



CITY OF VANCOUVER

POLICY REPORT DEVELOPMENT AND BUILDING

Date: October 28, 2003
Author: David Murphy
Phone No.: 7556
RTS No.: 03665
CC File No.: 3258
Meeting Date: November 20, 2003

TO: Standing Committee on Planning and Environment

FROM: Subdivision Approving Officer, in consultation with the Director of City Plans, General Manager of Engineering Services, Director of Legal Services, Director of Real Estate Services and General Manager, Park Board

SUBJECT: Eburne Lands Subdivision - Park Conveyance Payment-in-Lieu and Fraser River Waterfront Walkway

RECOMMENDATION

- A. THAT Council authorize a payment-in-lieu of park conveyance, regarding the subdivision of the Eburne Lands at 9149 Hudson Street, legally described as PID: 007-044-640, Block 1, District Lots 318, 3869 and 3871, Plan 19037.
- B. THAT Council support the Director of City Plans and General Manager of Engineering Services in not requiring a continuous waterfront walkway through the site, but that a bikeway/pedestrian pathway be constructed by the applicant along West 75th Avenue, including street end improvements to enhance public access and use of the Hudson Street and Bentley Street ends and along Hudson Street and Bentley Street between West 75th Avenue and the waterfront, and subject to an option to purchase Richmond Island for public park purposes with an accompanying right of first refusal, to the satisfaction of Director of Legal Services and Director of Real Estate Services.

CITY MANAGER'S COMMENTS

The City Manager notes that this area is identified as land for industrial purposes under the Industrial Land Policy. This policy was reaffirmed by Council June 24, 2003. With the sale of a portion of this North Fraser Port Authority (NFPA) Land to TransLink, the NFPA in its role as the authority for industrial port use along the Fraser River believes that the land and river

access uses are extremely important and must be maintained along the River in this area. The City Manager highlights that in areas which have been rezoned along the Fraser River for residential development, waterfront access and parks have been fully developed, in cooperation with the NFPA.

This is a subdivision application where the applicant believes the provision of land for a park or recreation purposes would not be compatible with the industrial uses and has offered to pay-in-lieu for this requirement. This is a procedure anticipated under the By-law but it is subject to acceptance by Council.

Within this provision of the industrial land the developer is providing improved recreation uses by developing a bikeway along the West 75th Avenue alignment between Bentley and Hudson Streets which will provide a major benefit for bike and pedestrian access south of Marine Drive. In addition, street end access is to be developed at Hudson and Bentley Streets.

It should be noted that with TransLink moving to this site, it will bring industrial uses to an industrial area, and TransLink will be able to accommodate the increased bus operations in Vancouver. In addition, redevelopment of the current bus site on West 41st Avenue will deliver other public benefits to the City.

The option to purchase Richmond Island, with the accompanying rights of first refusal, while it is an interesting proposal, it is land not in Vancouver's jurisdiction and the option must not have any commitment for the City to act as it would be a substantial expenditure for which there is currently no budget and no plan to suggest it is a greater priority over other areas in the City. The City Manager does not recommend approval of B. The City Manager recommends approval of A and, as an alternative to B, recommends C as follows:

- C. THAT Council support the Director of City Plans and General Manager of Engineering Services in not requiring a continuous waterfront walkway through the site, but that a bikeway/pedestrian pathway be constructed by the applicant along West 75th Avenue, including street end improvements to enhance public access and use of the Hudson Street and Bentley Street ends and along Hudson Street and Bentley Street between West 75th Avenue and the waterfront.

On October 6, and again on October 20, the Park Board deferred a decision on a report from its staff recommending support for payment-in-lieu of park dedication, consistent with Recommendation A of this report. Park Board staff also recommend public waterfront access rights-of-way across the entire site, as opposed to Recommendation B of this report. Subject to the Park Board's further deliberations on this matter prior to November 6, additional items may be submitted for Council's CONSIDERATION

COUNCIL POLICY

Industrial Lands Policies (March, 1995)

- Section 2.6.2 of the Industrial Lands Policies calls for the retention of the subject site and adjacent lands for industrial purposes.

- On June 24, 2003, Council resolved:

“THAT Council confirm its unequivocal support for the Industrial Lands Strategy and the goals of preserving industrial lands in the City and will not permit further reduction without a comprehensive review of the needs of industry, transportation and servicing of the downtown and other businesses in the City.”

Fraser River and Burrard Inlet Waterfront Policies and Guidelines (Amended August, 1988)

- “Council agrees that provision should be made for public access to the North Fraser waterfront for a variety of recreational purposes as practicality of zoning, existing industry and land ownership make possible”;
- “Council declares that for the area east of Angus Drive to Boundary Road a continuous waterfront walkway is not practical, but a waterfront walkway will be developed where feasible”;
- “At the time of rezoning or subdivision, developers be required to construct, at their expense, shoreline protection and a 25 foot wide [7.6 m] public access walkway along the river”.

