attention of Samien Safaei, Lands Solicitor (only comments received by 4:00 p.m. November 13, 2015 will be considered).



The Corporation of Delta  
4500 Clarence Taylor Crescent  
Delta BC V4K 3E2  
(604) 946-4141  
www.delta.ca

Like us on  
[facebook.com/CorpofDelta](https://www.facebook.com/CorpofDelta)

Follow us on  
[twitter.com/CorpDelta](https://twitter.com/CorpDelta)

Watch us on  
[youtube.com/CorpDelta](https://www.youtube.com/CorpDelta)

YouTube

**Appendix "D" to the Owner's Written Submissions  
January 2016 Memorandum**



The Corporation of Delta  
Legal Services

**E.05**

**MEMORANDUM**

ON TABLE

To: **Mayor and Council**  
From: **Greg Vanstone, Municipal Solicitor**  
Date: **January 8, 2016**  
Subject: **Final Consideration and Adoption of Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015.**  
File No.: **LAN-14-978**  
CC: **George V. Harvie, Chief Administrative Officer**

---

The following Memorandum has been reviewed and endorsed by the Chief Administrative Officer.

▪ **RECOMMENDATIONS:**

- A. THAT Council receive the attached November 12, 2015 letter from Abbotsford Concrete;
- B. THAT Council resolve not to receive any further submissions regarding Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015; and
- C. THAT Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 be finally considered and adopted.

▪ **BACKGROUND:**

Bylaw No. 7421 (Attachment A) would stop up and close a 0.468ha portion of road (the "Road") located between 8910 and 8970 River Road.

Bylaw No. 7421 received first, second and third readings on October 19, 2015. In accordance with the *Community Charter*, public notices of the road closure and disposal were published in both the Surrey-North Delta Leader and the Delta Optimist on October 30, 2015 and November 6, 2015.



The Corporation of Delta  
Legal Services

Subject: Final Consideration and Adoption of Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 Page 2 of 2

File No: LAN-14-978

The only letter in opposition (Attachment B) was from Abbotsford Concrete, the owner of the adjacent property at 8910 River Road.

As the road closure is within 800 metres of an arterial highway, Bylaw No. 7421 was submitted to the Ministry of Transportation and Infrastructure and received approval for the road closure on October 26, 2015.

In accordance with the *Community Charter*, notice was delivered on October 27, 2015 to the operators of utilities whose transmission or distribution facilities or works may be affected by the road closure and the terms of statutory rights-of-way agreements with the affected utilities will be finalized after title to the Road has been created.

Consequently, staff recommend that Council receive the attached November 12, 2015 letter correspondence from Abbotsford Concrete, resolve not to receive any further submissions regarding Bylaw No. 7421 and finally consider and adopt Bylaw No. 7421.

Greg Vanstone  
Municipal Solicitor

Department submission prepared by: Greg Vanstone, Municipal Solicitor

▪ **ATTACHMENTS:**

- A. Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015
- B. November 12, 2015 letter from Abbotsford Concrete

**THE CORPORATION OF DELTA**

**BYLAW NO. 7421**

*A Bylaw to close certain portions of a public highway  
and cancel the dedication of such highway*

---

WHEREAS pursuant to Section 40 of the *Community Charter SBC 2003, c. 26* as amended, a Municipal Council may, by Bylaw, close all or part of a highway that is vested in the municipality to all or some types of traffic and may remove the dedication of a highway that has been or is being closed by the same bylaw;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF DELTA, IN OPEN MEETING ASSEMBLED, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as **Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015**.
2. That portion of public highway marked as road closure area 0.468ha on the Reference Plan prepared by Warren Barnard, B.C. Land Surveyor of Watson & Barnard B.C. Land Surveyors, dated September 14, 2015, a reduced copy of which is attached hereto as Schedule "A", (the "Closed Road") is hereby stopped up and closed to all traffic.
3. The dedication of the Closed Road is hereby cancelled and removed.
4. The Closed Road shall cease forever to be a public highway and title thereto shall be vested in The Corporation of Delta.
5. Schedule "A" attached hereto shall form part of this bylaw.
6. The Mayor and the Municipal Clerk of The Corporation of Delta are hereby authorized to execute such conveyances, deeds, maps, plans, receipts and documents on behalf of The Corporation of Delta as may be required in connection with the aforesaid purposes and to affix the Corporate Seal of The Corporation of Delta thereto if necessary.

READ A FIRST TIME the 19<sup>th</sup> day of **October, 2015**.

READ A SECOND TIME the 19<sup>th</sup> day of **October, 2015**.

READ A THIRD TIME the 19<sup>th</sup> day of **October, 2015**.

Bylaw No. 7421

Public Notice of Intention to proceed posted in the public notice posting place on and since the **28<sup>th</sup>** day of **October, 2015**.

Public Notice of Intention to proceed advertised in the Delta Optimist Newspaper on the **30<sup>th</sup>** day of **October, 2015** and on the **6<sup>th</sup>** day of **November, 2015** and in the Surrey North Delta Leader on the **30<sup>th</sup>** day of **October, 2015** and on the **6<sup>th</sup>** day of **November, 2015**.

Approved by the authorized delegate of the minister responsible for the Transportation Act the **26<sup>th</sup>** day of **October, 2015**.

FINALLY CONSIDERED AND ADOPTED the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

---

Lois E. Jackson  
Mayor

---

Robyn Anderson  
Municipal Clerk

Schedule "A"  
to Bylaw 7421

PLAN EPP52174

REFERENCE PLAN TO ACCOMPANY  
DELTA ROAD CLOSURE AND CANCELLATION  
(PORTION OF ROAD BETWEEN 8910 AND 8970 RIVER ROAD)  
BY-LAW No.7421, 2015  
TO CLOSE PARTS DEDICATED ROAD ON PLAN BCP27703 AND PLAN 62294  
DISTRICT LOT 132, GROUP 2,  
NEW WESTMINSTER DISTRICT  
PURSUANT TO SEC. 120 OF THE LAND TITLE ACT AND SECTION 40 OF THE COMMUNITY CHARTER

B.C.G.S. 92G.005

SCALE: 1:1250

THE INTENDED PURPOSE OF THIS PLAN IS  
TO CLOSE A PORTION OF ROAD BETWEEN 8910 AND 8970 RIVER ROAD  
AND IS DRAFTED AT A SCALE OF 1:1250 (1/8" = 1')

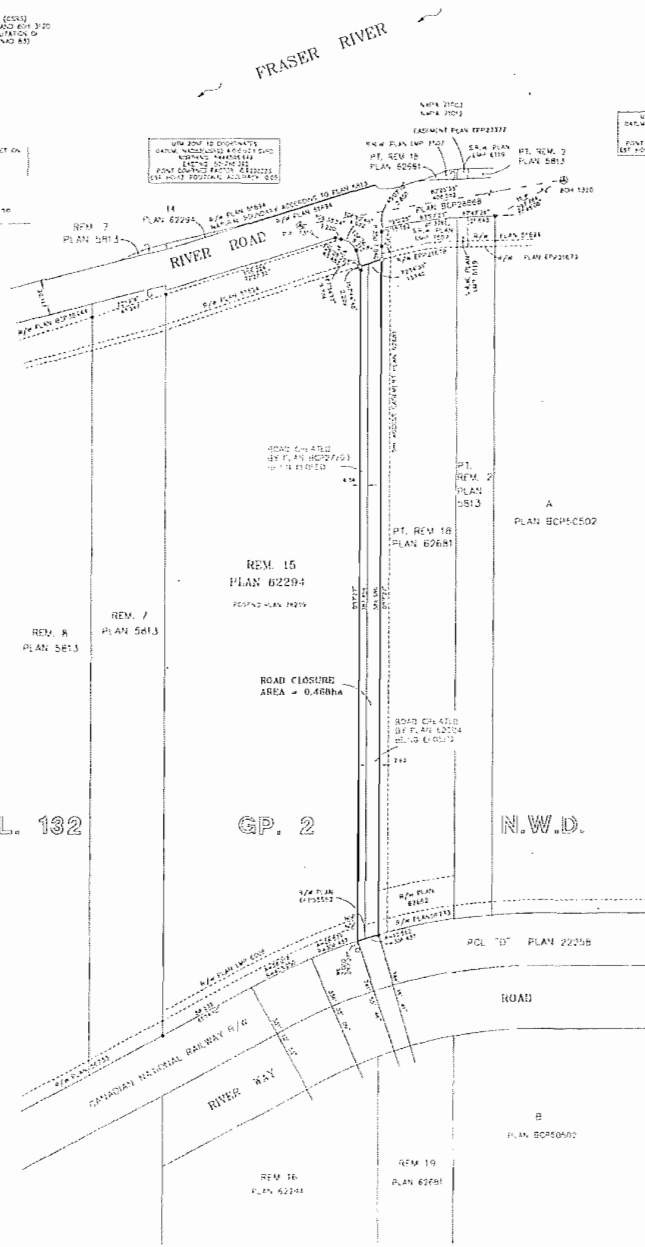
NOTES:  
- ALL DISTANCES ARE GIVEN IN METRES  
- THIS PLAN LIES WITHIN AN INTEGRATED SURVEY AREA AS IS "DELTA", NEARBY (2005)  
- BOUNDARIES AND DISTANCES ARE MEASURED FROM CORNER MARKERS AND ARE TO BE  
- THIS PLAN SHOWS DISTANCE MEASURED DISTANCE FROM TO CORNER OF  
- UTM COORDINATES, MULTIPLY BY A CORRECTION FACTOR OF 0.999 999 925 000 000

FIELD NOTES:  
- REM 15: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 7: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 19: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 18: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 16: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 14: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 13: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 12: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 11: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 10: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 9: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 8: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 6: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 5: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 4: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 3: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 2: REMAINS INTEGRATED SURVEY WORK-ONLY  
- REM 1: REMAINS INTEGRATED SURVEY WORK-ONLY

NOTE: THIS PLAN DOES NOT SHOW ANY OTHER RIGHTS WHICH ARE NOT SET OUT IN THE FIELD NOTES

TABLE OF REFERENCE	
ROAD CLOSURE TOTAL AREA	0.488 ha
PORTION OF ROAD CREATED BY PLAN BCP27703 AND PLAN 62294	

THIS PLAN LIES WITHIN THE JURISDICTION OF THE  
SURVEYING DIVISION FOR THE MUNICIPALITY OF DELTA



FIELD SURVEY REPRESENTED BY THIS PLAN WAS  
COMPLETED, SEPTEMBER 15th, 2015  
WARREN E. PALNARD, B.C.S. (855)

WARREN E. PALNARD  
B.C.S. (855)  
1154 85th STREET  
DELTA, B.C. V4C 3K8  
TEL: 644 5433 FAX: 644 5431  
WWW.WARRENPALNARD.COM

THIS PLAN LIES WITHIN THE DISTRICT VOUCHER REGIONAL DISTRICT - MUNICIPALITY OF DELTA

FILE: 240787P\_00  
DATE: 2015/09/15  
MAP: 1-431



3422 McCallum Road  
Abbotsford, B.C.  
V2S 7W6  
TELEPHONE  
(604) 852-4987  
TOLL FREE  
1-800-663-4091  
FAX  
(604) 852-4811  
www.paving.ca

Attachment "B"  
Page 1 of 3

November 12, 2015

Corporation of Delta  
Mayor, Council and Staff

Attention: Samien Safaei, Lands Solicitor

Dear Sirs/Mesdames:

Re: Bylaw No. 7421, 2015 (Portion of road between 8910 and 8970 River Road

We are submitting this letter to outline reasons for our strong objection to the passing of Bylaw No. 7421. We would also request verbal representation to further express in more detail our objection and to allow us to respond to any questions or comments from Council and Staff.

