



RYAN W. PARSONS  
DIRECT: 604 899 5208  
RPARSONS@EYFORDPARTNERS.COM

06 November 2025

**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: Owner's Response to Engineering Department's Proposed Resolutions under section 132 of the *Land Title Act* in Response to Petition to Cancel Part of 90 Street Dedicated on Plan BCP27703 ("Land Title Petition")**

---

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 14 October 2025 report to council (the "**2025 Engineering Report**"), as well as to provide additional responses to the Engineering Department's 11 April 2023 report to council (the "**2023 Engineering Report**"). We will refer to those reports, collectively, as the "**Engineering Reports**".
3. We ask that this letter (as well as the Owner's submissions dated 20 April 2023 ("**Owner's Initial Submissions**")<sup>1</sup>) be brought to the attention of the members of Council in advance of the regular meeting scheduled for 17 November 2025.

---

<sup>1</sup> The Owner's Initial Submissions are found at Attachment B (pp. 1 of 87) to the 2025 Engineering Report.

**EYFORD PARTNERS LLP**  
[eyfordpartners.com](http://eyfordpartners.com)

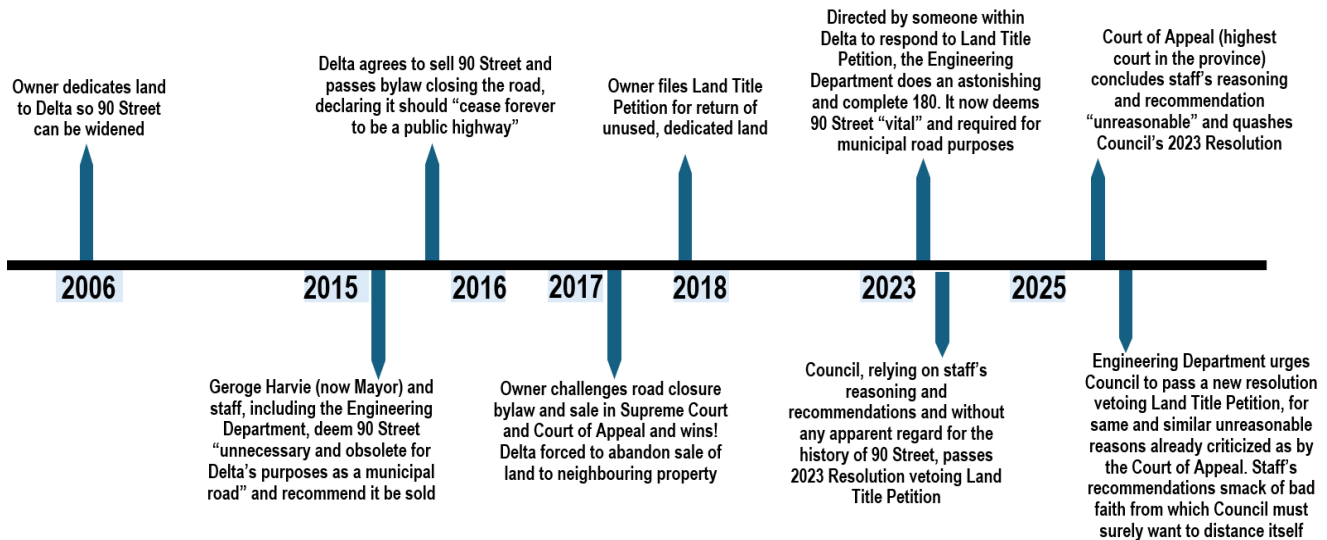
☒ 1744 - 1055 Dunsmuir Street  
PO Box 49254  
Vancouver, BC V7X 1L2  
P: 604 899 5240 F: 604 899 5216

☐ 207—3500 Carrington Road  
West Kelowna, BC V4T 3C1  
P: 778 754 0285 F: 778 754 0287

## I. OPENING STATEMENT TO MEMBERS OF COUNCIL

Dear Members of Council:

4. At the outset, here's a timeline of key events relevant to the issue now before you:



5. Delta's Engineering Department is once again recommending that you pass a resolution declaring that an unused, unimproved 4m-wide strip of a narrow, neglected, and forgotten gravel municipal road is required by the City of Delta ("**Delta**") for highway purposes. Staff makes its current recommendation in order to defeat the Owner's Land Title Petition to recover that unused strip, which the Owner gave to Delta for free nearly 20 years ago so that the existing road could be widened.

6. The widening of 90 Street would have been important and beneficial to the Owner's business operations at the Property, and the Owner has waited patiently for Delta to undertake such promised improvements. No such improvements have ever been made.