Marpole Plan (October, 1979)

- Policy 3: A public riverfront lookout should be considered at the foot of Hudson Street.

Vancouver Greenways Plan (July, 1995)

- One of the proposed routes within the approved Vancouver Greenways Plan is the Fraser River Trail. This greenway, when complete, will provide a continuous connection from Burnaby to Pacific Spirit Park as close as possible to the north shore of the Fraser River.
- No major change to the industrial land use of large portions of the riverfront is likely in the near future, therefore, the Fraser River Trail will grow incrementally. Possibilities exist to develop the trail by bypassing inaccessible portions of the riverfront.

PURPOSE

This report recommends that the City accept a payment-in-lieu of park conveyance, regarding the subdivision of the Eburne Lands at 9149 Hudson Street, legally described as Block 1, District Lots 318, 3869 and 3871, Plan 19037, and that the Approving Officer not require a continuous waterfront walkway through the site.

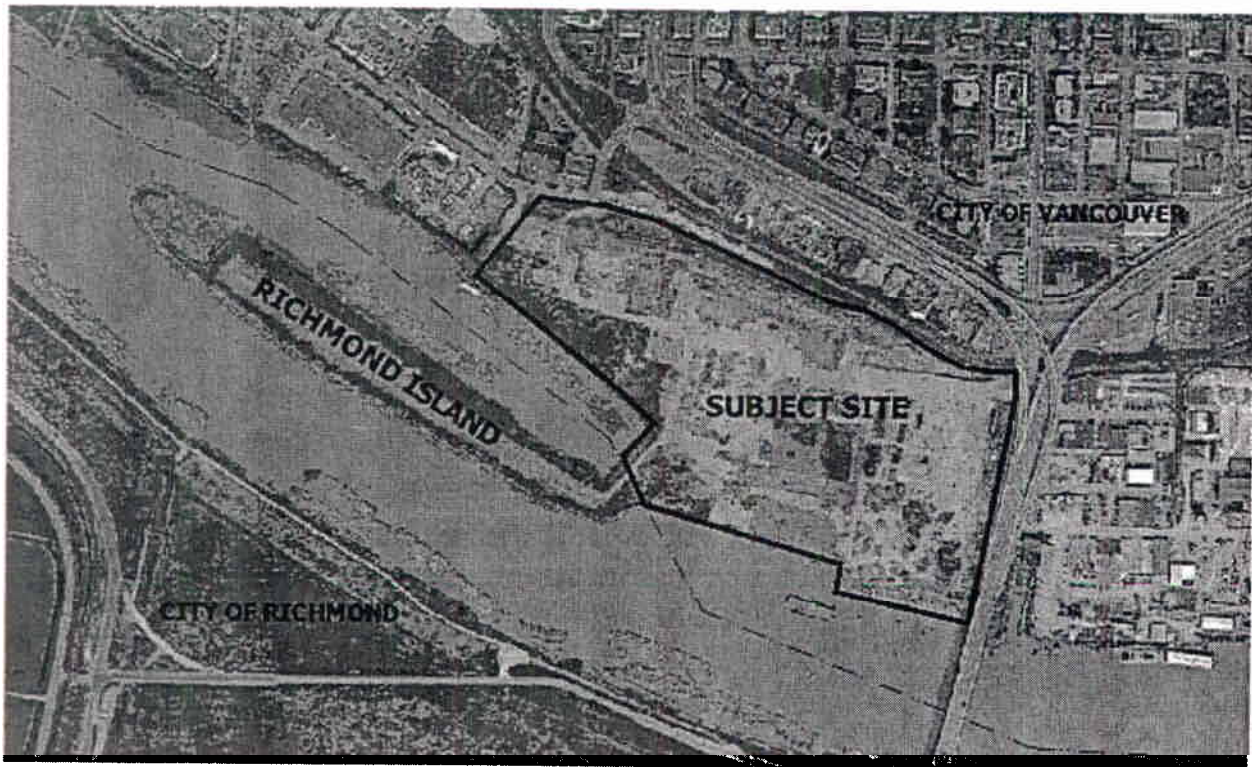
BACKGROUND

In May 2003, the Approving Officer received a preliminary proposal to subdivide Block 1 of the Eburne Saw Mill Lands into four parcels, which has subsequently been revised to a three parcel proposal, as shown in Appendix A (it is anticipated that the proposal will be revised again to realign the proposed road perpendicular to West 75th Avenue, which will create