**Reason for Objection:**

Abbotsford Concrete Products (ACP) objects to the proposed closure of the road because our plant was designed to ultimately be used with access from the road. Knowing the road existed, we designed the plant to be used so that trucks could use the road to access and enter the property from the southern end and proceed solely in a northerly direction. Closure of the road will require all trucks to enter our property from the north and the trucks will have to travel both north and south (two-way) rather than the safer single one-way design.

In 2006 ACP was approached by Delta Engineering Department to sell a strip of land which was to be dedicated for the above-referenced road right of way. We assessed Delta's plan and determined that the new road allowed ACP to access the southern end of the property. Therefore, trucks either delivering supplies or removing finished product could travel in a safe orderly one-way northern direction. We discussed and received assurances from Delta regarding the use, fencing, entrance and exit locations. As a result, we agreed to the proposed road right of way land acquisition.

ACP has exerted a considerable amount of time, energy and capital to design and build one of the most advanced hardscape products manufacturing plants in North America. ACP designed inside product packaging lines, outside product storage and shipping, relying upon the continued existence of the road. We enclose a diagram showing the use of the road.

Corporation of Delta  
November 12, 2015  
Page 2

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As you can see from the attached drawing, this will add a cost primarily for having to transport finished product a greater distance to a new storage location. The highlighted product on the east side of the building represents the amount of product to be displaced should the use of the road be eliminated. The highlighted product on the west side of the plant represents the new storage area. One can see from the drawing why the use of the road played such a large part in the final plant layout. Had ACP not been assured of the use of the said road, a different location for exit of the finished product from the plant (West Side) could have been chosen in the design.

To now eliminate the road and prevent ACP from using it is wrong and will have a negative impact on production costs for the life of our business and plant operation. We currently have an outside independent accounting firm conducting a comprehensive audit to provide an accurate assessment of these added costs. This should be available by mid-December. However our accounting department estimates the loss to be in the range of \$50,000 to \$75,000 a year. If this loss is incurred, we will seek remedies for injurious affection and any other remedy available.

In summary, Abbotsford Concrete Products objects to the closure of the road. It is not fair or proper to close the road after the municipality acquired a portion of land from us for the expansion and assured us that we would have use of it after the acquisition. The plant has been designed based on the existence of the road. ACP requires continued access through the existing road as Delta agreed when it negotiated to expand the road.

We wish to have an opportunity to speak to this matter before council. The closure of the road is a significant matter upon which we cannot make adequate submissions without an opportunity to present our position to council. We invite council members to visit the property to fully understand the property and the issue.

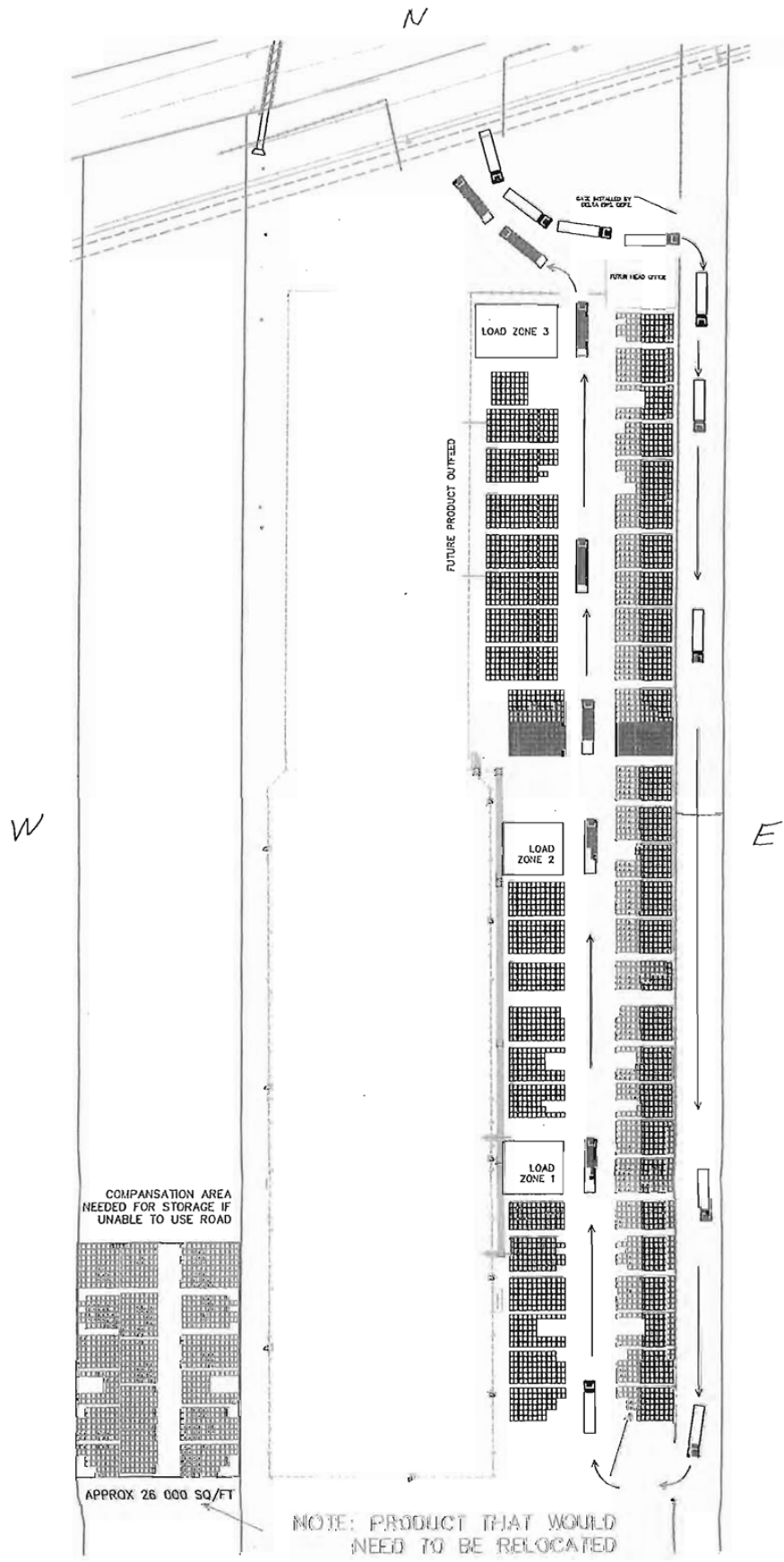
Please contact me to schedule a meeting date and time for verbal representation to further express in more detail our objection.

Sincerely

Abbotsford Concrete Products

*Keith Leach*

Keith Leach,  
Vice-President  
604-626-1533  
[keith-acp@pavingstones.com](mailto:keith-acp@pavingstones.com)



**Appendix "E" to the Owner's Written Submissions  
October Meeting Minutes**

THE CORPORATION OF DELTA

Minutes of the REGULAR MEETING of Delta Municipal Council held Monday, October 19, 2015 at 1:00 p.m. in the Council Chamber of the Delta Municipal Hall, 4500 Clarence Taylor Crescent, Delta, British Columbia.

PRESENT: Mayor Lois Jackson, Chair  
Councillor Sylvia Bishop  
Councillor Robert Campbell  
Councillor Jeannie Kanakos  
Councillor Heather King  
Councillor Bruce McDonald  
Councillor Ian L. Paton

ALSO PRESENT: George Harvie Chief Administrative Officer  
Jeff Day Director of Community Planning and  
Hugh Fraser Development  
Ken Kuntz A/Director of Engineering  
Sean McGill Director of Parks, Recreation and Culture  
Karl Preuss Director of Human Resources and Corporate  
Planning  
Director of Finance

MUNICIPAL CLERKS OFFICE Robyn Anderson Municipal Clerk  
Jana Anderson Committee Clerk

**AFTERNOON SESSION**

**ANNOUNCEMENTS**

By Mayor Jackson

**2015 Federal Election**

Mayor Jackson reminded residents that due to the October 19, 2015 Canadian Federal Election, the Council meeting was scheduled to commence at 1:00 pm and that Municipal Hall is closing at 4:00 pm to accommodate voting.

**Delview Secondary's  
"Thanks for Giving"  
Food Drive**

Mayor Jackson offered congratulations to Delview Secondary School for another successful "Thanks for Giving" campaign. On October 8, 2015, the school hosted its 23<sup>rd</sup> annual "Thanks for Giving" canned food drive and 500 to 600 student volunteers spent the day collecting non-perishable food items from their community. This year, the food drive collected an astounding 17,378 cans and non-perishable food items.

**Delta Sports Hall of  
Fame Awards Gala**

Mayor Jackson extended thanks to North Delta's Forte Sports & Orthopaedic Physiotherapy Clinic who donated 5 cents for every can collected, and presented the school with a cheque for \$868.00.

Mayor Jackson advised that on Saturday, October 17, 2015 she attended the Delta Sports Hall of Fame Gala Banquet and Awards, celebrating sport and the amazing athletes in our community.

Mayor Jackson extended congratulations to the following sport champions and inductees on their amazing achievements in sports excellence:

2015 Sport Champions

- Ray Moon – Coach, South Delta Secondary Sun Devils Football Team
- Mike Hawkes - Tennis
- Jeannie Cockcroft & Michael Aono – Track & Field
- Markus Thormeyer – Swimming
- Nic Petan – Hockey; and
- Megan and Nicole McNamara – Beach Volleyball.

2015 Inductees

- Dave Buck – Builder Inductee (Hockey)
- Pamela Leila Rai and Greg Hamm – Athlete Inductees (Swimming)
- John Batchelor – Coach Inductee (Hockey)
- North Delta 1990 Huskies AAA Basketball – Team Inductee
- Donald Lightbody – Pioneer Inductee (Soccer); and
- Randy Scott – Sponsor Inductee.

**Free Sustainable Gardening Workshop**

Mayor Jackson announced that the last edition of the Free Sustainable Gardening Workshops takes place on Saturday, October 24<sup>th</sup> at 10:00 am. The session is hosted by Peter Isaacson and will be held at Sunbury Hall.