7. Staff's current recommendation is, to put it mildly, rather surprising. Only a decade ago now-Mayor Harvie and the same Engineering Department personnel deemed 90 Street in its entirety to be "unnecessary" and "obsolete" as a municipal road. In their view the whole road was "surplus" land, and they recommended that Council pass a bylaw to close and sell it to the owner 8970 River Road. The Owner successfully applied to court to block those moves.

8. Instead of receiving the benefit of an improvement (widening) to 90 Street, the Owner has had to address irreconcilable flip-flopping positions and evidence from staff, including now-Mayor Harvie and the Engineering Department. For example, staff first says that 90 Street is "obsolete" as a municipal road, isn't needed by Delta, and should

be sold; and then, a mere handful of years later, citing no material changes and offering reasons that do not withstand scrutiny, staff says no, actually, 90 Street is a vital part of Delta's road network. Staff's public and unjustified reversal of positions regarding 90 Street have now been extensively addressed *twice* by the courts, and the Court of Appeal recently criticized staff's reasoning and quashed the decision of Council based on it. Staff's current recommendations raise serious concerns issues about the consistency, transparency, and integrity of Delta's decision making at the staff level.

9. The Owner urges Council members to assess staff's reasoning carefully and critically. Do not accept it at face value; it does not withstand scrutiny. Take the Owner's word for it, for the reasons set out in detail below.

10. And don't just take the Owner's word for it; take that of the Court of Appeal for British Columbia. The Court of Appeal, the highest court in the province, largely agreed with the Owner's trenchant criticisms of the same reasoning the Engineering Department's continues to rely on. The Court found such reasoning to be *unreasonable* and it consequently quashed Council's 2023 Resolution because it wasn't "justified, transparent, or intelligible."

11. In support of the new resolution the 2025 Engineering Report urges Council to pass, the Engineering Department continues to rely on the reasoning in its 2023 Engineering Report that the Court of Appeal found to be legally unreasonable. Now, in its 2025 Engineering Report it also offers a few new, additional reasons why its proposed resolution should be passed. Unfortunately, the new reasons are as unreasonable and fare no better than the old: they simply do not justify the outcome urged by staff, having regard to the factual and historical context in the voluminous record now before Council.

12. The Owner urges the members of Council to distance itself from staff's unreasonable and tainted reasoning and recommendations. The Owner recognizes that the Engineering Department is directed by someone within Delta and that in making the recommendations in its report the Engineering Department are likely simply doing what they have been directed to do. Regardless, in all of the circumstances, especially the history of Delta's consideration and treatment of 90 Street, the directions given to staff and staff's ultimate recommendations smack of bad faith, are continuing to waste local taxpayers' money, and perpetuate the unfair and unreasonable treatment of the Owner, a business that has long supported the community.

13. Council should reject staff's latest effort to block the Land Title Petition and decline to pass the proposed resolution.

14. These submissions are organized as follows:

<b>I.</b>	<b>Opening Statement to Members of Council .....</b>	<b>2</b>
<b>II.</b>	<b>Introduction And Summary of Owner’s Position Opposing Recommended Resolutions .....</b>	<b>5</b>
<b>III.</b>	<b>Relevant Factual Background .....</b>	<b>6</b>
	A. The Property and Road-Widening Covenant .....	6
	1. Owner Purchases Property to Operate Local Business .....	6
	2. Road-Widening Covenant .....	7
	B. Owner Dedicates Unimproved Road Area .....	7
	C. Council Adopts 90 Street Closure Bylaw .....	8
	1. Staff Recommends Closing and Selling 90 Street.....	8
	2. Council Gives First, Second, and Third Readings to 90 Street Closure Bylaw .....	9
	3. Council Finally Considers and Adopts 90 Street Closure Bylaw ...	10
	D. Court Quashes 90 Street Closure Bylaw .....	10
	E. Owner Files Petition to Cancel Dedication of Unimproved Road Area ....	12
	1. Scope of Relief Sought in Petition.....	12
	2. Approving Officer Report.....	12
	3. 2023 Engineering Report .....	13
<b>IV.</b>	<b>Council’s 2023 Resolution Vetoing Land Title Petition Unreasonable and Quashed By Court of Appeal.....</b>	<b>13</b>
	1. Council Passes 2023 Resolution Vetoing Land Title Petition.....	13
	2. Court of Appeal Quashes 2023 Resolution Because it was Unreasonable.....	13
<b>V.</b>	<b>Resolution Recommended in 2025 Engineering Report .....</b>	<b>14</b>
<b>VI.</b>	<b>Issue Before Council.....</b>	<b>15</b>
<b>VII.</b>	<b>Council Should Decline to Pass a Resolution Opposing the Land Title Petition .....</b>	<b>15</b>
	A. Law and Principles Governing Council’s Discretionary Authority to Pass Resolution Opposing Petition.....	15
	B. No Plausible Basis to Conclude that Unimproved Road Area is Required for Highway Purposes.....	16
	1. Unimproved Road Area Not Required for Highway Purposes.....	16
	2. Reasoning in 2023 Engineering Report Unreasonable and Does Not Justify Proposed Resolution .....	18
	3. Reasoning in 2025 Engineering Report Unreasonable and Does Not Justify Proposed Resolution .....	21