parcels more rectangular in shape). Block 1 is a single parcel having an area of 14.25 ha (35.2 ac.) and is located within the City of Vancouver. The site has been resurveyed and approximately 0.77 ha (1.9 ac.) of the site will be returned to the Crown as part of this subdivision proposal, due to a change in the natural boundary caused by site erosion, which will leave a net site area of approximately 13.48 ha (33.30 ac.). There are two other legal parcels that form part of the Eburne site, known as Richmond Island, which are within the City of Richmond, and have a combined area of 3.44 ha (8.5 ac.). The site is owned by North Fraser Terminals Ltd., a wholly-owned subsidiary of the North Fraser Port Authority (NFPA).

The Eburne Lands including Richmond Island are zoned for industrial uses (heavy industrial M-2 in Vancouver, light industrial I 2 in Richmond). North Fraser Terminals Ltd. intends to develop a portion of the site with a river-oriented industrial terminal (trans-shipment facility). The easterly balance of the site is, according to the applicant, under a binding sale/purchase agreement with Translink for the purpose of relocating the "Oakridge Bus Barns" from West 41st Avenue between Cambie Street and Oak Street.

Context Map



DISCUSSION

Payment-in-Lieu of Park

The existing site area of the parcel to be subdivided is in excess of 8.094 ha (20.00 ac.); therefore the subdivision is subject to provisions of the Vancouver Charter (the Charter) and the corresponding provisions in the Subdivision By-law regarding the conveyance of land for park or recreational purposes. Specifically, Section 292 (1)(g) of the Charter sets out that upon subdivision of a parcel of land exceeding 20 acres, the applicant is required to convey to the City up to ten percent (10%) of the total land area included in the subdivision for

parkland. Further, it states that Council may accept a payment-in-lieu of the park conveyance. Section 292 (1)(g) of the Charter and section 12.1 of the Subdivision Bylaw are detailed in Appendix B.

The Approving Officer has considered various park options, in consultation with the applicant and Park Board staff, noting:

- The applicant's contention that a payment-in-lieu approach is the only viable option given the scale and nature of the intended industrial uses;
- Park Board staff's preference is to use payment-in-lieu funds either for subsequent sale/purchase of a portion of Richmond Island for future park purposes, or for an alternate piece of industrial land on the Fraser River.

The Approving Officer has concluded that it would be advantageous to pursue a park payment-in-lieu of dedication, subject to provision of an option to purchase Richmond Island and a Right of First Refusal (both of which the applicant has agreed to in principle), under terms and conditions to be negotiated by the Director of Legal Services and Director of Real Estate Services.

Council approval is required to proceed with any payment-in-lieu. The Approving Officer therefore recommends a payment-in-lieu arrangement between the City and North Fraser Terminals Ltd. in which they will provide a payment-in-lieu of park conveyance for an amount equal to the value of ten percent (10%) of Block 1, as of the date of the payment.

The applicant's consultant has also provided comments on the park options, which are contained in Appendix C.

The Park Board considered a Park Board staff report on this matter at their October 6, 2003, meeting. After many delegations, the Board referred the item to their October 20, 2003, meeting, at which time it was further deferred. Council will be advised of the Board's decision as soon as possible.

Waterfront Access

The Fraser River and Burrard Inlet Waterfront Policies and Guidelines, last amended by Council in 1988, stipulate that provision should be made for public access to the North Fraser waterfront for a variety of recreational purposes *as practicality of zoning, existing industry and land ownership make possible*; and that provision of a waterfront walkway should be required *where feasible* in the area between Angus Drive and Boundary Road.

The NFPA has indicated that any public waterfront access across any portion of the site would unacceptably compromise the intended industrial development in terms of water dependent activities and the "9-11" inspired International Ship and Port Facility (ISPS) Code (letters from the president and CEO of the NFPA and from Translink are attached in Appendices D and E).

As an alternative to provision of pedestrian access along the waterfront, the applicant has volunteered to construct a pedestrian/bicycle path to the north of the site within the West 75th Avenue street allowance.

The Approving Officer is supportive of this, recognizing the existing City policy supportive of retaining opportunities for water-related industrial development, and support for this approach from both the Director of City Plans and General Manager of Engineering Services (excerpts are contained in Appendix F). Parks Board staff, given their mandate, have recommended that the Board advise the Approving Officer to seek the provision of pedestrian waterfront access rights-of-way across the entire site, as a condition of subdivision approval to be established by the Approving Officer, as also outlined in Appendix F.