Please go to [www.Delta.ca](http://www.Delta.ca) for more information about the workshop and how to register.

**Family Fright Fest**

Mayor Jackson noted that the Halloween season is upon us, and that Delta has a wide variety of family-friendly events to get excited for. One of Delta's biggest events is the Family Fright Fest, which is happening at the Firehall Centre for the Arts in North Delta on October 22 and at the McKee Seniors Centre in Ladner on October 28, 2015. Mayor Jackson encouraged the public to dress up, invite their family and friends, and snap lots of pictures of the all the action.

The events are free and more information can be found on [www.Delta.ca](http://www.Delta.ca).

**Canada Post Community Mail Boxes**

Mayor Jackson advised that Delta has been informed that Canada Post will be starting to install the new Community Mail Boxes over the next few days, which will affect approximately 4,900 addresses with the V4K postal code. Mayor Jackson noted that Delta has had no say in determining the locations of these new boxes, as the authority rests entirely with Canada Post.

For Delta residents, Council understands that this process can be challenging and Delta staff is currently working hard to ensure that the community is informed about these changes.

Canada Post encourages anyone with concerns to call the toll-free line at 1-844-454-3009 or visit [www.canadapost.ca](http://www.canadapost.ca).

**RESOLUTION TO ENDORSE THE AGENDA**

-- Agenda Endorsement

MOVED By Cllr. McDonald,  
SECONDED By Cllr. Bishop, THAT the Regular Agenda for Monday, October 19, 2015 be endorsed.

CARRIED UNANIMOUSLY

**B. DELEGATIONS / PRESENTATIONS**

No items for this meeting.

**ITEMS ARISING FROM IN-CAMERA MEETING OF  
OCTOBER 5, 2015**

No items for this meeting.

**C. RECEIPT AND APPROVAL OF MINUTES**

**Receipt and Approval of  
Regular Meeting Minutes  
(C.01)**

MOVED By Cllr. Campbell,  
SECONDED By Cllr. Paton, THAT the Minutes of the Regular Meeting of  
October 5, 2015 be received and adopted as circulated.

CARRIED UNANIMOUSLY

**D. UNFINISHED BUSINESS / VERBAL UPDATES**

No items for this meeting.

**E. BYLAWS**

**BYLAWS FOR FINAL ADOPTION**

**Final Adoption: Delta  
Permissive Tax.  
Exemption B/L 7467  
(E.01)**

Memorandum from the Director of Finance dated October 6, 2015  
regarding Final Consideration and Adoption of Bylaw No. 7467 - Delta  
Permissive Taxation Exemption.

-- Recommendation  
Endorsed

MOVED By Cllr. Bishop,  
SECONDED By Cllr. Campbell, THAT Bylaw No. 7467 (Attachment A of  
the report) be finally considered and adopted.

CARRIED UNANIMOUSLY

In response to Council queries, the Director of Finance advised the  
taxation exemption amounts were included in the first report to Council on  
October 5, 2015.

-- Final Adoption  
Bylaw 7467

MOVED By Cllr. Bishop,  
SECONDED By Cllr. Campbell, THAT DELTA PERMISSIVE TAXATION  
EXEMPTION BYLAW NO. 7467, 2015 be Finally Considered and  
Adopted.

CARRIED UNANIMOUSLY

**Final Adoption B/L 7277  
& Issuance of DVP –  
11661 84 Ave. (E.02)**

Memorandum from the Director of Community Planning and Development  
dated September 28, 2015 regarding Final Consideration and Adoption of  
Bylaw No. 7277 and Issuance of Development Variance Permit LU006746  
for 11661 84 Avenue (Gill). (File: LU006746 & B/L 7277)

-- Recommendations

MOVED By Cllr. Kanakos,

Endorsed  
SECONDED By Cllr. King,  
A. THAT Bylaw No. 7277 be finally considered and adopted.  
B. THAT Development Variance Permit LU006746 be issued.

CARRIED UNANIMOUSLY

-- Final Adoption  
Bylaw 7277  
MOVED By Cllr. Kanakos,  
SECONDED By Cllr. King, THAT DELTA ZONING BYLAW NO. 2750,  
1977 AMENDMENT (Gill – LU006746) BYLAW NO. 7277, 2014 be Finally  
Considered and Adopted.

CARRIED UNANIMOUSLY

**Final Adoption B/L 7431  
& Issuance of Heritage  
Alt. Permit – 4840 48  
Ave. (E.03)**  
Memorandum from the Director of Community Planning and Development  
dated October 2, 2015 regarding Final Consideration and Adoption of  
Bylaw No. 7431 and Issuance of Heritage Alteration Permit LU007277 for  
4840 48 Avenue (T.E. Andres Home Building Ltd. and 0821044 BC Ltd.)

-- Recommendations  
Endorsed  
MOVED By Cllr. McDonald,  
SECONDED By Cllr. Kanakos,  
A. THAT Bylaw No. 7431 be finally considered and adopted.  
B. THAT Heritage Alteration Permit LU007277 be issued.

CARRIED UNANIMOUSLY

-- Final Adoption  
Bylaw 7431  
MOVED By Cllr. McDonald,  
SECONDED By Cllr. King, THAT DELTA ZONING BYLAW NO. 2750,  
1977 AMENDMENT (C.D. 452 – T.E. ANDRES HOME BUILDING LTD.  
AND 0821044 BC LTD. – LU007277) BYLAW NO. 7431, 2015 be Finally  
Considered and Adopted.

CARRIED UNANIMOUSLY

### **BYLAWS FOR FIRST, SECOND AND THIRD READINGS**

**Amend. – Dev. Appl.  
Procedures B/L 4918 &  
Cons. Fees B/L 7273  
(E.04)**  
Report by the Community Planning and Development Department dated  
September 29, 2015 regarding Amendments to “Development Application  
Procedures Bylaw No. 4918, 1992” and “Consolidated Fees Bylaw No.  
7273, 2013” (The Corporation of Delta).

Memorandum from the Director of Community Planning and Development  
dated September 30, 2015 regarding Comparison of Costs Associated  
with Completed Rezoning / Two-Lot Subdivision Applications.

-- Recommendations  
Endorsed  
MOVED By Cllr. McDonald,  
SECONDED By Cllr. Bishop,  
A. THAT first, second and third readings be given to Bylaw No.  
7460.  
B. THAT first, second and third readings be given to Bylaw No. 7461.

CARRIED UNANIMOUSLY

- First, Second & Third Readings Bylaw 7460      MOVED By Cllr. Campbell,  
SECONDED By Cllr. McDonald, THAT DEVELOPMENT APPLICATION PROCEDURES BYLAW NO. 4918, 1992 AMENDMENT (REMOVAL OF DEVELOPMENT APPLICATION FEE SCHEDULE – P14-01) BYLAW NO. 7460, 2015 be given First, Second and Third Readings.

CARRIED UNANIMOUSLY

- First, Second & Third Readings Bylaw 7461      MOVED By Cllr. Campbell,  
SECONDED By Cllr. Kanakos, THAT CONSOLIDATED FEES BYLAW NO. 7273, 2013 AMENDMENT (ADDITION OF DEVELOPMENT APPLICATION FEES – P14-01) BYLAW NO. 7461, 2015 be given First, Second and Third Readings.

CARRIED UNANIMOUSLY

**Closure & Cancellation –  
Portion of Rd. Between 8910  
& 8970 River Rd. (E.05)**

Report by the Legal Services Department dated October 7, 2015 regarding Closure and Cancellation of a Portion of Road Between 8910 and 8970 River Road. (File: LAN-14-978 & B/L 7421, 2015)

- Recommendations  
Endorsed

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos,

- A. THAT first, second and third readings be given to Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 (Attachment A of the report); and  
B. THAT the Municipal Solicitor and the Lands Solicitor be authorized to do all things necessary for registration of the above-mentioned Bylaw (once adopted) and accompanying plans in the Land Title Office.

CARRIED UNANIMOUSLY

- First, Second & Third Readings Bylaw 7421

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos, THAT DELTA ROAD CLOSURE AND CANCELLATION (PORTION OF ROAD BETWEEN 8910 AND 8970 RIVER ROAD) BYLAW NO. 7421, 2015 be given First, Second and Third Readings.

CARRIED UNANIMOUSLY

**BYLAWS FOR FIRST AND SECOND READINGS AND PUBLIC HEARING WAIVED**

**LUC Discharges (Omnibus)  
(E.06)**

Report by the Community Planning and Development Department dated September 23, 2015 regarding Land Use Contract Discharges (Omnibus). (File: LU007441 & B/L 7473)

- Recommendations  
Endorsed

MOVED By Cllr. Paton,  
SECONDED By Cllr. Kanakos,

- A. THAT first and second readings be given to Land Use Contract Discharge Bylaw No. 7473.

- B. THAT the requirement for a Public Hearing for Land Use Contract Discharge Bylaw No. 7473 be waived in accordance with Section 890(4) of the *Local Government Act*.
- C. THAT the application fee of \$600 relating to each of the land use contract discharges be waived in this instance.

CARRIED UNANIMOUSLY

In response to Council queries, the Director of Community Planning and Development advised:

- 764 Land Use Contracts have been discharged to date in Delta and there are approximately 3400 remaining.
- The provincial government has set up a process to discharge all Land Use Contracts by 2024.

In response to a Council query, the Chief Administrative Officer advised that in accordance with Council policy, land use contracts will continue to be discharged whenever the opportunity arises.

-- First and Second  
Readings Bylaw 7473

MOVED By Cllr. Paton,  
SECONDED By Cllr. King, THAT DELTA (OMNIBUS – LU007441) LAND USE CONTRACT DISCHARGE BYLAW NO. 7473, 2015 be given First and Second Readings.

CARRIED UNANIMOUSLY

## F. REPORTS

### COMMITTEE REPORTS

**HRAC – 2015 Six-Month  
Progress Report (F.01)**

Report by the Hunting Regulation Advisory Committee dated September 8, 2015 regarding Hunting Regulation Advisory Committee – 2015 Six-Month Progress Report. (File: P07-04)

-- Report Received

MOVED By Cllr. Campbell,  
SECONDED By Cllr. Bishop, THAT the Hunting Regulation Advisory Committee's 2015 Six-Month Progress Report be received.

CARRIED UNANIMOUSLY

### ADMINISTRATIVE REPORTS

#### BY CONSENT

-- Reports Received and  
Recommendations Endorsed  
by Consent

MOVED By Cllr. Paton,  
SECONDED By Cllr. Kanakos, THAT the reports numbered F.02 through to F.04 be received and the recommendations contained therein be endorsed as presented.

CARRIED UNANIMOUSLY

Therefore the following recommendations were endorsed by consent.