## II. INTRODUCTION AND SUMMARY OF OWNER'S POSITION OPPOSING RECOMMENDED RESOLUTIONS

15. The Owner has set out below in greater detail the factual background relevant to the issue now before Council (see paragraphs 24 to 69), as well as detailed submissions why the reasoning in the Engineering Reports is unreasonable—why the Unimproved Road Area is *not* required for highway purposes—and does not justify the proposed resolution (see paragraphs 77 through 104).

16. By way of brief overview of the factual and legal issues, 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 90 Street.

17. Nearly two decades later, Delta still has not widened the road. 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 the Owner's Initial Submissions.<sup>2</sup>

18. Delta's consideration and treatment of 90 Street, and the narrow strip of the Unimproved Road Area, is impossible to reconcile or justify.

19. In brief, a decade ago, Mayor Harvie (then Chief Administrative Officer) and the Engineering Department (*per* Steven Lan) endorsed the closure and sale of the entire road because, as the City's solicitor swore in an affidavit filed in court, *90 Street was "unnecessary and obsolete for Delta's purposes as a municipal road."*<sup>3</sup> Council adopted the 90 Street Road Closure Bylaw in 2016 to close and sell the road, declaring in the bylaw that 90 Street "shall cease forever to be a public highway." The Owner's subsequent court challenge prevented that closure and sale.

20. Then, just over two years ago, in response to the Owner's Land Title Petition, the Engineering Department (also *per* Steven Lan) did a 180: in its 11 April 2023 report to council (the "**2023 Engineering Report**"),<sup>4</sup> and despite all the earlier reports and statements from Delta's staff (sworn and otherwise) about 90 Street's obsolescence, the Engineering Department claimed 90 Street *is* required for highway purposes. Regrettably, Council agreed with staff and adopted the 2023 Engineering Report as its reasons for passing the 2023 Resolution.

---

<sup>2</sup> See Attachment B (pp. 76-87 of 87) to the 2025 Engineering Report. For ease of reference, we have enclosed copies of Appendices H and I with this letter.

<sup>3</sup> See paragraphs 9-11 of the affidavit #1 of Greg Vanstone made on 26 May 2016, found at Attachment A (pp. 206-207 of 328) to the 2025 Engineering Report.

<sup>4</sup> See Attachment A (pp. 1-328 of 328) to the 2025 Engineering Report.

21. The Court of Appeal for British Columbia recently concluded that staff's 2023 Engineering Report, on which staff continues to rely in support of the proposed resolution, was *unreasonable*, that Council's previous resolution based on that report was not sufficiently justified, transparent, or intelligible, and that the resolution had to be quashed. The Court awarded costs to the Owner in both the trial and appellate courts.

22. Now, in its 2025 Engineering Report, the Engineering Department takes another kick at the can. Implausibly, it continues to maintain that the Unimproved Road Area *is* required for highway purposes, for the (now court-confirmed) unreasonable reasons set out in the 2023 Engineering Report, but also now for some additional yet vague, unpersuasive reasons. The additional reasons, like those in the earlier report, do not withstand scrutiny. Among other things, they are undermined by facts on the ground, *i.e.*, the physical features and limitations of 90 Street itself, and by the sworn evidence tendered by Delta in previous court proceedings.

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

### III. RELEVANT FACTUAL BACKGROUND

24. 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

25. 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.

26. 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 90 Street on the east.

27. 90 Street runs north-south, terminating, on the north end, at River Road. 90 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>5</sup>

## 2. Road-Widening Covenant

28. 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 90 Street (the “**Road-Widening Covenant**”). Specifically, Under the Road-Widening Covenant, the Owner agreed to the following dedication to widen 90 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 “**90 Street Dedication Area**”).

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

### **B. OWNER DEDICATES UNIMPROVED ROAD AREA**

30. 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 90 Street Dedication Area.

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

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

33. As a result, a significant part of the 90 Street Dedication Area 4.38m wide and 387.5m long, *i.e.*, the Unimproved Road Area, has remained undeveloped for road-

---

<sup>5</sup> See, generally, the colour photographs, Google Satellite images, and video recording, each of which is as Appendices “H”, “I”, and “J” to the Owner’s Initial Submissions, found at Attachment B (pp. 76-87 of 87) to the 2025 Engineering Report, also **enclosed for ease of reference**.

widening purposes, despite the purpose of the dedication contemplated by the Road-Widening Covenant and 2006 dedication of the 90 Street Dedication Area. Accordingly, for over 16 years the area of 90 Street actually used as a public highway has not exceeded its original width of 7.62m.