The Approving Officer appreciates any advice offered by Park Board, acknowledging its mandate and objectives. However, the advice offered by its staff fails to note the significant impacts on the affected lands of waterfront rights-of-way. They essentially sterilize the right-of-way lands for anything but temporary use. This has significant adverse implications on site planning and use of both these and adjacent lands.

Quite apart from Council policy supporting provision of pedestrian access along the waterfront, the Land Title Act requires that an Approving Officer secure public access to the waterfront at a minimum of every 200 m (centre line to centre line) as a condition of approval of a subdivision bordering a body of water, the bed of which is owned by the Crown. The Act also provides for relief from this requirement by the Minister of Transportation and Highways, upon application by an Approving Officer. For the subject site, the Act would theoretically suggest dedication of two more north-south streets through the site. The Approving Officer supports the applicant's contention that this would totally frustrate the intended uses and development of the site.

The Approving Officer will therefore be supporting an application for relief from the Minister, subject to:

- (i) the applicant entering into agreements, to the satisfaction of the Director of Legal Services and General Manager of the Park Board, providing options to purchase Richmond Island for future park purposes and a right of first refusal;
- (ii) provision of a pedestrian pathway/bikeway within the West 75th Avenue street allowance, and to enhance the public realm within the Hudson Street and Bentley Street ends and along Hudson Street and Bentley Street between West 75th Avenue and the waterfront; and
- (iii) the applicant entering into covenants or other suitable agreements to the satisfaction of the Director of Legal Services, to secure future opportunity to secure such public access to the waterfront upon future subdivision or rezoning of the proposed parcels.

CONCLUSION

After exploring all options to secure park conveyance from the lands being subdivided in a satisfactory location and configuration, the Approving Officer recommends that Council authorize a park land payment-in-lieu as permitted by the Charter and the Subdivision By-law.

In addition, before reaching a decision on the subdivision application, opportunity is provided for Council's advice on the matter of public access along the waterfront of the subject site, noting Council's Industrial Land Policies, the practicality and feasibility explicitly embodied in Council policy related to provision of waterfront access, the advice offered by the Director of City Plans and the General Manager of Engineering Services, the positions of the subdivision applicant and Translink pertaining to intended use of the lands, and the countervailing advice offered by Park Board staff.

* * * * *

Conveyance of Land for Park

With regard to the conveyance of land involved in a subdivision for park or recreational purposes, section 292.(1)(g) of the Charter states:

- S.292(1) For the purpose of regulating the subdivision of land, the Council may make by-laws
- (g) for providing that
 - (i) upon any subdivision of a parcel of land exceeding twenty acres there shall be conveyed to the city, without compensation, a portion of such land for park or recreation purposes other than streets, such portion not to exceed ten per centum of the land included in the subdivision;
 - (ii) the size, dimensions, and location of the portion of the land to be conveyed to the city shall be determined by the approving officer;
 - (iii) the Council may accept in lieu of the conveyance to the city of the lands to which it is entitled hereunder, or any portion thereof, the payment of a sum of money equivalent to the actual value of such land or portion thereof immediately prior to the subdivision;

[Clauses 292.(1)(g)(iv) through (vi) not cited.]

Section 12.1 of the Subdivision By-law contains provisions which closely follow the enabling authority of the Charter but also includes a provision for phased park conveyance. Specifically, Subsection 12.1.6 of the By-law states:

- 12.1.6 Notwithstanding Subsection 12.1.5, where a parcel of land exceeding 20 acres (8.094 ha) is to be subdivided in stages, the City may enter into an agreement with the owner of the land which includes provision for the following:
- (a) that a proportionate part of the land to be conveyed to the City for park or recreational purposes pursuant to Subsection 12.1.1 shall be conveyed to the City at each stage of subdivision as agreed to between the City and the owner; and
 - (b) such other terms and conditions as the parties may agree and as are not inconsistent with this section.

[Subsection 12.1.5 precludes park conveyance other than at the time of an initial subdivision.]

LPA DEVELOPMENT & MARKETING CONSULTANTS LTD.

Applicants Comments Re 10% Park Dedication or Payment -in-Lieu and waterfront walkway objectives of Park Board per City policy.

Friday, September 12, 2003

The Port Authority acquired the former Eburne sawmill site in an effort to preserve waterfront industrial property. It sought the assistance of an experienced industrial landowner as a partner to assist it to find suitable tenants and/or prospective purchasers to put the land to its highest and best use under its current zoning - M2, an objective also encouraged by City planners, managers and previous City Councils.