**Contract Award: Genset  
Trailer (F.02)**

Report by the Engineering Department dated October 1, 2015 regarding Genset Trailer Contract Award. (File: 7260-20)

- A. THAT a contract for one genset trailer be awarded to Cummins Western Canada LP in the amount of \$67,172.00, including GST and PST.
- B. THAT the Director of Finance and the Director of Engineering be authorized to execute the contract.

**Contract Award: Nordel Way BNR Overpass Deck Sealing (F.03)**

Report by the Engineering Department dated October 5, 2015 regarding Nordel Way BNR Overpass Deck Sealing Contract Award. (R15-116)

- A. THAT a contract for the Nordel Way BNR Overpass Deck Sealing be awarded to Polycrrete Restorations Ltd. in the amount of \$71,111.25, including GST.
- B. THAT the Director of Finance and the Director of Engineering be authorized to execute the contract.

**Contract Award: 12 Avenue In-Pavement Flasher Repl. (F.04)**

Report by the Engineering Department dated October 7, 2015 regarding 12 Avenue In-Pavement Flasher Replacement Contract Award. (File: R14-142)

- A. THAT a contract for the 12 Avenue in-pavement flasher replacement be awarded to Trans-Western Electric Ltd., in the amount of \$60,620.21, including the GST.
- B. THAT the Director of Engineering and Director of Finance be authorized to execute the contract.

**FOR DISCUSSION**

**2014 Carbon Neutral Recognition (F.05)**

Report by the Office of Climate Action and Environment dated September 29, 2015 regarding 2014 Carbon Neutral Recognition.

-- Recommendations Endorsed

MOVED By Cllr. McDonald,  
SECONDED By Cllr. King,

- A. THAT Delta's website be updated to reflect the Corporation of Delta's 2014 Carbon Neutral achievement.
- B. THAT this report be provided to the Environment Advisory Committee for information.

CARRIED UNANIMOUSLY

In response to Council queries, Mike Brotherston, Manager of Climate Action and Environment, advised:

- In 2014, 39 out of 180 communities provided reports to the Province of British Columbia. Delta is the third largest out of the 39 communities that submitted a report.
- Carbon neutrality was achieved by reducing emissions corporately and balancing or offsetting the remaining emissions through other measures including Delta's green waste collection program and the Vancouver Landfill Gas Capture Optimization Greenhouse Gas Emissions Reduction Project.
- Delta has reduced corporate building and fleet emissions by 15% from its 2007 levels through the purchase of hybrid vehicles and building retrofits.

- Outreach with businesses and the industrial sector comes under the Climate Smart Program, run in partnership with Metro Vancouver. This program provides resources to businesses to reduce emissions.
- The Community Energy Emissions Plan adopted by Council sets out a number of actions to help the community reduce emissions.

**Roberts Bank T2  
Project (F.06)**

Report by the Engineering Department dated October 6, 2015 regarding Roberts Bank Terminal 2 Project. (File: 13460-25/RBT2 and 5220-25/GTCF)

MOVED By Cllr. Paton,  
SECONDED By Cllr. King,

- A. THAT a copy of this report be sent to the Gateway Transportation Collaboration Forum to address the Corporation of Delta's transportation concerns and proposed improvements with respect to the Roberts Bank Terminal 2 Project.
- B. THAT a copy of this report also be sent to the Honourable Mary Polak, Minister of Environment and the Honourable Todd Stone, Minister of Transportation and Infrastructure.

-- Amendment Endorsed MOVED By Cllr. Bishop,  
SECONDED By Cllr. King, THAT the main motion be amended to add:

THAT Item 3.4 be removed from "Table 1: Roberts Bank Terminal 2 Project – Concerns and Proposed Improvements" of the report.

CARRIED UNANIMOUSLY

-- Amendment Endorsed MOVED By Cllr. Kanakos,  
SECONDED By Cllr. King, THAT the main motion be amended to add:

THAT the need for HOV lanes on Highway 91 be added as a suggested transportation upgrade to "Table 1: Roberts Bank Terminal 2 Project – Concerns and Proposed Improvements" of the report.

CARRIED UNANIMOUSLY

-- Amendment Endorsed MOVED By Mayor Jackson,  
SECONDED By Cllr. Kanakos, THAT the main motion be amended to add:

THAT the impact of the Ashcroft Terminal on alleviating truck traffic congestion in the Roberts Bank traffic corridor be included in the letter from the Mayor.

CARRIED UNANIMOUSLY

-- Main Motion Endorsed as Amended Question was called on the main motion as amended.

CARRIED UNANIMOUSLY

In response to Council queries, the A/Director of Engineering advised:

- The Gateway Collaboration Forum is seeking input from municipalities on proposed improvements. Funding for the project is primarily from provincial and federal governments.
- Funding requests have been made for an overpass at Highway 17 and 52 Street but to date no funding has been permanently established for the project.

- Provisions for Short Sea Shipping options are identified as “not applicable” because the focus is on land based systems. Although Delta is aware of this issue, it does not fit this particular project.
- Although the Gateway Collaboration Forum was established to look at the transportations facilities throughout the whole Lower Mainland, it was divided in several areas. Delta is affected by the Roberts Bank and Fraser trade areas.
- The Gateway Collaboration Forum will evaluate a list of road and rail projects and identify projects with the highest priority. The project list ranges from Delta Port to the Abbotsford area.
- When Delta is informed of the short list of projects that will be funded, an update report will be provided to Council.
- The need for mitigation efforts with respect to road infrastructure impacts in the Fraser trade area including improved pedestrian, cycling, bus and carpooling will be brought forward to the Gateway Collaboration Forum.
- The shoulder area on the South Fraser Perimeter Road was made wider to accommodate cyclists.

In response to Council queries, the Chief Administrative Officer advised that:

- The Minister of Transportation and Infrastructure has agreed to meet with Delta Council to discuss concerns related to the Roberts Bank Terminal 2 Project and staff will be scheduling this meeting as soon as possible.
- The need for bicycle lanes on Highway 91 can be brought forward when Council meets with the Minister of Transportation and Infrastructure.
- Delta has serious concerns about the safety of the intersection at Highway 17 and 52 Street and staff are in the process of working on developing a joint grant application for funding with the Tsawwassen First Nation to address safety concerns.
- Engineering staff support waiting until the intersection work at Highway 17 and 52 Street is complete and then using ferry traffic timing data and photographs of the width to illustrate Delta’s concerns to the Minister.

**Memorial Park  
Waterpark Proposal  
(F.07)**

Report by the Parks, Recreation and Culture Department dated October 5, 2015 regarding Memorial Park Waterpark Proposal. (File: 14050-20/MemP)

-- Recommendation  
Endorsed

MOVED By Cllr. Campbell,  
SECONDED By Cllr. McDonald, THAT the proposal by the Rotary Club of Ladner to upgrade the Kinsmen Water-Play Area at Memorial Park be supported in principle.

CARRIED UNANIMOUSLY

In response to Council queries, the Director of Parks, Recreation and Culture advised:

- The cost for upgrades to the Kinsmen Water-Play Area at Memorial Park is not included in the community cost share program.
- Delta anticipates that it will be two years before the Rotary Club has secured the additional 25% needed to meet the required 50% project funding.

In response to a Council query, the Director of Finance advised that the total annual budget for the community cost share program is \$100,000.

**2016 Council Meeting & Public Hearing Schedule (F.08)**

Report by the Office of the Municipal Clerk dated September 30, 2015 regarding 2016 Council Meeting and Public Hearing Schedule.

-- Recommendation  
Endorsed

MOVED By Cllr. McDonald,  
SECONDED By Cllr. Kanakos, THAT the 2016 Regular Council Meeting and Public Hearing Schedule, as set out in Attachment A of the report, be approved.

CARRIED UNANIMOUSLY

In response to a Council query, the Chief Administrative Officer advised that the FCM is scheduled June 3 – 5, 2016 and these dates will be appropriately colour coded in the meeting schedule.

**DVP at 8807 Russell Drive (F.09)**

Report by the Community Planning and Development Department dated October 2, 2015 regarding Development Variance Permit at 8807 Russell Drive (Kew). (File: LU007527)

-- Recommendations  
Endorsed

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos,

- A. THAT Development Variance Permit LU007527 be issued.
- B. THAT the Mayor and Municipal Clerk be authorized to sign all documents pertaining to this development.

CARRIED UNANIMOUSLY

In response to Council queries, the Director of Community Planning and Development advised:

- The application involves creating a secondary suite by utilizing the existing garage and attaching it to the existing building.
- The application meets all regulations regarding lot coverage and house size.
- The Development Variance Permit allows the garage to be part of the house subject to a larger side yard setback. The existing garage conforms to the side setback requirement for a detached accessory structure.
- The owners are bringing the application forward to accommodate an extended family member and allow them to age in place.
- If approved, the home would have a legal secondary suite. The zoning allows for a secondary suite and there is more than adequate parking space to accommodate the suite.

**DVP Amend. & Restr. Cov. Amend. Appl. at 1900 56 St. (F.10)**

Report by the Community Planning and Development Department dated October 8, 2015 regarding Development Variance Permit Amendment and Restrictive Covenant Amendment Application at 1900 56 Street (Tsawwassen Independent School Society). (File: LU007549)

-- Recommendations  
Endorsed

Correspondence from M. Appavoo dated [October 14, 2015](#). (On Table)

MOVED By Cllr. McDonald,  
SECONDED By Cllr. Kanakos,

- A. THAT Development Variance Permit LU005890 be amended by replacing the drawing in Schedule "B" with the revised drawing shown in Attachment H of this Council Report in order to permit a school cafeteria enclosure at the west portion of the fourth storey of the existing private school building at 1900 56 Street, with a roof height of 16.5 m (54 ft) and four storeys from grade.
- B. THAT Restrictive Covenant BB1164791 be amended to permit a revised school building design, which includes a school cafeteria enclosure at the west portion of the fourth storey of the existing private school building at 1900 56 Street in accordance with the proposed architectural plans shown in Attachment I of the report.
- C. THAT the owner provide a tree retention security in the amount of \$8,000 as a condition of the development variance permit amendment and restrictive covenant amendment.
- D. THAT the Mayor and Municipal Clerk be authorized to sign all documents pertaining to this development.

CARRIED UNANIMOUSLY

In response to a Council query, the Director of Community Planning and Development advised that a commercial kitchen is not proposed under the application.

#### **G. MOTIONS ON NOTICE**

No items for this meeting.

#### **H. CORRESPONDENCE**

##### **INFORMATION ITEMS**

##### **Correspondence for Information (External) (H.01)**

6 items of external correspondence for information circulated to Council as of October 14, 2015.

-- Correspondence Received

MOVED By Cllr. Paton,  
SECONDED By Cllr. Kanakos, THAT the correspondence be received for information.

CARRIED UNANIMOUSLY

##### **2015 Poppy Campaigns (H.02)**

Correspondence from Jacky Hillairet, Branch Manager, Royal Canadian Legion #61 dated September 24, 2015 regarding Permission to Hold Poppy Campaign from October 30 to November 11, 2015.