34. 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 2023 Engineering Report.

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

#### **1. Staff Recommends Closing and Selling 90 Street**

35. As the 2023 Engineering Report notes,<sup>6</sup> in 2014 Delta Council directed staff to identify potentially surplus lands within Delta that could be sold to generate revenue.

36. To that end, in late 2015 Delta's Legal Services Department prepared a report to council recommending that Council adopt a bylaw, in accordance with section 40 of the *Community Charter*, to close 90 Street, cancel the dedication over the entire roadway, and create a fee simple parcel for sale (the "**2015 Staff Report**").<sup>7</sup>

37. 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>8</sup>

38. 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>6</sup> See Attachment A (p. 3 of 328) to the 2025 Engineering Report.

<sup>7</sup> A copy of the 2015 Staff Report (and its two attachments) is found at Attachment B (p. 22 of 87) to the 2025 Engineering Report.

<sup>8</sup> See 2015 Staff Report, pp. 1 and 3.

39. In addition to advising Council that the Legal Services Department 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.]

40. The report concludes by noting that “[90 Street] has served its purpose and is no longer needed.”

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

41. As recommended by the Legal Services Department, at its regular meeting on 19 October 2015 Council unanimously gave first, second, and third readings to the 90 Street Closure Bylaw and directed staff to do all things necessary for the registration of the bylaw (once adopted).<sup>9</sup>

42. 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 90 Street Closure Bylaw (the “**November 2015 Memorandum**”).<sup>10</sup>

43. In the November 2015 Memorandum, Mr. Vanstone reiterated that 90 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 been published and “no public inquiries or comments” had been received in response to the notices.

---

<sup>9</sup> A copy of the Minutes of the Regular Meeting of Delta Municipal Council held on 19 October 2015 (the “**October Meeting Minutes**”) is found at Attachment B (p. 43 of 87) to the 2025 Engineering Report.

<sup>10</sup> A copy of the November 2015 Memorandum (and its attachment) is found at Attachment B (p. 29 of 87) to the 2025 Engineering Report.

44. Mayor Harvie (then CAO) also reviewed and endorsed the November 2015 Memorandum.

45. On 12 November 2015 Abbotsford delivered a letter to Delta strenuously objecting to the 90 Street Closure Bylaw.

3. Council Finally Considers and Adopts 90 Street Closure Bylaw

46. Mr. Vanstone prepared a further memorandum to Mayor and Council, dated 08 January 2016, regarding final consideration and adoption of the 90 Street Closure Bylaw (the "**January 2016 Memorandum**").<sup>11</sup>

47. 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.

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

49. 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 90 Street Closure Bylaw.<sup>12</sup>

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

50. The Owner applied for judicial review to the Supreme Court of British Columbia. It challenged the validity of the 90 Street Closure Bylaw on a number of grounds.

51. Delta opposed the application for judicial review of the 90 Street Closure Bylaw.<sup>13</sup> In doing so, among other things, Delta acknowledged that the majority of 90 Street remained an unpaved gravel road.<sup>14</sup> In paragraphs 11 through 13 of Part 1 of Delta's Response to Court Petition, Delta advised the court of the following facts, each of which was based on the affidavit evidence of its municipal solicitor:<sup>15</sup>

---

<sup>11</sup> A copy of the January 2016 Memorandum (and its attachments) is found at Attachment B (p. 35 of 87) to the 2025 Engineering Report.

<sup>12</sup> A copy of the Minutes of the Regular Meeting of Delta Municipal Council held on 11 January 2016 (the "**January Meeting Minutes**") is found at Attachment B (p. 55 of 87) to the 2025 Engineering Report.

<sup>13</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 found at Attachment B (p. 68 of 87) to the 2025 Engineering Report.

<sup>14</sup> Delta's Response to Court Petition, para. 9, Attachment B (p. 70 of 87) to the 2025 Engineering Report.

<sup>15</sup> See paragraphs 9-11 of the affidavit #1 of Greg Vanstone made on 26 May 2016, found at Attachment A (pp. 206-207 of 328) to the 2025 Engineering Report.

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 Street from other municipal road to the south of the highway; and therefore
- (c) limited the utility of 90 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, 90 Street became unnecessary and obsolete for Delta's purposes as a municipal road. Accordingly, in 2015 Delta Council resolved to market 90 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.]

52. 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>

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

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

---

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

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

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

1. Scope of Relief Sought in Petition

55. In May 2018, the Owner filed the Land Title Petition, a copy of which, together with its supporting evidence, is included in Attachment A (p. 11ff) to the 2025 Engineering Report.