We are aware that:

1. Section 2.6.2 of the Industrial Lands Strategy and Policy Report (Council Policies document approved in March 1995) calls for the retention of the subject site and adjacent lands for industrial purposes.
2. In 1995, only 250 acres of land were available to serve river-related industrial uses. Today that number is considerably smaller given the potential rezoning of the Weyerhaeuser and adjacent City-owned lands at Boundary and Marine for residential and commercial use.
3. Few large industrial sites remain in the City that are zoned M2 and that have water-related access.
4. A few examples of M2 parcels of land being rezoned and subdivided have occurred in recent years. The Finning land is one example of land being rezoned from M to I3.
5. Another notable example is the CN land. CN and City staff, with Council approval, eventually agreed to a partial payment-in-lieu and deferred extraction until the rail yards leave. In that instance, the land was rezoned from M to I.
6. However, to date, not one example exists in the City of Vancouver of an owner of a 20+ acre of M2-zoned parcel of land seeking subdivision, where extractions called for in the Sub-division By-law came into consideration, without an accompanying change in zoning prior to or at the time of subdivision. Provisions exist to relax the requirements to protect M2 industrial land and we request such from Council and staff in this instance.
7. Section 12.1.1 of the Sub-division By-law states that for any parcel of land over 20 acres, "There shall be conveyed to the City, without compensation, a portion of the land, not exceeding 10 percent of the land in the subdivision, for park or recreational purposes other than streets."
8. Section 12.1.3 permits Council in its discretion to accept "the payment of a sum of money equivalent to the actual value of such land or portion thereof immediately prior to subdivision."
9. The clear and unequivocal preference of the applicant is to request Council to advise the Approving Officer to exercise the payment-in-lieu provision set out in Section 12.1.3 of the Sub-division By-law for many reasons:
 - a. We have been in discussions with Park Board staff for several months concerning the subdivision of the subject site without resolution.
 - b. We had considered the possibility of conveying a portion of Richmond Island to the Park Board and offering the remainder for sale.
 - c. However, that proposition is not acceptable for a number of reasons:

- i. Any proposed park dedication on or waterfront walkway along the site while it is zoned M2 restricts and/or compromises the Port Authority's flexibility to use the site, either in whole or part, now or in the future for water-related industrial purposes.
- ii. It constrains the flexibility of the Port and potential future M2 owners and/or users as to what may be the possible use of the land and, thereby, reduces the land's value in both economic and use terms. In other words, the by-law may list certain industrial uses, but the proposed park dedication and public access will eliminate some of these uses because of the strength of public access and use covenants over-riding the unimpeded water access, one of the principal M2 zoning uses for which the land is intended.
- iii. It introduces a variable on, and adjacent to, the proposed parcels that is both a use constraint and an operational and insurance liability.
- iv. The Port Authority has an obligation to comply with the ISPS rules, regulations and requirements to maximize security to, on and about water-related port operations. The Park Board proposal would unduly compromise the Port's ability to satisfactorily comply with the ISPS requirements, especially around container storage and shipping, the Port's intended use for two of the proposed three-lot subdivision - the 10-acre and 4-acre parcels.
- v. It compromises the Port Authority's desire to maximize its utilization of the site for the range of larger site industrial uses and users both now and in the future.
- vi. It is impossible to project or predict the future in terms of water-related uses and users, whether for the Port or for Translink and to impose the Park Board requirements will place an undue constraint on the land and the Owners.

The City will have an opportunity in the future to achieve public access and extraction objectives should the Port, Translink, or a future owner seek to change the use to something other than M2. For the time being, the Port wishes to pay its fair share by way of a payment-in-lieu or the provision of 3.3 acres of land as indicated on the revised subdivision proposal, and to maintain the integrity of the City's own industrial policies as they apply to this site.

Clearly, there is a conflict between Council policies:

- i. One Council policy clearly states that it wishes to retain and conserve Industrial Land, and in particular water-related industrial land that is in short supply and fast disappearing.
- ii. Another seeks extractions of land for park purposes and public access for waterfront walkways that are in this instance quite at odds with each other and impair the opportunity to have unimpeded use of the lands for the full range of M2 uses now and in the future.

The question Council is being asked to address in this instance strikes at:

- The principle of extraction as set out in Section 12 of the Sub-division By-law (and the implications of imposing the requirement(s) to the letter of the law) versus
- The integrity of the Industrial Land Policies and Strategies (and an industrial landowner being able to enjoy the full rights and privileges of an M2-zoned property and its associated uses).

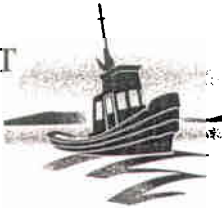
A secondary but important issue to consider is that this is an M2 zoned water-related site where no change in zoning is requested nor involved, and where, to our knowledge, there is currently no prior precedent for extractions from such sites without rezoning being contemplated or having occurred.