Correspondence from Al Wakarchuk, Poppy Committee Chair, Royal Canadian Legion #289 dated [October 10, 2015](#) regarding the annual poppy campaign (On Table).

-- Motion Endorsed

MOVED By Cllr. Kanakos,  
SECONDED By Cllr. King, THAT permission be granted to the Royal Canadian Legion Branches of Ladner and Tsawwassen to conduct their 2015 Poppy Campaigns.

CARRIED UNANIMOUSLY

**I. NOTICE OF MOTIONS**

No items for this meeting.

**J. ENQUIRIES, OTHER MATTERS AND NEW BUSINESS**

No items for this meeting.

**RESOLUTION TO TERMINATE**

**Terminate**

MOVED By Cllr. McDonald,  
SECONDED By Cllr. Paton, THAT this meeting now terminate.

CARRIED UNANIMOUSLY

The meeting terminated at 1:50 p.m.

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Lois E. Jackson  
Mayor

**CERTIFIED CORRECT:**

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Robyn Anderson  
Municipal Clerk

**Appendix "F" to the Owner's Written Submissions**  
**January Meeting Minutes**

THE CORPORATION OF DELTA

Minutes of the REGULAR MEETING of Delta Municipal Council held Monday, January 11, 2016 at 7:00 p.m. in the Council Chamber of the Delta Municipal Hall, 4500 Clarence Taylor Crescent, Delta, British Columbia.

PRESENT: Mayor Lois Jackson, Chair  
Councillor Sylvia Bishop  
Councillor Robert Campbell  
Councillor Jeannie Kanakos  
Councillor Heather King  
Councillor Bruce McDonald

ABSENT: Councillor Ian L. Paton

ALSO PRESENT:

George Harvie	Chief Administrative Officer Director of Community Planning and Development
Jeff Day	Director of Parks, Recreation and Culture
Ken Kuntz	Director of Engineering
Steven Lan	Director of Human Resources and Corporate Planning
Sean McGill	Director of Finance Municipal Solicitor (Item E.05)
Karl Preuss	
Greg Vanstone	
MUNICIPAL CLERKS OFFICE	Municipal Clerk Committee Clerk
Robyn Anderson	
Barinder Lalli	

**EVENING SESSION**

**ANNOUNCEMENTS** By Mayor Jackson

**New Year's Resolutions** Mayor Jackson noted that many residents made New Year's Resolutions that they are hoping to keep and that it can be difficult to maintain new habits or goals over the course of the year. Mayor Jackson advised that Delta is here to help residents be the best they can be. Whether it is a fitness goal for themselves or their children, finding a new career, or a desire to live a greener and more sustainable lifestyle, there are programs and professionals available to help. For more information visit [www.Delta.ca](http://www.Delta.ca) or check out Delta's activities guides.

**Committee and Commission Appointments** Mayor Jackson encouraged residents to get involved with their local government in 2016. There are a wide variety of Committee and Commission opportunities open and waiting for volunteer appointments. Mayor Jackson noted that these positions serve as advisory committees

that collaborate with and provide advice to Council on various issues affecting our community. The application deadline is January 31, 2016. For more information on how to apply visit [www.Delta.ca](http://www.Delta.ca).

**Delta Idol**

Mayor Jackson advised that every year, Delta Parks, Recreation & Culture gather up some of our most talented youngsters and showcase them through the annual Delta Idol competition. Delta youth between the ages of 12 and 19 are invited to audition for this exciting event by sending in a YouTube link, USB key, or CD to our Firehall Centre for the Arts or the Tsawwassen Arts Centre. Mayor Jackson noted that the deadline for auditions is January 22, with the performance night taking place at the Tsawwassen Arts Centre on February 26. For more information visit [www.Delta.ca](http://www.Delta.ca).

**Collection Calendar**

Mayor Jackson noted that the 2016 Curbside Collection Calendar has been mailed out to Delta residents. The calendar can also be downloaded from the Delta website and replacements can be picked up from Municipal Hall or any Delta Recreation Centre throughout the year. For those more technologically inclined, an app is available for download onto your smart phone or tablet.

**Splash N' Dash**

Mayor Jackson advised that in light of the pending roadway improvements along the route used in past triathlons, the bike component will be removed from this year's event. Adults are invited to participate in a Splash N' Dash swim and run event while children will be able to participate in the Kids of Steel Triathlon. The alternative route will be around Paterson Park, with the events starting at the Ladner Leisure Centre. Mayor Jackson noted that registration gets underway on January 18, 2016 at 6:00am at [www.Delta.ca/Triathlon](http://www.Delta.ca/Triathlon).

**Spring Break Programs**

Mayor Jackson advised that this year Spring Break will run from March 14 to March 28. Delta has many activities to keep residents and their families busy. There will be half and full day camps for kids of all ages, as well as Extreme Camps for kids who enjoy a variety of sports, games, and snack making, as well as Get Out Of Town Camps for the more adventurous youth. There will also be First Aid and Lifesaving Instructor crash courses available, as well as one and two week swimming lessons. Mayor Jackson noted that there will also be lots of Easter events and drive-in movie afternoons, as well as a magic show to look out for. For more information view the Spring Break supplement available at Municipal Hall and all Delta Facilities, and on our website [www.Delta.ca](http://www.Delta.ca).

**RESOLUTION TO ENDORSE THE AGENDA**

-- Amended Agenda  
Endorsement

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos, THAT the Regular Agenda for Monday, January 11, 2016 be endorsed with the following changes:

1. Withdrawal of Item E.01 Final Consideration and Adoption of Bylaw No. 7298 and Issuance of DVP Permit LU007024 for 11897/11899 74B Avenue.
2. Addition of Item E.05 Final Consideration and Adoption of Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015.

CARRIED UNANIMOUSLY

## **SPECIAL PRESENTATION**

### **2015 UBC Thunderbirds Winning Teams**

Presentation to the Delta School District 37 Alumni on the following 2015 UBC Thunderbirds Winning Teams:

- Men's Football – Vanier Cup
- Women's Field Hockey – McCrae Cup
- Women's Soccer – Gladys Bean Memorial Trophy

Presentation:

Mayor Jackson recognized the Delta School District Alumni from the UBC Thunderbirds Men's Football Team, the Women's Field Hockey Team and the Women's Soccer Team on their respective historical wins in 2015.

On November 8, 2015, the Women's Field Hockey Team claimed their fifth consecutive national championship, the McCrae Cup. On November 15, 2015, the Women's Soccer Team won the national Gladys Bean Memorial Trophy for the sixth time in program history. On November 28, 2015, the Men's Football Team took the Vanier Cup, the team's first national win since 1997.

Mayor Jackson called forward the following athletes to receive a certificate in recognition of their accomplishments:

UBC Thunderbirds Women's Field Hockey team:

- Cailean Meredith

UBC Thunderbirds Women's Soccer team:

- Nadia Langenberg
- Jasmine Mander
- Taylor Shannik
- Nicole Sydor

UBC Thunderbirds Men's Football team:

- Chris Adams
- Bryce Connors
- Tony Ganton
- Riley Jones
- David Mann
- Ethan Sadowski

Mayor Jackson also thanked the coaching staff and the athletes' families for their support of the athletes.

-- Presentation Received

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos, THAT the presentation be received for information.

CARRIED UNANIMOUSLY

## **B. DELEGATIONS / PRESENTATIONS**

No items for this meeting.

## **ITEMS ARISING FROM IN-CAMERA MEETING OF DECEMBER 14, 2015**

No items for this meeting.

## **C. RECEIPT AND APPROVAL OF MINUTES**

**Receipt and Approval of Regular Meeting Minutes (C.01)**      MOVED By Cllr. McDonald,  
SECONDED By Cllr. Bishop, THAT the Minutes of the Regular Meeting of December 14, 2015 be received and adopted as circulated.

CARRIED UNANIMOUSLY

**Receipt of Public Hearing Minutes (C.02)**      MOVED By Cllr. Bishop,  
SECONDED By Cllr. Campbell, THAT the Minutes of the Public Hearing of December 14, 2015 be received for information.

CARRIED UNANIMOUSLY

**Receipt and Approval of the Meeting Minutes (following Public Hearing) (C.03)**      MOVED By Cllr. Campbell,  
SECONDED By Cllr. King, THAT the Minutes of the Meeting following the Public Hearing of December 14, 2015 be received and adopted as circulated.

CARRIED UNANIMOUSLY

**Receipt of Advisory Committee Minutes (C.04)**      MOVED By Cllr. Campbell,  
SECONDED By Cllr. Bishop, THAT the following Minutes of the Advisory Committees be received for information:

- Heritage Advisory Commission – December 2, 2015
- Community Planning Advisory Committee – December 3, 2015
- Parks, Recreation & Culture Commission – December 10, 2015.

CARRIED UNANIMOUSLY

#### **D. UNFINISHED BUSINESS / VERBAL UPDATES**

No items for this meeting.

#### **E. BYLAWS**

##### **BYLAWS FOR FINAL ADOPTION**

**(E.01)**      This item was withdrawn by staff.

**Final Adoption: B/L 11857 87 Ave. (E.02)**      Memorandum from the Director of Community Planning and Development dated January 4, 2016 regarding Final Consideration and Adoption of Bylaw No. 7411 for 11857 87 Avenue (Haher and Singh). (File: LU007348 & B/L 7411)

-- Recommendations Endorsed      MOVED By Cllr. McDonald,  
SECONDED By Cllr. Campbell, THAT Bylaw No. 7411 be finally considered and adopted.

CARRIED UNANIMOUSLY

-- Final Adoption Bylaw 7411      MOVED By Cllr. McDonald,  
SECONDED By Cllr. Campbell, THAT DELTA ZONING BYLAW NO. 2750, 1977 AMENDMENT (HAHER AND SINGH – LU007348) BYLAW NO. 7411, 2015 be finally considered and adopted.

CARRIED UNANIMOUSLY

**BYLAWS FOR FIRST AND SECOND READINGS AND REFERRAL TO PUBLIC HEARING**

**Rez. & Subdiv. – 11552  
80 Avenue (E.03)**

Report by the Community Planning and Development Department dated December 22, 2015 regarding Rezoning and Subdivision at 11552 80 Avenue (Sidhu and Panesar). (File: LU007559 & B/L 7494)

-- Recommendations  
Endorsed

MOVED By Cllr. Bishop,  
SECONDED By Cllr. King,

- A. THAT first and second readings be given to Zoning Amendment Bylaw No. 7494.
- B. THAT Bylaw No. 7494 be referred to a Public Hearing.
- C. THAT the owners satisfy the following requirements as a condition of final consideration and adoption:
  1. Enter into a Section 219 Restrictive Covenant for building design and tree retention and replacement to the satisfaction of the Director of Community Planning & Development;
  2. Enter into a Section 219 Restrictive Covenant to address in-ground basement and secondary suite requirements, to the satisfaction of the Director of Community Planning & Development;
  3. Provide a tree retention security in the amount of \$2,000; and
  4. Provide a tree replacement security in the amount of \$5,000;
- D. THAT the Mayor and Municipal Clerk be authorized to sign all documents pertaining to this development.