56. Because the “Discussion” section of the 2023 Engineering Report repeatedly refers to the function and uses (actual or potential) of 90 Street *generally* in its reasons for opposing the Land Title Petition, it is necessary to emphasize the scope of the relief that is actually sought in the Land Title Petition.

57. The Land Title 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).

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

59. The Land Title Petition was set for hearing on 16 May 2023. (In July 2023, as a result of Council’s 24 April 2023 resolution, the land title registrar cancelled the Land Title Petition and to date it has not been reset for hearing.)

2. Approving Officer Report

60. In response to the Owner’s request, Marcy Sangret, then 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>

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

- (a) if the Land Title 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>18</sup> A copy of the Approving Officer Report is found at Attachment A (p. 298 of 328) to the 2025 Engineering Report.

- (b) 90 Street does not have any direct access to Highway 17;
- (c) the open portion of 90 Street includes no improvements such as a sidewalk, utility corridor, drainage improvements, or parking;
- (d) at 12m, 90 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 Land Title Petition would merely increase 90 Street's non-conformity (by a further 15 percent) with applicable industrial road standards; and
- (e) with regard to the actual condition and use of 90 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.

3. 2023 Engineering Report

62. Following service of the Land Title Petition, Delta's staff prepared the 2023 Engineering Report recommending that Council oppose the Land Title Petition and pass a resolution under section 132 of the *Land Title Act* declaring that the Unimproved Road Area is required for highway purposes.

63. Steven Lan, Director of Delta's Engineering Department, signed off on the 2023 Engineering Report (see p. 5).

64. As noted above in paragraph 37, Steven Lan had also signed the 2015 Staff Report, confirming that the Engineering Department had been consulted by the Legal Services Department during the preparation of the 2015 Staff Report and concurred in that report's recommendations to close 90 Street, cancel the dedication over that entire public area, and create and sell the resulting fee simple lot.

**IV. COUNCIL'S 2023 RESOLUTION VETOING LAND TITLE PETITION UNREASONABLE AND QUASHED BY COURT OF APPEAL**

1. Council Passes 2023 Resolution Vetoing Land Title Petition

65. At its regular meeting on 24 April 2023, without discussion, Council passed the resolution recommended by staff in the 2023 Engineering Report, for the reasons set out in that report (the "**2023 Resolution**"), and staff subsequently filed a certificate under section 132 of the *Land Title Act* in the land title office, a move that effectively vetoed the Land Title Petition.

2. Court of Appeal Quashes 2023 Resolution Because it was Unreasonable

66. The Owner successfully challenged the 2023 Resolution in the Court of Appeal.

67. The Court unanimously concluded that, although the outcome (*i.e.*, the decision underlying the 2023 Resolution) was not *per se* unreasonable, *that outcome together with the reasons proffered for it were unreasonable*.<sup>19</sup>

68. In the Court's view, the history of 90 Street and Delta's previous dealings in relation to it in 2015-2016 were relevant factors for determining whether the 2023 Resolution was justifiable and could in fact be justified to the Owner.<sup>20</sup> Among other fundamental concerns, the Court expressed the following regarding the reasoning in the 2023 Engineering Report:

[56] The Engineering Report reasons did not, however, meaningfully address the concerns raised by the appellant. It might be considered that the reasons attempted generally, albeit indirectly, to address the primary complaint that there had been no material change that could justify a change in Delta's position from that it took in 2015. They sought to do so by articulating a need to retain options for future road alignment in response to industrial development in the area. But that articulation was itself supported by propositions that, in the absence of further response, the appellant's submissions potentially undermined. These propositions included the inhibition of Delta's ability to provide future highway improvements, the loss of the ability to provide physical space for pedestrian and cycling infrastructure as contemplated by the OCP, and the need to facilitate the future development of 90 Street as a north-south highway connector—all in the face of the significant physical, geographical, and historical limitations the appellant described.

[57] To be responsive, the reasons required further input from the engineering department (or any other municipal staff Council chose) that explained why it would be appropriate to preserve the undeveloped dedication area for highway purposes notwithstanding the many concerns the appellant raised. The requirement (for instance) of space for pedestrian and cycling infrastructure on this very narrow road squeezed between two industrial sites, a railway, and River Road, needed re-examination in the face of the appellant's submissions. Another area that remains unaddressed is what particular changes had occurred with respect to anticipated industrial development in the area that would impact future requirements notwithstanding 90 Street's significant physical limitations.  
[underlining added]

## V. RESOLUTION RECOMMENDED IN 2025 ENGINEERING REPORT

69. In its 2025 Engineering Report the Engineering Department again recommends that Council pass a resolution under section 132 of the *Land Title Act* declaring that the Unimproved Road Area is required for highway purposes. It does so for the reasons set

---

<sup>19</sup> See *667895 B.C. Ltd. v. Delta (City)*, [2025 BCCA 279](#), para. 33.