Therefore, we ask

1. Does Council believe in the importance and integrity of its Industrial Land Policies?
2. Will Council accept a payment-in-lieu for park purposes to preserve the integrity of the proposed M2 industrial parcels?
3. Is Council willing to defer currently non-existent public access in order to allow bona fide M2 uses to occur on all the resulting lots in an unencumbered manner?
4. Is Council willing to acknowledge as a priority the employment, proximity and tax revenue benefits that will accrue through the sustained use of the whole site for industrial purposes?

PORT
NORTH FRASER

7911 Grauer Road
Richmond, British Columbia
Canada, V7B 1N4



PORT
NORTH-FRASER

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Canada

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Tel/Tél: (604) 273-1866
Fax: (604) 273-3772

August 20, 2003

City of Vancouver
453 West 12th Avenue
Vancouver BC V5Y 1E4

Attention: Rick Scobie, Approving Officer, Subdivision & Strata Title

Dear Mr. Scobie,

As you may be aware, effective July 1, 2004, Canada (in particular the Federal Government, port authorities and shipping companies) is obligated to ensure that the new International Ship and Port Facility Security (ISPS) Code (the "Code") is implemented. The primary purpose of the Code is to ensure that all port facilities in Canada are protected and secured from "security incidents" which can range from acts as extreme as those which occurred on September 11, 2001 to simple acts of vandalism and theft. Port facilities which do not comply with the Code will be at such a competitive disadvantage with those that do and those situated in the United States that their (continued) existence is questionable. To this extent, we wholly agree with the comments set out in the attached article which appeared on August 20, 2003 in the Vancouver Sun.

"If the port and its facilities are "compliant" [with the code] they get certified [under the Code]. If they aren't compliant, it's a slippery slope to oblivion as other ports (read U.S. ports) will deny access to any vessels or cargo that travels through your "uncompliant" facilities. *Vancouver Sun, August 20, 2003 Page D3.*

Transport Canada has confirmed that North Fraser Terminals Inc.'s (our wholly owned subsidiary) terminal facility (the "Terminal") will be subject to strict compliance with the Code, because of the Terminal's extreme proximity to the Vancouver International Airport (especially the north runway) and the Arthur Laing Bridge.

The first step in the implementation of the Code is the completion of a Port Facility Security Assessment. We enclose for your reference a blank Security Assessment. We cannot provide you with our completed assessment due to the obvious security risk associated with disclosure of it. In any event, you will note that the Security Assessment specifically deals with land side and water side access to port facilities. For example, we direct your attention to section 1.1 which addresses the need for a completely secure compound with restricted access. We further note that a fundamental purpose of the Security Assessment and the Code is to ensure the prevention of unauthorized access to a port facility and vessels moored at the facility.

Based on the Code and our current Security Assessment, there is no issue that public access along the waterfront of the property must be absolutely prohibited. A waterfront walkway or public access along any portion of the property will create major security issues under the Code.

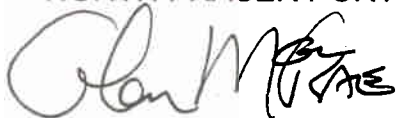
In addition, it is our position that a waterfront walkway or public access along the waterfront is also simply not feasible in the circumstances of the Terminal or the continued use of the property as a marine industrial site. For example, vessels at the Terminal will be loaded and unloaded with goods or containers being moored across the waterfront. Accordingly, in addition to security concerns, there are serious safety issues associated with persons passing through those areas.

We understand that the City of Vancouver has on occasion indicated that it might consider requiring waterfront access along just TransLink's portion of the property. Please be advised that this option is unacceptable for the reasons described above and given that the Terminal will be utilizing the water lots (with existing dolphins and pilings) immediately adjacent to TransLink's property. Accordingly, the same security and safety issues as described above arise.

If you have any questions regarding the above or the Code, please do not hesitate to contact me. Otherwise, we trust that the enclosed material provides you with a clear indication of the degree of security which the Terminal has to comply with. We therefore urge the City of Vancouver not to require any sort of waterfront walkway or public access dedication along any portion of the property.

