
Request for Decision



To: Mayor and Council **File No:** 3900
Meeting Date: September 17, 2018 **Submission Date:** September 12, 2018
From: Peter de Verteuil, CAO
Reviewed By: Paige MacWilliam, Director of Corporate Services
Subject: Portion of EJ Hughes Place Road Closing and Removal of Dedication Bylaw No. 3184, 2018

RECOMMENDATION:

That Council adopt "Road Closure and Removal of Highway Dedication Bylaw No. 3184, 2018" – a bylaw to close a portion of EJ Hughes Place.

BACKGROUND:

The purpose of this report is for Council to consider adopting the Road Closure Bylaw to close a portion of municipal road allowance on EJ Hughes Place, to the north of 262 EJ Hughes Place (Appendix A). The Road Closure Bylaw is a required procedural step to enable the raising of title for the Closed Road.

Given the concerns expressed by Council and members of the community about the loss of parking, the City is now separating the consideration of the potential disposition of the closed road to a future meeting, so that the decision to close the road and the decision on whether to sell the closed road can be fully considered separately.

ANALYSIS:

Closing the road does not functionally change the way the road is currently being used primarily for parking. If the road is closed, it could be used as a formal parking lot (with access through to Sherwood and Wedgewood) or considered for sale. As the details have now changed, if Council does consider the sale at a future meeting, new notification of the sale of the road and its conditions would be advertised in the local paper. Additionally, staff intend to notify the Downtown Duncan Business Improvement Area, so they could advise their members of the potential sale and its conditions.

On July 16, 2018 the road closure bylaw was given first reading by Council. Notification of Council's intent to consider the road closure and potential disposition of the closed road was advertised in the newspaper, and sent out for referral to Cowichan Tribes, the neighbouring Certificate of Possession Holder, and owners and residents within 60 metres of the road way.

The City received two letters from members of the public regarding the potential road closure, both of which expressed concerns regarding the potential loss of parking associated with the sale of the closed road. The correspondence was included in the agenda for Council's consideration at the August 20, 2018 meeting. At that meeting, second and third reading of the road closure bylaw was given by Council; however, concern was expressed by Council and the public about the loss of parking, thus it was proposed that road closure and the potential sale of the property be considered separately.

Notice has been provided to the utility companies and draft Statutory Right of Way (SRW) documents are nearing completion for their infrastructure.

The City's lawyer is nearing completion of draft documents for SRW agreement for the City's infrastructure and access rights for vehicles and pedestrians to the two neighbouring properties.

In the past two weeks, staff reissued notice in the newspaper of the road closure, clarifying that Council will now be considering the road closure and subsequent sale of the closed road separately to ensure parking concerns are adequately addressed. To date, the City has received one additional input from the public regarding the parking and the accesses to Sherwood and Wedgewood (Appendix B). As noted previously and above, the accesses to these properties will be maintained for vehicles and pedestrians.

Cowichan Tribes has since advised that they do not have any concerns with the road closure and they look forward to further engagement prior to development of the site.

If closure of the road is approved by Council, these SRWs would still be required to be registered on title, regardless of the whether the newly created lot is sold, prior to the road closure being registered at land titles.

Road Closure Process

As noted in previous reports, in accordance with section 40 of the *Community Charter*, Council must provide notice of its intention to close a portion of highway. Council must then provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council.

The road closure process is summarized below:

- (a) Council gives first reading to the proposed Road Closure Bylaw.
- (b) Staff publish statutory notices for the road closure and removal of highway dedication per section 94 of the *Community Charter* and provide an opportunity for persons who consider they are affected by the proposed bylaw to make representations to Council.
- (c) In addition to statutory notice, individual notification will be provided to properties within 60 metres of the roadway, and specifically to Cowichan Tribes administration.
- (d) Pursuant to section 41 (4) of the *Community Charter*, the operator of a utility affected by the closure of a highway may require the municipality to provide reasonable accommodation of the utility's affected transmission or distribution facilities or works on agreed terms. The City will contact the utility companies and obtain their agreement that the utilities will be accommodated on the area of road to be closed through the issuance of a statutory right of way (SRW).
- (e) After the opportunity for making representations has been provided, Council considers giving second and third reading to the proposed Road Closure Bylaw.
- (f) Pursuant to section 41 (3) of the *Community Charter*, as the proposed Closed Road is not within 800 metres of an arterial highway, the City is not required to refer the proposed bylaw to the Ministry of Transportation and Infrastructure (MOTI) for approval.
- (g) As there is no referral to MOTI, Council can consider adopting the Road Closure Bylaw.
- (h) To complete the process, the City attends to registration of a certified copy of the Road Closure Bylaw at the Land Title Office along with any applicable SRWs.

The bylaw is at step (g) of the road closure process.

IMPLICATIONS:

- Financial:** The prospective purchaser assumed the legal costs for legal survey, and SRW documentation necessary for the road closure. As Council's discretion cannot be fettered, payment of the costs for these steps in the process do not require Council to approve the sale in the future. As noted, that is a separate decision.
- Policy/Legislation:** Sections 40, 41 and 94 of the *Community Charter* provide for the municipal authority and notification process for highway closures.
- Strategic Priority:** N/A
- Sustainability:** N/A
- Communication:**
- a) The Notice of Road Closure and Removal of Highway Dedication has now been published in four newspaper editions.
 - b) The Notice has been posted on the public notice boards at City Hall and distributed to properties homes in the area surrounding the Closed Road.
 - c) Cowichan Tribes was specifically notified due to the roadway being adjacent to IR#1.
- No concerns have been expressed with respect to the road closure itself that have not been addressed with SRWs.
- Staffing Implications:** Staff will be meeting with the developer regularly regarding their development, regardless of the land purchase. However, additional staff time has been required to deal with drafting agreements, consultation and communication, and additional meetings with the developer.

ALTERNATE RESOLUTION:

- 1) **That Council defer consideration of "Road Closure and Removal of Highway Dedication Bylaw No. 3184, 2018" – a bylaw to close a portion of EJ Hughes Place – and provide direction to staff on next steps.**

APPENDICES:

Appendix A – Road Closure and Removal of Highway Dedication Bylaw No. 3184, 2018

Appendix B – 2018-09-13 Taylor – EJ Hughes Road Closure