<sup>20</sup> [2025 BCCA 279](#), para. 44.

out the 2023 Engineering Report (already found to be unreasonable by the Court of Appeal) *and* those set out in the 2025 Engineering Report.

70. We will address and respond below to the reasons in both of the Engineering Reports.

## **VI. ISSUE BEFORE COUNCIL**

71. At Council's regular meeting on 17 November 2025, we understand the following issue will be 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 2025 Engineering Report?

No. Delta has previously and unequivocally maintained, through public notices, adoption of the 90 Street Closure Bylaw, and in proceedings in the superior courts, that 90 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 nearly 20 years, is now suddenly required for highway purposes. The Court of Appeal has already confirmed that the reasoning in the 2023 Engineering Report was unreasonable and could not justify the 2023 Resolution. The additional reasons in the 2025 Engineering Report are equally unreasonable and do not provide a legal justification for the resolution recommended by staff.

## **VII. COUNCIL SHOULD DECLINE TO PASS A RESOLUTION OPPOSING THE LAND TITLE PETITION**

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

72. 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>21</sup>

73. 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

---

<sup>21</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".

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.

74. 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).

75. 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>22</sup>

76. 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.

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

1. Unimproved Road Area Not Required for Highway Purposes

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

78. 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.

79. Not so here.

80. 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 [in staff's own words] its purpose and it is no longer needed."

---

<sup>22</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) Holdgins v. Vancouver (City)*, 2021 BCCA 160, paras. 3, 8.

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

- (a) the comments regarding 90 Street's purpose and the analysis of the Legal Services Department in the 2015 Staff Report unequivocally supporting adoption of the 90 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 90 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 90 Street, and then sell it for \$1.7M;
- (d) Delta's successful effort to obtain the approval of the 90 Street Closure Bylaw from the Ministry of Transportation and Infrastructure;<sup>23</sup>
- (e) the October Meeting Minutes (E.05), at which Council gave first, second, and third reading to the 90 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 Engineering) present, Council finally considered and adopted the 90 Street Closure Bylaw;
- (g) the positions Delta took in the Supreme Court of British Columbia in opposing the application for judicial review of the 90 Street Closure Bylaw. See, in particular paragraphs 11 through 13 (inclusive) of Part 1 of Delta's Response to Court Petition (quoted above in paragraph 51). 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 90 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;

---

<sup>23</sup> See the January Memorandum (p. 2) found at Attachment B (p. 36 of 87) to the 2025 Engineering Report.

- (B) cut off 90 Street from other municipal roads to the south of Highway 17; and, therefore
  - (C) limited the utility of 90 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 90 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 90 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 81(g)(i) through (iii), “90 Street became unnecessary and obsolete for Delta’s purposes as a municipal road.” [emphasis added.]

82. The Owner is not aware—and neither the Approving Officer Report nor the Engineering Reports contain 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 90 Street Closure Bylaw on staff’s recommendations, and 2023 or 2025. There is, in short, nothing in the record that would support or justify the Engineering Department’s dramatically different discussion of the issues and conclusion that the Unimproved Road Area is now required for highway purposes.

83. 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.

2. Reasoning in 2023 Engineering Report Unreasonable and Does Not Justify Proposed Resolution

84. Because the Engineering Department continues to rely on the reasons in its 2023 Engineering Report,<sup>24</sup> the Owner will address each of the six reasons set out in that report as justifying the resolution now proposed by the Engineering Department.

---

<sup>24</sup> See pages 3-5 of that report, found in Attachment A (pp. 3-5 of 328) to the 2025 Engineering Report.

a) *First Reason at Odds with Substantial Historical Evidence Generated by Delta Itself*

85. The Engineering Department's first reason was that staff expected industrial development in the vicinity of 90 Street will increase over the next several years and that north-south connections, including 90 Street, will be important for facilitating future development.

86. Against these general, conclusory, and untethered "expectations" stood Delta staff's admission, grounded in substantial evidence, only six years earlier, that Delta's *long-term plan* for development of roads in the vicinity of 90 Street was "fundamentally affected" by the construction and opening of Highway 17. Further, as Delta's municipal solicitor explained under oath in 2016, Delta no longer needed 90 Street for municipal road purposes. Such evidence from staff persuaded Council to adopt a bylaw closing and selling 90 Street and declaring that the road "shall cease forever to be a public highway".