Yours truly,

NORTH FRASER PORT AUTHORITY



Glen MacRae
President & CEO

Encl. (3)



CHAIR

October 3, 2003

Doug McCallum

DIRECTORS

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Malcolm Brodie

David Cadman

Larry Campbell

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Marvin Hunt

Don MacLean

Barbara Sharp

Joe Trasolini

Wayne Wright

Scott Young

CEO

Pat Jacobsen

City of Vancouver
453 West 12th Avenue
Vancouver, B.C. V5Y 1V4

Attn: Mr F.A (Rick) Scobie
Director of Development Services

Dear Mr. Scobie,

Re: Subdivision of Block 1, DL 318, 3869 and 3871, Plan 19037

TransLink would like to provide commentary on the desire to seek relief from a waterfront walkway. TransLink plans to construct a new transit facility to replace the Oakridge Transit Centre on the 17.6 acre parcel. The new transit centre, which will house the new fleet of trolley buses, utilises the entire 17.6 acre parcel that adjoins the waterfront. A waterfront walkway would encroach into the area designed for bus parking and would therefore limit the number of buses that could be housed at the facility. A waterfront walkway would also eliminate any potential future uses of the property that could develop with respect to waterway transit services. As an example, over the next decade TransLink proposes to expand the use of clean water transportation through the addition of up to seven passenger-only ferry routes. This property has the potential to be utilised, in the future, in the provision of this service.

Sincerely,

Sheri Plewes, P.Eng
Vice President, Capital Management
TransLink

SP/MM/lc

cc Dan Lipetz, Eburne Developments Ltd.
RMC

Comments from Director of City Plans:

This note is in response to the subdivision proposal for 9149 Hudson Street, formerly the site of the Eburne mill. The perspective taken here is to support continued use of the City's industrial lands primarily for industrial activity.

The present policy context for the area seeks to satisfy potentially competing goals:

- The Industrial Lands Policies seek to retain the industrial zoning for the lands in this area "to meet the needs of port/river related industry, and city-serving and city-oriented industry."
- The Fraser River and Burrard Inlet Waterfront Policies and Guidelines pertaining to this area state that "a continuous waterfront walkway is not practical, but a waterfront walkway will be developed where feasible."
- The Subdivision By-law seeks a 10% park allocation or payment-in-lieu when subdividing parcels 20 acres or more in size.

To meet the goals of the Industrial Lands Policies, the City needs to ensure that industrial activity remains viable on lands with industrial zoning. Where industrial activity requires direct access between land and water, generally related to goods movement, safety and security issues may arise if a public waterfront walkway is provided. Further, the presence of a waterfront walkway along an industrial property may discourage a future change of use to water-dependent industry. Our understanding is that the North Fraser Port Authority intends to continue to use part of this site for water related uses.

The applicant states that providing a waterfront walkway is not feasible for the continued industrial use of the land under the current M-2 zoning. Issues are raised concerning security requirements for the planned activities on site. Also, the applicant claims that certain portions would not provide safe public access.

The needs of industry should be respected as much as possible. If the City decides to secure land for a waterfront walkway, either this could be as a right of way for future development or with a clear understanding that the walkway could be developed now along the bus portion of the site and might be closed at a future date if the bus site is reused for water related uses (though recognizing the difficulty of closing a walkway once opened). The walkway should not prevent the use of the site for water-dependent industry. If a rezoning is approved for higher valued uses, then the City could pursue developing the walkway.

Similarly, the park land acquisition process should be sensitive to the needs of industry. Every effort should be made to ensure that industrial activity continues to be viable.

Comments from the City Engineer

Engineering will not seek a waterfront walkway due to the current industrial zoning. We interpret the existing City policies to favour the potential for water based industry on water fronting industrially zoned properties. However, policy does state that this significant public amenity is to be sought upon subdivision where feasible, and therefore a suitable alternative should be sought in the best interest of the public. In lieu of a waterfront walkway, and to provide partial relief from the requirement for public access to the water every 200 m,

Engineering is requiring a Greenway for 75th Avenue as well as some improvements to the Hudson Street and Bentley Street ends.

Extracts from the October 6, 2003 report to Park Board on the Eburne Subdivision:

RECOMMENDATION

- A. THAT the Board recommend to Council acceptance of payment in lieu of park dedication at the proposed subdivision of the Eburne Lands, subject to legal arrangements to the satisfaction of the General Manager Park Board and the Director of Legal Services for the possible acquisition of Richmond Island for park purposes at a later date as described in this report; and
- B. THAT the Board recommend to the Approving Officer the establishment of public right-of-ways along the water with the matter of physical access to be resolved through any development permits.

[This item was deferred to the October 20, 2003 Park Board Meeting.]

Comments on Payment-in-Lieu

The proposed subdivision is an opportunity to create a park in a neighbourhood, Marpole, that has high residential density coupled with park deficiency and limited opportunities to acquire additional park land. Furthermore, the Eburne Lands are an attractive location offering a diverse waterfront with opportunities to watch for birds and wildlife in the backwaters of Richmond Slough, to observe ship movements in the active navigation channel, and to take in the larger landscape with ocean and mountains on the horizon.

