



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: October 17, 2008
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VanRIMS No.: 08-2000-20
Meeting Date: October 28, 2008

TO: Vancouver City Council

FROM: General Manager of Engineering Services in consultation with the Director of Legal Services

SUBJECT: Agreement for the Transfer to the Corporation of Delta and the Greater Vancouver Regional District of certain land adjacent to the Vancouver Landfill (known as "Parcel 2") and a Covenant governing the future use of Parcel 2 for park purposes (the "Parcel 2 Conservation Covenant")

RECOMMENDATIONS

- A. THAT Council approve entering into the Vancouver Landfill Four Party Transfer Agreement (the "Transfer Agreement") between the City of Vancouver ("Vancouver"), the Corporation of Delta ("Delta"), the Greater Vancouver Sewerage and Drainage District ("GVS&DD") and the Greater Vancouver Regional District ("GVRD"), on the general terms outlined in this report, for the transfer for nominal consideration of a portion of lands adjacent to the Vancouver Landfill, known as "Parcel 2", by Vancouver to Delta and the GVRD. The Transfer Agreement includes covenants by Vancouver to provide an indemnity in favour of Delta and GVRD in accordance with the terms and conditions outlined in this report.
- B. THAT Council approve Vancouver entering into the Parcel 2 Conservation Covenant and the Parcel 2 Statutory Right of Way Agreement with Delta and GVRD governing the future use, rights and liabilities in respect of Parcel 2 subsequent to it being transferred to Delta and GVRD. The Parcel 2 Conservation Covenant includes covenants by Vancouver to provide an indemnity in favour of Delta and GVRD in accordance with the terms and conditions outlined in this report.
- C. THAT no legal rights or obligations will arise and no consents, permissions, leases or licenses are granted by the above and none will arise or be granted unless and until all contemplated legal documentation has been (a) approved as to form by the Director of Legal Services and the General Manager of Engineering Services, and (b) executed and delivered by the Director of Legal Services on behalf of Vancouver.

GENERAL MANAGER'S COMMENTS

The General Manager of Engineering Services recommends that Council approve entering into the Transfer Agreement, Parcel 2 Conservation Covenant and Parcel 2 Statutory Right of Way Agreement, including the granting of the associated indemnities as described in this report.

COUNCIL POLICY

Council authority is required for amendments to Vancouver's intergovernmental Landfill operating agreements.

Council approval is required for Vancouver to grant an indemnity in favour of any third party and to enter into agreements that include indemnities by Vancouver.

SUMMARY

Delta, the GVS&DD, the GVRD and Vancouver have recently concluded extensive negotiations to facilitate the transfer of lands adjacent to the Vancouver Landfill from Vancouver to Delta and the GVRD. In the 1999 Vancouver-Delta Landfill Operating Agreement (the "1999 Landfill Operating Agreement"), Vancouver and Delta agreed that Vancouver could fill waste higher within the current landfill footprint in exchange for the transfer of these lands from Vancouver to Delta. The lands to be transferred are known as "Parcel 2" and a portion of "Lot 9". The portion of Lot 9 to be transferred to Delta will be addressed in a subsequent agreement.

For a nominal fee (\$1), the transfer of Parcel 2 effectively reallocates its waste disposal capacity to the existing landfill footprint. Parcel 2 has never been used for garbage disposal and will be added to the lands in Burns Bog already owned by Delta and GVRD that will be used for park purposes. Filling higher on the existing footprint instead of on Parcel 2 will eliminate any environmental impacts resulting from the landfill operation on these lands in Burns Bog.

The parties to facilitate the Parcel 2 transfer have determined it necessary to enter into the Transfer Agreement, the Parcel 2 Conservation Covenant and the Parcel 2 Statutory Right of Way Agreement. However, to reach consensus during the negotiations, Vancouver made some concessions with the potential to affect Vancouver's obligations with respect to Parcel 2.

According to the terms of the agreement, Vancouver will be responsible to take all reasonable steps to mitigate all impacts of the Landfill operation on Parcel 2 including remediation of any contamination, as ordered or required by the Ministry, that migrates from the Landfill onto Parcel 2 and to indemnify Delta and GVRD for certain costs or expenses. Vancouver will also be responsible to indemnify Delta and GVRD in the event that any claims are made or incurred by Delta or GVRD with respect to Parcel 2 arising from:

- gross or criminal negligence or any intentionally harmful act or omissions by Vancouver or its personnel;
- personal injury or death of Vancouver's personnel on Parcel 2 after the transfer of Parcel 2; and
- injury or death of any persons on Parcel 2, if suffered before the transfer of Parcel 2.

