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VIA EMAIL TO: cityclerk@delta.ca

Office of the City Clerk
City of Delta
4500 Clarence Taylor Crescent
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TYPE: Refers to Item
DEPT: CC, Eng. 15.1
A.T. #: 149822
Comments: Dec 8, 2025
Regular Agenda

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")

I. INTRODUCTION

1. We write further to our submissions to council dated 06 November 2025 ("**Owner's Submissions**")¹ and to the Engineering Department's new memorandum to council dated 26 November 2025 (the "**November 2025 Memorandum**").
2. We understand that the Owner's Land Title Petition and the "Reconsideration of the 90 Street Road Dedication Resolution" is scheduled to be heard as item 15.1 on the agenda for the regular council meeting on 08 December 2025.
3. We request that this letter be brought to the attention of the members of Council in advance of that regular council meeting.

Dear Council Members:

4. The Court of Appeal quashed the last resolution staff urged you to pass because the 2023 Engineering Report, adopted by Council as its reasons for the resolution, was fatally flawed and unreasonable. The Court found the reasoning in that report and the

¹ Capitalized terms not defined in this letter carry the same meaning as in the Owner's Submissions.

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24 April 2023 resolution to be unjustified and unjustifiable, and it ordered Delta to pay the Owner's court costs (over \$20,000).

5. The Owner gave Delta the land in issue, for free, for a specific purpose, namely, to widen 90 Street. Instead of doing that, Delta's staff urged Council to sell that land, and the rest of 90 Street because it concluded the road was obsolete and should "cease forever to be a highway".

6. The courts blocked Delta's sale. The Owner then sought, reasonably, to recover the land Delta had just disavowed any interest in. Delta's staff then suddenly changed its tune, unreasonably so in the Court of Appeal's view, arguing that the land in issue was required for highway purposes despite the Owner's trenchant criticisms of staff's reasoning.

7. Instead of revisiting its earlier reasoning and recommendations in light of the record and the issues raised by the Owner, staff has doubled down. It urges Council once again to pass a resolution, this time for the flawed reasons in its 2023 Engineering Report *and* for similarly flawed reasons in its new 2025 Engineering Report. The significant issues and concerns set out in the Owner's Submissions potentially undermine the reasoning in the Engineering Reports and, therefore, the reasonableness of staff's proposed resolution.

8. The Engineering Department has now been given an opportunity to respond to the Owner's Submissions on the Engineering Reports. Unfortunately, other than in the most superficial respects, the Engineering Department has *again* failed or refused to meaningfully respond to the central issues and concerns raised by the Owner. And, if Council doesn't reject staff's latest effort to block the Land Title Petition, the courts will *again* quash such an unreasonable resolution.

9. Council should distance itself from staff's unreasonable and thus unlawful machinations and reject staff's proposed resolution, for the reasons set out below and in the Owner's Submissions.

II. NOVEMBER 2025 MEMORANDUM NOT RESPONSIVE TO OWNER'S SUBMISSIONS

10. The November 2025 Memorandum is brief (about a page). It purports to respond to the Owner's Submissions (23 pages). The Owner accepts, of course, that the length of the Engineering Department's response to the Owner's Submissions is not necessarily determinative of its reasonableness. That said, even a cursory examination of the November 2025 Memorandum reveals that it is patently *unresponsive* to the Owner's Submissions.

A. THE LAW REQUIRES COUNCIL'S REASONS TO JUSTIFY THE RESOLUTION AND BE RESPONSIVE TO THE CENTRAL ISSUES RAISED BY THE OWNER

11. When the Court of Appeal recently quashed Council's 24 April 2023 resolution, it confirmed a number of principles that will govern a determination of the reasonableness

(and thus validity) of any future resolution passed by Council under s. 132(1) of the *Land Title Act* in respect of the Land Title Petition.

12. Those principles and the specific comments made by the Court of Appeal about the facts surrounding the Land Title Petition include the following, which will be applied by the court on judicial review of the proposed resolution (if passed):

- (a) Delta is entitled to change its mind regarding the status of the Unimproved Road Area (in particular) and 90 Street (in general), as between the positions it took between 2015-2018 and 2023 (or at the 08 December 2025 regular meeting) *so long as it does so in a manner that satisfies the requirement of justification, transparency, and intelligibility.*²
- (b) Because written reasons for a resolution are required under s. 132(4) of the *Land Title Act*, the reasons must be responsive to the live issues raised; they must “meaningfully account for the central issues and concerns raised” by the Owner. To be valid, a resolution must be justifiable *and* “justified, by way of the reasons”, *to the Owner.*³
- (c) Put another way, to be responsive, Council’s reasons must explain “why it would be appropriate to preserve the undeveloped dedication area for highway purposes notwithstanding the many concerns raised by the [Owner].” As examples of the issues raised by the Owner – and the Court of Appeal:
 - (i) the purported requirement (in the 2023 Engineering Report) 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 [Owner’s Submissions]”;
 - (ii) “*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.*”⁴