CARRIED UNANIMOUSLY

-- First and Second  
Readings  
Bylaw 7494

MOVED By Cllr. Bishop,  
SECONDED By Cllr. Kanakos, THAT DELTA ZONING BYLAW NO. 2750, 1977 AMENDMENT (SIDHU & PANESAR – LU007559) BYLAW NO. 7494, 2016 be given First and Second Readings.

CARRIED UNANIMOUSLY

**BYLAWS FOR FIRST AND SECOND READINGS AND PUBLIC HEARING WAIVED**

**LUC Discharges (E.04)**

Report by the Community Planning and Development Department dated December 22, 2015 regarding Land Use Contract Discharges (Omnibus). (File: LU007522 & B/L 7491)

-- Recommendations  
Endorsed

MOVED By Cllr. Campbell,  
SECONDED By Cllr. King,

- A. THAT first and second readings be given to Land Use Contract Discharge Bylaw No. 7491.
- B. THAT the requirement for a Public Hearing for Land Use Contract Discharge Bylaw No. 7491 be waived in accordance with Section

890(4) of the *Local Government Act*.

- C. THAT the application fee of \$600 relating to each of the land use contract discharges be waived in this instance.

CARRIED UNANIMOUSLY

- First and Second Readings  
Bylaw 7491

MOVED By Cllr. Campbell,  
SECONDED By Cllr. King, THAT DELTA (OMNIBUS – LU007522) LAND USE CONTRACT DISCHARGE BYLAW NO. 7491, 2015 be given First and Second Readings.

CARRIED UNANIMOUSLY

### **BYLAWS FOR FINAL ADOPTION**

#### **Final Adoption B/L 7421 – Rd. Closure between 8910 & 8970 River Rd. (E.05)**

Memorandum from the Municipal Solicitor dated January 8, 2016 regarding Final Consideration and Adoption of Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015. (File: LAN-14-978) (ON TABLE)

- Recommendations  
Endorsed

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos,

- A. THAT Council receive the attached November 12, 2015 letter from Abbotsford Concrete;
- B. THAT Council resolve not to receive any further submissions regarding Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015; and
- C. THAT Delta Road Closure and Cancellation (Portion of road between 8910 and 8970 River Road) Bylaw No. 7421, 2015 be finally considered and adopted.

CARRIED UNANIMOUSLY

- Final Adoption  
Bylaw 7421

MOVED By Cllr. Campbell,  
SECONDED By Cllr. King, THAT DELTA ROAD CLOSURE AND CANCELLATION (PORTION OF ROAD BETWEEN 8910 AND 8970 RIVER ROAD) BYLAW NO. 7421, 2015 be Finally Considered and Adopted.

CARRIED UNANIMOUSLY

### **F. REPORTS**

#### **COMMITTEE REPORTS**

No items for this meeting.

#### **ADMINISTRATIVE REPORTS**

#### **BY CONSENT**

- Reports Received and  
Recommendations  
Endorsed by Consent

MOVED By Cllr. Campbell,  
SECONDED By Cllr. Kanakos, THAT the reports numbered F.01 through to F.02 and F.04 through to F.05 be received and the recommendations

contained therein be endorsed as presented.

CARRIED UNANIMOUSLY

Therefore the following recommendations were endorsed by consent.

**Contract Award: Water Fittings & Accessories (F.01)**

Report by the Engineering Department dated December 21, 2015 regarding Water Fittings and Accessories Contract Award. (File: 7260-20)

- A. THAT a one-year contract for the supply of water fittings and accessories be awarded to Flocor Inc. in the estimated annual amount of \$ 82,305.20 including GST and PST.
- B. THAT the Director of Finance and the Director of Engineering be authorized to execute the contract.

**Contract Award: Roadway Crack Sealing (F.02)**

Report by the Engineering Department dated December 22, 2015 regarding Roadway Crack Sealing Contract Award. (File: 7260-20)

- A. THAT a two-year contract for roadway crack sealing services, with the option to renew for an additional two one-year periods, be awarded to Sealtec Industries Ltd in the estimated annual amount of \$76,335.00, including GST.
- B. THAT the Director of Finance and the Director of Engineering be authorized to execute the contract.

**Facility Agmt: Canadian Sport Institute Pac. GymWorks (F.03)**

This item was removed from the consent agenda for discussion purposes. See below.

**Licence Agmt. Renewal: Sungod Skating Club (F.04)**

Report by the Parks, Recreation and Culture Department dated December 15, 2015 regarding Sungod Skating Club – Licence Agreement Renewal. (File: 11100-20/SSC)

- A. THAT renewal of the licence agreement between the Corporation of Delta and the Sungod Skating Club for the use of designated office space and storage room at the Sungod Recreation Centre be approved, generally in the form presented (Attachment A of the report).
- B. THAT the Mayor and Municipal Clerk be authorized to execute the renewal of the licence agreement on behalf of the Corporation of Delta.

**Facility Agmt: Delta Farmers' Institute (F.05)**

Report by the Parks, Recreation and Culture Department dated December 15, 2015 regarding Delta Farmers' Institute – Facility Rental Fee Grant. (File: 08480-20)

THAT a facility rental fee grant of \$720 be awarded to the Delta Farmers' Institute.

#### **FOR DISCUSSION**

**Facility Agmt:  
Canadian Sport  
Institute Pac.  
GymWorks (F.03)**

Report by the Parks, Recreation and Culture Department dated December 15, 2015 regarding Canadian Sport Institute Pacific - GymWorks Facility Agreement. (File: 11100-20/CSIP)

-- Recommendations  
Endorsed

MOVED By Cllr. Campbell,  
SECONDED By Cllr. Bishop,

- A. THAT the GymWorks Facility Agreement between the Corporation of Delta and Canadian Sport Institute Pacific be approved, generally in the form presented (Attachment A of the report).
- B. THAT the Director of Parks, Recreation & Culture be authorized to execute the GymWorks Facility Agreement on behalf of the Corporation of Delta.

CARRIED UNANIMOUSLY

During discussion it was noted that this program allows recognized provincial, national and international level athletes to make use of drop-in opportunities at all Delta parks, recreation and culture facilities at no cost. This program also provides an opportunity for residents to train alongside higher level athletes, building community pride.

**One Billion Rising  
(F.06)**

Report by the Delta Police Department dated December 8, 2015 regarding One Billion Rising.

-- Recommendations  
Endorsed

MOVED By Cllr. Bishop,  
SECONDED By Cllr. King,

- A. THAT One Billion Rising be approved as a municipally supported event.
- B. THAT a Facility Rental Fee Grant of 100% of the facility rental fee of \$542.85 be awarded to the Delta Police Department for use of the Fire Hall Centre for the Arts on February 12, 2016.

CARRIED UNANIMOUSLY

**Burns Bog Drainage  
Update (F.07)**

Report by the Engineering Department and Climate Action and Environment Departments dated December 17, 2015 regarding Burns Bog Drainage Update. (File: D16-440)

-- Presentation

Dr. Sarah Howie, Urban Environmental Designer, provided a PowerPoint presentation (On File) regarding an update on Burns Bog Drainage. In the course of the update, and in response to Council queries, Dr. Howie advised:

- As a result of the Burns Bog Management Agreement, Delta is responsible for the drainage management of Burns Bog.

- In 2015, a contractor built 10 dams, bringing the total number of dams to 236.
- The water level monitoring program has been in place since 2005. The 2015 drought led to the lowest water table in 10 years.
- Two culverts under 80<sup>th</sup> Street were removed to protect the bog from irrigation water.
- The development of a water balance model for Burns Bog is a priority item in the Burns Bog Management Plan. This tracks the amount of water entering the bog through rainfall and the amount of water leaving through drainage and evapotranspiration.
- 2015 water balance model studies included outflow monitoring and hydraulic conductivity by Delta, and lateral flow and evapotranspiration monitoring by the University of British Columbia (UBC).
- 2016 water balance model studies will include outflow monitoring, hydraulic conductivity, and pond and ditch monitoring by Delta, and rainwater interception by UBC.
- In the fall of 2015, FortisBC undertook a project removing sand fill at the northern edge of Burns Bog to reduce the stress on the pipeline.
- Sustainable recreation refers to activities in the Delta Nature Reserve that are low impact to the environment.

-- Recommendation  
Endorsed

MOVED By Cllr. Bishop,  
SECONDED By Cllr. King, THAT this report be provided to the Environment Advisory Committee for information.

CARRIED UNANIMOUSLY

**Traffic Calming on 50B St. (F.08)**

Report by the Engineering Department dated December 11, 2015 regarding Traffic Calming on 50B Street. (File: 5220-25/50B St)

-- Recommendation  
Endorsed

MOVED By Cllr. Kanakos,  
SECONDED By Cllr. King, THAT staff proceed with detailed design and construction of a series of speed humps on 50B Street between 8A Avenue and 12 Avenue.

CARRIED UNANIMOUSLY

In response to Council queries, the Director of Engineering advised:

- Delta has a Neighbourhood Traffic Calming Policy which was endorsed by Council in May 2003.
- When traffic concerns are received from the community, staff review the speed and daily traffic count on that street. A point scale is used to determine whether traffic calming measures are needed. Traffic calming surveys are then sent to area residents. If 50% of the surveys are returned with 60% in favour of the traffic calming measures, then staff will proceed.
- Traffic calming measures on 50B Street will be constructed in the spring when the weather is nicer.

**2016 FCM Resolutions (F.09)**

Report by the Human Resources and Corporate Planning Department dated November 24, 2015 regarding FCM Resolutions 2016.

-- Recommendation  
Endorsed

MOVED By Cllr. King,  
SECONDED By Cllr. Kanakos, THAT the following resolutions, included as Attachment 'A' to this report, be forwarded to the Federation of Canadian Municipalities for consideration at the 2016 Annual General Meeting:

- (i) Tax incentives to prevent food waste in Canada.
- (ii) Downloading of DNA analysis costs to municipal police agencies.

CARRIED UNANIMOUSLY

In response to a Council query, the Director of Human Resources and Corporate Planning advised staff will report back on the outcome of the 2015 UBCM resolution related to mental health.

**Deltaport 3<sup>rd</sup> Berth  
Adaptive Mgmt.  
Strategy Report (F.10)**

Report by the Human Resources and Corporate Planning Department dated December 7, 2015 regarding Deltaport Third Berth Adaptive Management Strategy Final Report.