87. Accordingly, staff had only relatively recently concluded—and, in adopting the 90 Street Closure Bylaw, Council agreed—that: (a) 90 Street was not "important": it was "unnecessary and obsolete"; and (b) Highway 17 and the BNSF Railway had "cut off" and "limited the utility" of 90 Street, all of which essentially precluded 90 Street from serving as a north-south *connection* to facilitate development of industrial lands in the vicinity.

88. As the Court of Appeal recognized, 90 Street has physical, geographical, and historical limitations for future road alignments and industrial developments. Neither of the Engineering Reports address (adequately or at all) the significant facts that undermine the first reason proffered by the Engineering Department in the 2023 Engineering Report.

89. Finally, and *notably*,

- (a) as discussed in more detail below, on page 3 of the 2025 Engineering Report, the Engineering Department cites (for the first time) a 2015 Metro Vancouver industrial lands inventory report regarding long-term industrial use of lands in the region in support of the proposed resolution; however, Delta, surely aware of the report when it was published, must have deemed the statements and conclusions in that report irrelevant to or unpersuasive in respect of 90 Street, given the affidavit sworn by its solicitor in May 2016<sup>25</sup> and its vigorous defence of the 90 Street Closure Bylaw in the Supreme Court of British Columbia and in the Court of Appeal throughout 2016 and 2017. Surprisingly, the 2025 Engineering Report does not explain or attempt to justify the sudden relevance or

---

<sup>25</sup> See the submissions above in paragraph 51 and footnote 15.

importance of that 2016 industrial lands report now, as opposed to in 2015-2017 or 2023; and

- (b) as discussed in more detail below, on pages 3 and 4 of its 2025 Engineering Report, the Engineering Department muses about the potential for converting private crossings into public crossings in the future. It offers such general and vague statements in the face of the conflicting and very specific pleadings and evidence *from Delta itself* (see paragraph 51 above and footnote 15) that the owner of the BNSF Railway crossing has already advised Delta that it expressly opposes any public crossing of the railway at the southern end of 90 Street. The 2025 Engineering Report does not explain or offer any indication that the factual circumstances found elsewhere in the record regarding the BNSF Railway have changed in any or any material way since 2016.

b) *Second, Fourth, Fifth, and Sixth Reasons Based on Logical Fallacy*

90. As its second, fourth, fifth, and sixth reasons, staff noted that *90 Street* (not specifically the Unimproved Road Area) provides continued access to the Property and other properties on River Road, as well as access for Delta to utilities and across the BNSF Railway, and that 90 Street should be retained for future road alignment options. These reasons reflect a classic straw man fallacy.

91. The Land Title Petition sought relief in respect of the Unimproved Road Area alone, not the remaining portion of 90 Street that has served largely as the only travelled portion of the road (outside access points to the Property across the Unimproved Road Area). There is no evidentiary support for any suggestion that the Land Title Petition would render 90 Street less useful or safe. On the facts, the Land Title Petition, if granted, would have done nothing to inhibit continued passage and access along 90 Street.

c) *Third Reason Undermined by History and Features of 90 Street Itself*

92. For its third reason, staff maintained that cancelling the dedication over the Unimproved Road Area would inhibit future highway improvements, eliminating physical space for improvements contemplated in a road standards bylaw and the official community plan such as pedestrian scale lighting, cycling lanes, street furniture, or a landscaped and treed boulevard.<sup>26</sup> This reason has no merit, for at least two reasons:

- (a) *first*, and most importantly, staff and council had recently and definitively concluded that 90 Street was of limited utility and obsolete for municipal road purposes. Staff's intimation that 90 Street, essentially a cul-de-sac as

---

<sup>26</sup> Robson Affidavit, Exhibit "H" (p. 326) [AAB, p. 331].

far as public traffic is concerned, might provide “vital transit” infrastructure for pedestrians and cyclists in the area amounts to wish-casting given the physical and geographical limitations inherent in 90 Street’s features; and

- (b) *second*, the bylaws cited by staff pre-date the 90 Street Closure Bylaw. Staff doesn’t explain how a modest increase in the road’s non-conformity would be more of a concern under those bylaw standards than the closure and loss (through sale) of the entire road. Further, given the road’s actual features, short of significant expropriations, 90 Street could never come close to meeting the aspirational standards in those bylaws.

93. Here, too, the Court of Appeal recognized that 90 Street’s physical features and limitations potentially undermined staff’s reasoning and required a reasonable explanation or justification. No such explanation or justification was found in the 2023 Engineering Report. Nor, as discussed below, has the Engineering Department offered the required justification or explanation in its 2025 Engineering Report.

3. Reasoning in 2025 Engineering Report Unreasonable and Does Not Justify Proposed Resolution

94. Since the Court of Appeal quashed the 2023 Resolution, the Engineering Department has now prepared the 2025 Engineering Report. That report offers some additional reasons purporting to justify the proposed resolution. The new reasons are, however, no more reasonable than the unreasonable ones offered in the 2023 Engineering Report and do not, on their own or collectively with those in the earlier report, justify the proposed resolution, for at least the following three reasons.