The above indemnities are required to be authorized by Council.

The Parcel 2 Conservation Covenant recognizes the ecological significance of Burns Bog and limits the future use of Parcel 2 to certain park purposes to ensure that it remains in its natural bog condition. Also, these limitations will ensure that the future use of this land does not impact Vancouver's operation of the Landfill and reduces the potential impacts and Vancouver's exposure to any claims as a result of Parcel 2 being located adjacent to the Landfill. Further, this agreement requires that Parcel 2 be dedicated by the GVRD as 'Regional Park' pursuant to the provisions of the *Local Government Act*.

The Parcel 2 Statutory Right of Way Agreement allows the City to enter onto Parcel 2 for litter pick up and to conduct any remediation of Parcel 2 resulting from the adjacent landfill operation.

PURPOSE

This report seeks Council authority for Vancouver to enter into an agreement with Delta, the GVS&DD and the GVRD to transfer certain lands owned by Vancouver which are adjacent to the Vancouver Landfill to Delta and GVRD. Vancouver originally agreed to transfer these lands to Delta in the 1999 Landfill Operating Agreement in exchange for Delta's consent to filling waste higher on the existing landfill footprint. However, subsequent to the 1999 Landfill Operating Agreement, Delta and GVRD agreed to jointly own Parcel 2; accordingly, subject to Council's approval, Parcel 2 will now be transferred to Delta and GVRD as co-owners.

BACKGROUND

In 1999, Vancouver and Delta entered into the 1999 Landfill Operating Agreement governing the long term operation of the Vancouver Landfill. The 1999 Landfill Operating Agreement includes provisions for financial compensation to Delta for hosting the Vancouver Landfill as well as design and operational requirements for the Landfill. Vancouver and Delta agreed that the Landfill will provide long term disposal capacity for Vancouver, Delta and other neighbouring municipalities.

The current landfill footprint which has received waste is approximately 225 hectares of the 635 hectare site area owned by Vancouver. According to the 1999 Landfill Operating Agreement, residual lands totalling approximately 300 hectares (80% of the size of Stanley Park) are to be transferred for nominal consideration to Delta for park or recreational purposes, subject to the approval of the GVS&DD with respect to Parcel 2. The lands to be transferred are known as "Parcel 2" and a portion of "Lot 9". The portion of Lot 9 to be transferred to Delta will be addressed in a subsequent agreement.

Parcel 2 was previously owned by the GVRD and was conveyed in 1983 to Vancouver for the purpose of disposing of waste from the western portion of the region. At that time, the Coquitlam landfill was closing and the Cache Creek landfill was not yet operating. Parcel 2 is located north of and, except for a buffer zone area being retained by Vancouver (the "Parcel 2 Buffer Zone"), adjacent to the west property boundary of the Landfill. This land has never been used for and is not required by Vancouver for garbage disposal.

As consideration for the transfer of Parcel 2, Vancouver was granted permission by the Ministry of Environment, with the consent of Delta, to fill waste higher on the existing landfill footprint within Lot 9, provided that the landfill footprint remains the same. The Ministry of

Environment approved the “City of Vancouver Landfill Design and Operations Plan” (2000) which outlined the fill plan until 2037, which date coincides with the expiry of the 1999 Landfill Operating Agreement.

The GVS&DD/GVRD in granting its initial approval of the transfer of Parcel 2 by Vancouver to Delta set as a condition that in the event that the GVS&DD/GVRD acquires more than 500 hectares of land for a regional park within Burns Bog, then Delta will transfer these lands to the GVS&DD or GVRD. In 2004, GVRD and Delta jointly acquired over 2000 hectares of land in Burns Bog for park. As a result, the agreement that is now recommended is between Delta, the GVS&DD, the GVRD and Vancouver to transfer Parcel 2 to Delta and GVRD as equal co-owners on the condition that Parcel 2 will be used only for park and ecological conservancy purposes pursuant to the Parcel 2 Conservation Covenant.