-- Recommendations  
Endorsed

MOVED By Cllr. Campbell,  
SECONDED By Cllr. Kanakos,

- A. THAT Port Metro Vancouver be requested to report back annually to Delta with respect to ongoing environmental monitoring related to the Deltaport Third Berth project.
- B. THAT Port Metro Vancouver be requested to respond to the recommendation of the Scientific Advisory Committee "that future monitoring programs associated with port development encompass a higher temporal and spatial frequency of macrofaunal sampling".
- C. THAT the Deltaport Third Berth *Adaptive Management Strategy 2014 Annual Report* and response from the Scientific Advisory Committee, included as Attachment 'A' of the report, be forwarded to Delta's Environment Advisory Committee for review and comment.

CARRIED UNANIMOUSLY

In response to a Council query, the Chief Administrative Officer advised that staff will invite Port Metro Vancouver to an upcoming Council workshop to provide an overview of the Deltaport 3<sup>rd</sup> Berth Adaptive Management Strategy Report.

**Roberts Bank T2 Env.  
Assessment Update  
(F.11)**

Report by the Human Resources and Corporate Planning Department dated December 15, 2015 regarding Roberts Bank Terminal 2 Environmental Assessment Update.

-- Report Received

MOVED By Cllr. Bishop,  
SECONDED By Cllr. King, THAT this report be received for information.

CARRIED UNANIMOUSLY

In response to Council queries, the Director of Human Resources and Corporate Planning advised:

- Although the Environmental Assessment is still in the early stages, Port Metro Vancouver (PMV) has provided a shortlist of potential terminal operators as they would likely want any future operator to have input into the terminal project.
- There is no time limit on how long the regulatory clock can be stopped.

**New Bldg. Can. Fund –  
2<sup>nd</sup> Call for  
Applications (F.12)**

-- Recommendations  
Endorsed

Report by the Human Resources and Corporate Planning Department dated January 4, 2016 regarding New Building Canada Fund – Second Call for Applications.

MOVED By Cllr. McDonald,  
SECONDED By Cllr. King,

- A. THAT an application for funding for the Emergency Operations Centre/Training Centre/Fire Hall be submitted to the New Building Canada Fund - Small Communities Fund (second intake).
- B. THAT a copy of the application be provided to Mayor and Council, Scott Hamilton, MLA Delta North, Vicki Huntington, MLA Delta South, and the Honourable Carla Qualtrough, Member of Parliament for Delta.

CARRIED UNANIMOUSLY

**DP – 536 Centennial  
Parkway (F.13)**

-- Recommendations  
Endorsed

Report by the Community Planning and Development Department dated December 18, 2015 regarding Development Permit at 536 Centennial Parkway (Dubord). (File: LU007636)

MOVED By Cllr. Campbell,  
SECONDED By Cllr. King,

- A. THAT the, application for Development Permit LU007636 be issued with the following conditions:
  1. Enter into a Section 219 Restrictive Covenant to ensure construction of the seawall is consistent with the design provided by Took Engineering Inc. dated July 10, 2015, and to set out maintenance requirements for the seawall to the satisfaction of the Director of Engineering; and
  2. Enter into a Section 219 Restrictive Covenant for flood proofing and to save Delta harmless from all claims arising from the proposed development and any events of flooding and debris flow.
- B. THAT the Mayor and Municipal Clerk be authorized to sign all documents pertaining to this development.

CARRIED UNANIMOUSLY

**Healthy Comm.  
Partnership – My**

Report by the Parks, Recreation and Culture Department dated December 30, 2015 regarding Healthy Community Partnership – *My Health My Community*. (File: 14060-01)

**Health My Community  
(F.14)**

MOVED By Cllr. Bishop,  
SECONDED By Cllr. King,

- A. THAT the Corporation of Delta continue to endorse the five areas of collaboration as identified in this report.
- B. THAT senior staff continue to participate at Healthy Community Partnership meetings.

-- Amendment  
Endorsed

MOVED By Cllr. Kanakos,  
SECONDED By Cllr. Bishop, THAT the main motion be amended to add:

- C. THAT a copy of the report be referred to the Environment Advisory Committee's Active Transportation Sub-Committee for information.

CARRIED UNANIMOUSLY

-- Main Motion  
Endorsed as Amended

Question was called on the main motion as amended.

CARRIED UNANIMOUSLY

**G. MOTIONS ON NOTICE**

No items for this meeting.

**H. CORRESPONDENCE**

**INFORMATION ITEMS**

The Municipal Clerk advised that a new copy of Correspondence #6 was provided On Table which includes a revised comment box. The Chief Administrative Officer noted that the revised comment box includes updated information on the increased threshold for the Home Owner Grant.

**Correspondence for  
Information (External)  
(H.01)**

13 items of external correspondence for information circulated to Council as of January 6, 2016.

-- Correspondence  
Received

MOVED By Cllr. Campbell,  
SECONDED By Cllr. Bishop, THAT the correspondence be received for information.

CARRIED UNANIMOUSLY

Council requested that item #13 be referred to New Business.

**I. NOTICE OF MOTIONS**

No items for this meeting.

**J. ENQUIRIES, OTHER MATTERS AND NEW BUSINESS**

**Municipalities: Top 13  
Actions to Support**

Correspondence from S. Cadieux, Minister of Children and Family Development, dated December 18, 2015 regarding "Municipalities: Top 13 Actions to Support Local Child Care Needs." (#13)



**Appendix "G" to the Owner's Written Submissions  
Delta's Response to Court Petition**



No. S-163477  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

667895 B.C. LTD. and ABBOTSFORD CONCRETE PRODUCTS LTD.

PETITIONERS

AND

THE CORPORATION OF DELTA

RESPONDENT

**RESPONSE TO PETITION**

**Filed by:** The Corporation of Delta ("Delta" or the "petition respondent")

THIS IS A RESPONSE TO the petition filed April 18, 2016.

**Part 1: ORDERS CONSENTED TO**

The petition respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the petition: none.

**Part 2: ORDERS OPPOSED**

The petition respondent opposes the granting of the orders set out in the following paragraphs of Part 1 of the petition: all.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The petition respondent takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the petition: none.

**Part 4: FACTUAL BASIS**

1. The roadway in issue in this proceeding ("90<sup>th</sup> Street") is located in an industrial area of Delta, near Annacis Island and Tilbury Island. The Petitioners' property lies to the west of 90<sup>th</sup>

Street and has a civic address 8910 River Road. The property on the east side of 90<sup>th</sup> Street, across the street from the Petitioners' property, has a civic address 8970 River Road.

2. Prior to the 1990s, development in this area of Delta, and the local road network, were limited. Delta planned to expand the road network as further development and subdivision took place. River Road was the main access road for the area, but Delta's long term plan was that River Road would be a main thoroughfare, rather than providing direct access to adjacent properties. Adjacent properties would have access from secondary roads connecting to River Road, such as 90<sup>th</sup> Street.

3. In 1998, consistent with the policy described above, Delta procured Covenant #BM004376 (the "Access Covenant") and Covenant #BM004378 (the "Dedication Covenant") from the Petitioners' predecessor in title. Both covenants were duly registered in the Land Title Office against title to the Petitioners' property.

4. The Access Covenant, provided, inter alia, that the existing access from River Road to the Petitioner's property would be abandoned, and that access would be via 90<sup>th</sup> Street instead.

5. The Dedication Covenant provided, inter alia, that the owner of the Petitioners' property would dedicate sufficient additional highway land to expand 90<sup>th</sup> Street to a width of 12 meters. The dedication was to be completed, at the latest, within 30 days following issuance of a particular building permit (No. 3585), but was not completed in a timely manner.

6. Both the Access Covenant and the Dedication Covenant were on title when the Petitioners acquired their property in 2003.

7. In 2006, Delta decided to enforce its right under the Dedication Covenant. At the same time, Delta negotiated with the Petitioner to acquire additional land, both along 90<sup>th</sup> Street (to widen 90<sup>th</sup> Street further), and near the intersection of 90<sup>th</sup> Street and River Road (to realign the intersection and to accommodate widening of River Road). The Petitioners were compensated for the additional land, but not for the land that was subject to the Dedication Covenant, as that covenant ran with the Petitioners' land, and was thus a pre-existing legal obligation of the Petitioners.

8. In 2007, Delta undertook an expansion of River Road. At the time, the condition of 90<sup>th</sup> Street was as follows:

- (a) A fence running near to the northern boundary of the Petitioners' property extended past the eastern boundary of the Petitioners' property, effectively blocking direct access to 90<sup>th</sup> Street from River Road. The fence ran in a northwest to southeast direction (at varying angles), and effectively forced any vehicle traffic coming off River Road across to the other side of 90<sup>th</sup> Street, and onto the property at 8970 River Road.
- (b) The 90<sup>th</sup> Street road allowance was not being used as a highway. Instead, it contained numerous abandoned vehicles and abandoned pieces of machinery, and other parts of the road allowance were used for parking from time to time. Part of the road allowance at the southern end was overgrown with vegetation.

In violation of the Access Covenant, the Petitioner was continuing to access its property directly from River Road.

9. In addition to widening and upgrading River Road, the work undertaken in 2007 included the following work on 90<sup>th</sup> Street:

- (a) widening 90<sup>th</sup> Street to include the additional road dedication area;
- (b) removing and relocating part of the Petitioners' fence to the eastern boundary of the Petitioners' property so that the fence no longer blocked access to 90<sup>th</sup> Street (although the Petitioners' fence still encroaches on the present road allowance, because a significant portion of it does not follow the existing property line accurately);
- (c) removing the existing asphalt to a distance of 25 metres south of the intersection with River Road, and placing new asphalt on that area;
- (d) upgrading and installing a snow fence along the eastern shoulder of 90<sup>th</sup> Street; and
- (e) adding new gravel to the western shoulder of 90<sup>th</sup> Street.

With respect to item (b), the existing asphalt continued south on 90<sup>th</sup> Street for a further distance of approximately 50 meters, so that 90<sup>th</sup> Street became a paved road for a distance of approximately 75 meters. The remainder of 90<sup>th</sup> Street was left as a gravel road.

10. Subsequent to the work described above, the Petitioners continued to access their property directly from River Road (in breach of the Access Covenant). 90<sup>th</sup> Street continued to be the only means of access to 8970 River Road. The owner of 8970 River Road operates a truck terminal at that site, and has maintained the gravel section of 90<sup>th</sup> Street at its own expense. The gravel section of 90<sup>th</sup> Street has required regular re-gravelling, re-compacting, and re-grading to keep it in a condition suitable for the heavy semi-trailer transport trucks travelling to and from 8970 River Road. The cost to the owner of 8970 River Road has been in excess of \$10,000 per year, on average.

11. Several years following the events described above, Delta's long-term traffic plan for the area was fundamentally affected by the construction of Provincial Highway 17, in or about 2013. Highway 17 runs parallel to River Road, a short distance to the south. The construction of Highway 17:

- (a) obviated the need for River Road to be the principal thoroughfare in this area of Delta;
- (b) cut off 90<sup>th</sup> Street from other municipal roads to the south of the highway; and therefore
- (c) limited the utility of 90<sup>th</sup> Street as a component of the municipal road system.