The most desirable location for a public park would be Richmond Island because of its unique prospect in the river, noting that the island is not part of the subdivision. Park Board staff has had some initially promising discussions with the proponent about Richmond Island as a public park in exchange for the park dedication required at subdivision, but the NFPA has since withdrawn that option as they require the island for port purposes at this time. Additional NFPA concerns include potential requirements arising from the imminent implementation of the International Ship and Port Facility Security (ISPS) Code. However, staff feel that long term opportunities for a park in this location ought to be created to ensure that this public interest is considered once the island is no longer required for the currently proposed uses.

Staff have also investigated how to best accommodate a park parcel as part of the subdivision of the Vancouver parcel, settling on a roughly rectangular piece at the western end of the site adjacent to the Bentley Street right-of-way as the preferred configuration. The NFPA, however, has emphasized that the entire site is needed for industrial water-dependent uses. Instead, the proponent is offering a payment-in-lieu of dedicating a park parcel, and a legal agreement allowing for the eventual purchase of Richmond Island in the future. Details of such an agreement still need to be worked out; in principle the Park Board would acquire an option to purchase when industrial use is no longer required and a right of first refusal at a potential change of ownership

This proposal gives the Park Board the ability to acquire another piece of industrial land along the river with the payment-in-lieu, thereby creating a public park in the near future, while maintaining the potential for a purchase of Richmond Island in the long term with other funds. Alternatively, the Park Board could reserve the payment-in-lieu for such an eventual deal.

As it is City Council's authority to accept payment-in-lieu of park dedication, this report recommends that the Park Board advise Council accordingly, subject to a legal agreement providing an option to purchase and a right of first refusal to the satisfaction of the General Manager Park Board and the Director of Legal Services.

Comments on Waterfront Access

Park Board, City and GVRD policies all emphasize the desirability of creating public access to the water. In particular, the City's Fraser River and Burrard Inlet Waterfront Policies and Guidelines seek a public waterfront walkway at subdivision or rezoning where feasible. This issue of feasibility has been the subject of intense discussions between staff and the proponent team.

The basic principle endorsed by all parties is that the creation of public walkways along the waterfront ought not to jeopardize the viability of water-dependent industry. Clearly, there are industrial waterfront uses that do not seem to be compatible with public access. For instance, the proposed container loading facility at this site might be incompatible with public access both in terms of public safety and facility security. On the other hand, the potential use for the easterly half of the site, Translink's bus barns, does not currently seem incompatible with public access to the waterfront.

Both these uses are intended to be realized under the existing industrial zoning. The feasibility of public access, referred to in the above quoted policy, would therefore not be a question of zoning but of use. That is a question to be dealt with at the development permit stage when more detailed information about the proposed industrial operations is available. It is worth noting that there are commercial/industrial uses on properties adjacent to the Fraser River which do not require access from the water and therefore can co-exist with waterfront walkways, such as the CD-1 zoned properties just west of the subject site adjacent to the Park Board's Fraser River Park, or the business park east of Boundary Road in Burnaby.

According to subdivision staff, subdivision of industrial properties along the Fraser River has mostly coincided with rezonings. An exception to that is the subdivision of the site that generated the park at the foot of Shaughnessy Street. There, the Approving Officer created a public right-of-way along the waterfront even though no rezoning was applied for. Park Board staff are suggesting that this case established a precedent for creating public rights along the water even in the absence of a rezoning.

The Approving Officer has the authority to require a public right to access to the waterfront in this subdivision application, in the form of an option or other appropriate legal instrument. To the extent that industrial uses which are not compatible with public access will occupy the lots to be created in this subdivision, such an option or right-of-way would not be exercised or realized. Where proposed industrial uses are not water-dependent, the City could exercise such an option for public access to the waterfront, and create physical access. Such determination could be made at the time of a development permit application.

It should be noted that the NFPA has expressed concerns about creating these public access rights, as they are considered to threaten to NFPA's ability to implement its mandate of sustaining the viability of water-related industry over the long term by compromising the full range of allowable uses for these lands and potentially weakening the NFPA's options to satisfy the ISPS code requirements, especially in regards to the proposed container storage and shipping facility.

City staff are proposing a condition which would seek the creation of an alternate pedestrian/bike path around the site linking the Hudson Street and Bentley Street ends. While that is a desirable connection to make, Park Board staff suggest that this subdivision application is an appropriate opportunity to create public rights to the waterfront even if physical access may not be achievable for some time.

SUMMARY

This report recommends acceptance of payment in lieu of park dedication at the subdivision of the Eburne Lands subject to a legal agreement allowing for the purchase of Richmond Island as a public park at a later date, and the creation of public rights for waterfront access with the matter of physical access to be determined at the development permit stage.