95. *First*, although the Engineering Department properly recognizes that there has been no significant (or any, really) change in use of the Property or 8970 River Road, it cites “substantial growth” in “Delta’s” industrial areas and renewed interest in redevelopment of existing sites in “Delta”, all apparently in support of the proposed resolution.<sup>27</sup> Such generalized and vague observations about “renewed interest” in Delta’s industrial areas, including for areas in Tilbury and Annacis Island, are simply not responsive to the circumstances of 90 Street specifically and the issues raised by the Land Title Petition and these submissions and the Owner’s Initial Submissions.

96. Such reasoning does not explain or justify how 90 Street, with its seemingly permanent physical and geographical limitations, previously characterized by staff as “obsolete” as a municipal road, is itself required to further the “protection of industrial lands” or “optimize existing sites for modern uses” (whatever the meaning of such vague phrases) in the specific area of Delta in which 90 Street is located.

97. *Second*, the Engineering Department cites possible “active transportation improvements” to 90 Street, such as a sidewalk or multi-use pathway, or curb and

---

<sup>27</sup> See 2025 Engineering Report, p. 3, para. 2.

gutter, catch basins, storm sewer and streetlighting, as reasons why the Unimproved Road Area is “vital” for Delta to be able to upgrade highway infrastructure in this area. This reason resembles that offered in the 2023 Engineering Report (see paragraph 92 above) and, in light of the facts, is also unreasonable for the same reasons.

98. It is unclear on what evidence staff bases its statement that since 2015 workers in Delta, including in the Tilbury industrial area, have increased modes of transportation such as use of transit, walk or cycle, and whether such an increase (if it exists) has any actual relevance to 90 Street and the use or access to the properties adjacent to it. There is simply no evidence in the record to substantiate staff’s bald and generalized assertion in this regard, and, for that reason alone, it should not be given any weight by Council in its consideration of the issue now before it.

99. In any event, on the facts, and as depicted in the photographs and maps enclosed with these submissions, 90 Street effectively terminates for public use at its southern end. Members of the public are *not* permitted to cross the railway tracks at the southern end, so the only reason for members of the public to use 90 Street would be to access one of the two properties adjacent to it.

100. The properties adjacent to 90 Street are industrial lands, with existing vehicular access for workers, customers, et. al., via driveways off 90 Street. In the highly unlikely event that an individual might use transit to access one of those properties by foot or by bicycle (given the nature of the businesses), they could easily do so through transit infrastructure (if any) from River Road, mere meters away from the entrance to the businesses. Further, given the features of the road, it is difficult to fathom how or why a sidewalk or multi-use pathway would ever be useful, necessary, or justified along the western side of 90 Street—and the 2025 Engineering Report doesn’t offer any (or any plausible) reasons why either could or would be. Finally, telephone poles already along the eastern side of 90 Street, on which streetlamps are or could be easily affixed, if so desired by Delta.

101. Ultimately, given 90 Street’s significant physical and geographical limitations, and the historical and anticipated future use of the lands adjacent to it, it strains credulity for the Engineering Department now to suggest that the Unimproved Road Area is “vital for the City to deliver active transportation facilities.”

102. *Third*, and finally, staff speculates about possible future development lands south of the BNSF railway. More particularly, staff acknowledges that Delta alone has a private railway crossing agreement with the BNSF Railway *for emergency purposes*, but staff then goes on to speculate that with development “such private crossings” “can potentially be converted into public crossings in the future.”

103. Unfortunately, staff’s speculations in these regards about potential access across private crossings in general is fatally undermined by the facts and Delta’s own evidence. Specifically, as set out above in paragraph 51 and the evidence cited in footnote 15, on the record there is no prospect now or in future that the BNSF Railway would consider

granting any use or crossing of its railway beyond the emergency use currently permitted to Delta alone under the private crossing agreement.

104. In support of its speculations, the Engineering Department could have obtained and cited updated information from the BNSF Railway, information that might have suggested a change of position (as compared to 2015) on the railway company's part when it comes to public crossing of its railway. But staff either didn't take seek such updated information or, if it did, likely received confirmation that the railway company's hasn't changed since 2015. Either way, this reason proffered by the Engineering Department is unjustified and unjustifiable in light of all of the other evidence in the record before Council regarding the potential use and crossing (or not) of the BNSF Railway.

105. For all of the foregoing reasons, Council should reject staff's reasoning as unreasonable and decline to pass the proposed resolution.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,

EYFORD PARTNERS LLP

Per: 

Ryan W. Parsons\*

\*Practising through a Law Corporation

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