12. In addition, a railway right of way is located to the south of the properties in issue, between those properties and Highway 17. At present, Delta has a private crossing agreement

which permits Delta to use the railway crossing but requires Delta to ensure the crossing is secured from use by unauthorized users, namely the general public. Further, the owners of the right of way have taken the position that that they oppose any expansion in the use or users of the crossing to include use by the general public.

13. As a result of the facts describe in paragraphs 11 and 12, 90th Street became unnecessary and obsolete for Delta's purposes as a municipal road. Accordingly, in 2015 Delta Council resolved to market 90<sup>th</sup> Street for sale. Both the Petitioners and the owner of 8970 River Road were invited to submit bids for the land, and the Petitioners were given the opportunity to present written submissions to Delta's municipal council in support of their position (in accordance with Delta's standard practice). The owner of 8970 River Road submitted the higher bid, which was accepted by Delta.

**Part 5: LEGAL BASIS**

1. Section 40(6) of the *Community Charter* does not require that Delta obtain the Petitioners' consent prior to removing the dedication of 90<sup>th</sup> Street or closing it.

- (a) 90<sup>th</sup> Street has been developed for its intended purpose, within the meaning of the *Community Charter*; and therefore the criterion in s. 40(6)(a) is not met; and
- (b) 90<sup>th</sup> Street has been a dedicated road since at least 1981, as shown on Plan 62681. The additional dedicated area (other than the small portion Delta purchased from the Petitioners) was effectively obtained from the Petitioners' predecessor in title pursuant to the Dedication Covenant in 1998, five years prior to the Petitioners' ownership of 8910 River Road;
- (c) Accordingly, the Petitioners was not the owner of 8910 River Road when 90<sup>th</sup> Street was dedicated as highway, and therefore the criterion in s. 40(6)(b) is not met.

2. Delta met any applicable duty of procedural fairness, and each of its statutory obligations in respect of the sale of 90<sup>th</sup> Street and adoption of Bylaw No. 7421, 2015, by :

- (a) Meeting with Mr. Leach and advising him of an existing offer for 90<sup>th</sup> Street on May 25, 2015;
- (b) Providing advance notice that staff would recommend against accepting Mr. Leach's initial offer (June 4, 2015);
- (c) Offering to explain how Delta's plans with respect to 90<sup>th</sup> Street had changed over time to any representative of the Petitioners, including legal counsel (June 4, 2015);
- (d) Inviting Mr. Leach to submit a second offer so as to be competitive with the other offer Delta had received (June 4, 2015);

- (e) After receiving Mr. Leach's second offer, advising the Petitioners' realtor that Delta had received another offer so as to afford the Petitioners' the opportunity to submit a third offer (June 12, 2015);
- (f) Two days after Council approved the sale of 90<sup>th</sup> Street to the third party, advising Mr. Leach by phone that
  - a. Council had approved the other offer
  - b. Staff did not recommend acceptance of his offer
  - c. Mr. Leach's offer was more than \$200,000 lower than the other offer; and
  - d. Council had received Mr. Leach's letters(June 24, 2015);
- (g) Confirming to the Petitioners' solicitor that a bylaw had to be adopted prior to the completion of the sale (July 8, 2015);
- (h) Providing notice to the Petitioners' solicitor that the Bylaw was to be introduced and that he or Mr. Leach could attend in person or watch the proceedings live via the internet (October 19, 2015);
- (i) Providing notice to the Petitioners that the Bylaw had received three readings (October 19, 2015);
- (j) Providing notice to the Petitioners' solicitor that the Bylaw received three readings (November 3, 2015);
- (k) Providing a copy of the notice of proposed road closure directly to the Petitioners' solicitor (November 3, 2015);
- (l) Advising the Petitioners' solicitor that there would not be a public hearing but that the Petitioners' could make written submissions or request to appear as a delegation before Council (November 3, 2015);
- (m) Advising the Petitioners' solicitor that permission to appear as a delegation before Council may or may not be granted (November 3, 2015);
- (n) Providing advance notice to the Petitioners' solicitor that written submissions had to be submitted by November 13, 2015 (November 3, 2015);
- (o) Providing advance notice to the Petitioners' solicitor that submissions would be presented to Council on November 16 or 23, 2015 and that Council would likely be considering adoption of the Bylaw thereafter (November 3, 2015);

- (p) Advising the Petitioners' solicitor that without permission to appear as a delegation before Council, neither he nor the Petitioners would be able to speak at the meeting when Council would consider adoption of the Bylaw (November 3, 2015).
- (q) Rescheduling the adoption of the Bylaw after receiving the Petitioners' letter of November 12, 2015 to enable Delta to consider the letter, and advising the Petitioners' legal counsel of this (December 4, 2015); and
- (r) Personally advising Mr. Leach and the Petitioners' solicitor that Delta had adopted the Bylaw (March 1, 2016 and March 14, 2016 respectively).

3. Section 40 of the *Community Charter* gives discretion to Delta to determine the nature of the consultative process prior to highway disposition. Delta was entitled to receive written submissions, and not receive oral submissions, from the Petitioners, particularly when the Petitioners did not request to appear as a delegation in accordance with Delta's Delegation Protocol.

4. There is no basis for a claim that Delta's decision to close 90<sup>th</sup> Street is impugned under the doctrine of reasonable apprehension of bias. When faced with the opening of Highway 17 and opposition to 90<sup>th</sup> Street crossing a railway right of way, Delta made the decision, as it was entitled to do, that 90<sup>th</sup> Street was no longer necessary for municipal purposes. In seeking the highest possible price, it acted responsibly, in keeping with its stewardship obligations in respect of municipal assets and its obligations to the taxpayers.

5. In *Newfoundland Telephone Co. v. Newfoundland (Public Utilities Board)*, 1992 CanLII 84 (SCC), [1992] 1 S.C.R. 623, 89 D.L.R. (4th) 289, the Supreme Court of Canada considered this issue at 638-9:

[T]here is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the board should be such that there could be no reasonable apprehension of bias with regard to their decision. At the other end of the scale are boards with popularly elected members such as those dealing with planning and development whose members are municipal councillors. With those boards, the standard will be much more lenient. In order to disqualify the members a challenging party must establish that there has been a pre-judgment of the matter to such an extent that any representations to the contrary would be futile. Administrative boards that deal with matters of policy will be closely comparable to the boards composed of municipal councillors. For those boards, a strict application of a reasonable apprehension of bias as a test might undermine the very role which has been entrusted to them by the legislature.

6. In *McLaren v. Castlegar (City)*, 2011 BCCA 134, the Court of Appeal unanimously held:

[34] Where a matter that comes before a municipal council is a matter of policy, a member of council will not be disqualified for being pre-disposed in one direction or

another. What is necessary is simply that the councillor be willing to listen to the submissions; as long as the councillor is not impervious to submissions such that any arguments would be futile, he or she will not be disqualified on grounds of bias: *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170, 75 D.L.R. (4th) 385; *Save Richmond Farmland Society v. Richmond (Township)*, 1990 CanLII 1132 (SCC), [1990] 3 S.C.R. 1213, 75 D.L.R. (4th) 425.

7. It follows that Bylaw No. 7421, 2015 was lawfully and validly adopted, and there is no impediment to Delta disposing of the closed road.
8. Sections 33(2) and 41(2) of the *Community Charter* have no application to the case at bar.
9. Part 8 of the *Land Title Act* likewise has no application to the case at bar. As set out in the Petition at paragraphs 57 and 59, an owner of property adjacent to an unused dedicated road allowance has a right to apply to cancel the unused dedicated road allowance. Since at least 2007, 90<sup>th</sup> Street has been continuously used to access the property located at 8970 River Road, which has no other road access and in particular does not have direct access to River Road. (*Ratzlaff v. Smith*, 1999 CanLII 6647 (BC SC), at para 14)
10. For the reasons set out in paragraph 9 above, *Acro Pace Projects Ltd. and Seiler Holdings Ltd. v. Registrar of New Westminster Land Title District and Attorney General of British Columbia* (1982), 35 B.C.L.R. 315 (S.C.) and *Maple Ridge (District of) v. British Columbia (Registrar, New Westminster Land Title Office)*, 1991 CanLII 871 (BC SC) are likewise not of assistance to the Petitioners. In addition, those cases were decided in 1982 and 1991, respectively. In 2004 the Province enacted the *Community Charter*, which, *inter alia*:
  - (a) Vested ownership of (most) highways in municipalities, rather than the Crown;
  - (b) Granted municipal councils extensive authority and jurisdiction over highways, including the authority to close highways and remove their dedications (previously this power was held by the minister or Cabinet);
  - (c) Provided specific statutory prerequisites to the exercise of such power, thereby superseding the principles of common law including any duty of procedural fairness which previously may have applied.
11. Furthermore, in 2004 the Province also deposited the *Resumption of Highways Regulation*, which, *inter alia*, cancels the Provincial right of resumption in highways that have been closed and had their dedication removed by municipal bylaw, where the land is disposed of to an adjacent landowner for consolidation with their existing adjacent parcel.

#### **Part 6: MATERIAL TO BE RELIED ON**

1. The respondent relies on

- (a) Affidavit #1 of Greg Vanstone made 26/May/2016
- (b) Affidavit #1 of Steven Trent Reid made 1/June/2016
- (c) Affidavit #1 of Shinda Aheer made 1/June/2016

The petition respondents estimate that the application will take one day.

Date: June 2, 2016

  
.....  
Signature of lawyer for petition respondents

Paul Hildebrand

Petition respondents' address for service: 1300-128 West Pender Street, Vancouver, B.C., V6B 1R8

Fax number address for service: 604-899-2281

E-mail address for service: hildebrand@lidstone.info

Name of the petition respondents' lawyer: Paul Hildebrand

Appendix "H" to the Owner's Written Submissions  
Photo No. 1



Appendix "H" to the Owner's Written Submissions  
Photo No. 2



MAERSK LINE

Appendix "H" to the Owner's Written Submissions  
Photo No. 3



MAERSK  
SEALAND



Appendix "H" to the Owner's Written Submissions  
Photo No. 4



Appendix "H" to the Owner's Written Submissions  
Photo No. 5



Appendix "H" to the Owner's Written Submissions  
Photo No. 6



Appendix "H" to the Owner's Written Submissions  
Photo No. 7



Appendix "I" to the Owner's Written Submissions  
Google Earth Image No. 1



**Appendix "I" to the Owner's Written Submissions  
Google Earth Image No. 2**



**Appendix "I" to the Owner's Written Submissions  
Google Earth Image No. 3**



**Appendix "I" to the Owner's Written Submissions  
Google Maps Image No. 1**



Appendix "I" to the Owner's Written Submissions  
Google Maps Image No. 2