B. NOVEMBER 2025 MEMORANDUM DOESN’T EVEN PURPORT TO ENGAGE WITH CENTRAL ISSUES AND CONCERNS RAISED BY OWNER

13. The scope of the November 2025 Memorandum is expressly limited: its “reply” focusses solely on a handful of basic background, factual descriptions in the Owner’s Submissions regarding the historic use of 90 Street and the Unimproved Road Area.

14. Specifically, the new memorandum purports to respond, through some additional facts and appended documents, *only* to those assertions of the Owner that the

² [2025 BCCA 279](#), para. [53](#).

³ [2025 BCCA 279](#), paras. [54-56](#), [58](#).

⁴ [2025 BCCA 279](#), para. [57](#) (emphasis added).

Unimproved Road Area was “unused”, “has never been used for traffic of any kind” (outside access points to the Property across the Unimproved Road Area), that Delta has “still not widened the road.” and that 90 Street is a narrow, “neglected and forgotten gravel municipal road”.⁵

15. Importantly, for present purposes, the Owner’s submissions in those regards (though still generally accurate despite any recent on-the-ground tinkering Delta may have done to 90 Street), were fairly incidental, uncontroversial background issues. On any fair reading of the Owner’s Submissions, they were *not* the *central* issues and concerns raised by the Owner with respect to the proposed resolution and staff’s reasons in support of it.

16. To recap, **the central issues and concerns raised by the Owner**, issues and concerns that the Engineering Department has regrettably once again ducked, include:

- (a) the substantial historical record—from Delta itself, and all now before Council—undermines staff’s first reason in the 2023 Engineering Report, that staff expected an increase in the industrial development of 90 Street and north-south connection, including 90 Street, will be important for facilitating future development;⁶
- (b) the second, fourth, fifth, and sixth reasons proffered in the 2023 Engineering Report are based on the classic straw man logical fallacy;⁷
- (c) as the Court of Appeal emphasized, the third reason proffered in the 2023 Engineering Report (and again, in only slightly different terms, in the 2025 Engineering Report), that cancelling the dedication over the Unimproved Road Area would inhibit various aspirational or “vital” transit or other improvements to 90 Street, is also potentially undermined by the historical record and the features of 90 Street itself;⁸
- (d) the “substantial growth” in “Delta’s” industrial areas and renewed interest in redevelopment of existing sites in “Delta” cited as reasons for the proposed resolution in the 2025 Engineering Report are overly vague and untethered to the relevant facts. Staff makes no effort to relate (even indirectly) such considerations to 90 Street, a road Delta had recently avowed to be “obsolete and unnecessary” as a municipal road;⁹ and, finally,
- (e) staff speculates in the 2025 Engineering Report about future development of lands south of the BNSF railway, and muses that with development

⁵ Owner’s Submissions, paras. 5, 17, 91.

⁶ Owner’s Submissions, paras. 85-89. See also Owner’s Initial Submissions and documents appended to those submissions.

⁷ Owner’s Submissions, paras. 90-91.

⁸ Owner’s Submissions, paras. 92-93, 97-101.

⁹ Owner’s Submissions, paras. 95-9

“such private crossings” can potentially be converted to public crossings in the future. However, against such speculations stands the affidavit evidence of Delta’s former municipal solicitor, and Delta’s pleadings in court, confirming that at least as of 2015 the railway company was adamantly opposed to *any* future public crossing of the railway at the southern end of 90 Street. In the face of such evidence, staff’s speculative reasons for the resolution are patently unreasonable.¹⁰

17. Ultimately, despite the opportunity to do so, in neither the Engineering Reports (or either of them) nor in the November 2025 Memorandum does the Engineering Department make a real or genuine effort to engage with the central issues raised by the Owner. As the Court of Appeal confirmed, those issues and concerns, outlined in detail in the Owner’s Submissions, potentially undermine the reasons proffered by the Engineering Department in support of the resolution it now urges Council to pass under s. 132(1) of the *Land Title Act*.

18. For all of the foregoing reasons, as well as those set out in the Owner’s Submissions, 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

¹⁰ Owner’s Submissions, paras. 102-104.