DISCUSSION

Delta, GVS&DD, GVRD and Vancouver recently concluded extensive negotiations of an agreement to complete the transfer of Parcel 2. Pursuant to those negotiations of the terms and conditions for the transfer of Parcel 2, it is necessary for the parties to enter into the Transfer Agreement, the Parcel 2 Conservation Covenant and the Parcel 2 Statutory Right of Way Agreement.

In the 1999 Landfill Operating Agreement, Vancouver and Delta agreed that Parcel 2 would be transferred from Vancouver to Delta on an “as-is” basis. Vancouver, both then and now, does not want to assume liability for claims made by Delta, as owner, or by any third parties using these lands after the transfer. Vancouver was only prepared to accept responsibility to remediate contamination on Parcel 2 resulting from the landfill operation, as is required or ordered by the Ministry of Environment to be remediated. However, in order to reach consensus on the Transfer Agreement, all parties made some concessions, including those with the potential to affect Vancouver’s obligations with respect to Parcel 2 as are outlined below.

Pursuant to the terms of the Transfer Agreement and the Parcel 2 Conservation Covenant, Vancouver will be responsible to take all reasonable steps to mitigate all past, present and future impacts of the Landfill operation on Parcel 2, including remediation of any contamination, as ordered or required by the Ministry, that migrates from the Landfill onto Parcel 2 and to indemnify Delta and GVRD for any costs or expenses either may incur as a result thereof. Vancouver will also be responsible to indemnify Delta and GVRD in the event that any claims are made or incurred by Delta or GVRD with respect to Parcel 2 arising from:

- gross or criminal negligence or any intentionally harmful act or omissions by Vancouver or its personnel;
- personal injury or death of Vancouver’s personnel on Parcel 2 after the transfer of Parcel 2; and
- injury or death of any persons on Parcel 2, if suffered before the transfer of Parcel 2.

The Transfer agreement also outlines the circumstances of when and on what basis certain of the costs related to Parcel 2 would be shared by Vancouver and the GVS&DD, in the event that Vancouver has to remediate contamination on Parcel 2 or incurs any other costs in respect of Parcel 2 and are caused by the adjacent landfill operation.

The above indemnities are required to be authorized by Council.

The Parcel 2 Conservation Covenant recognizes the ecological significance of Burns Bog and limits the future use of Parcel 2 to certain park purposes to ensure that it remains in its natural bog condition. Also, these limitations will ensure that the future use of this land does not impact Vancouver's operation of the Landfill and reduces the potential impacts and Vancouver's exposure to any claims as a result of Parcel 2 being located adjacent to the Landfill.

Some examples of uses that are not permitted on Parcel 2, pursuant to the Parcel 2 Conservation Covenant, include any commercial, industrial, institutional or recreational development or any deposit or transfer of garbage. The agreement of all the parties is required to conduct any activities within Parcel 2 and any work in the Parcel 2 Buffer Zone requires the consent of Delta and GVRD. Further, this agreement requires that Parcel 2 be dedicated by the GVRD as 'Regional Park' pursuant to the provisions of the *Local Government Act*.

The Parcel 2 Statutory Right of Way Agreement allows the City to enter onto Parcel 2 for litter pick up and to conduct any remediation of Parcel 2 resulting from the adjacent landfill operation.

FINANCIAL IMPLICATIONS

There are no direct cost implications to Vancouver homeowners arising from the nominal fee to transfer Parcel 2 from Vancouver to Delta and GVRD. At the time of transfer of Parcel 2 to Vancouver, the City assumed payment of the property tax for these lands. The property tax, \$111,000 in 2008, will transfer with Parcel 2 to Delta and GVRD. These costs are shared with GVRD with Vancouver's share of the Parcel 2 property tax being 35% or approximately 0.3% of the annual operating cost of the Landfill.

ENVIRONMENTAL IMPLICATIONS

The new agreement recognizes that Burns Bog has significant ecological importance and limits future uses of Parcel 2 to ensure that it remains in its natural bog condition.

SOCIAL IMPLICATIONS

There is general recognition by the public of the environmental value of Burns Bog. This land transfer adds Parcel 2, approximately 200 hectares, to the 2000 hectares of Burns Bog already dedicated as Regional Park.

CONCLUSION

The General Manager of Engineering Services recommends that Council approve entering in to an agreement with Delta, the GVS&DD and the GVRD to complete the transfer of Parcel 2 to Delta and GVRD.

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