

NO: R085

COUNCIL DATE: **May 9, 2011**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **May 6, 2011**

FROM: **General Manager, Engineering**

FILE: **2430-01/11 #1**

SUBJECT: **Unauthorized Infilling of an Open Ditch within a Statutory Right-of-Way at
11678 - 130 Street – Progress Report**

RECOMMENDATION

The Engineering Department recommends that Council receive this report as information.

INTENT

The purpose of this report is to provide information to Council on the progress made in relation to the Remedial Action Requirement that was issued pursuant to Council Resolution No. R11-338 related to the property at 11678 – 130 Street.

BACKGROUND

At its Regular meeting on February 28, 2011, Council considered Corporate Report No. L002:2011 related to a circumstance where a section of drainage ditch (known as the “East Bridgeview Canal”) located within a right-of-way through the property at 11678 – 130 Street had been filled without authorization from the City. After considering the report and representations by staff, the Owner, and its representatives, Council adopted the following resolution consistent with the recommendations of the report:

“WHEREAS Sections 72 and 75 of the Community Charter (the “Charter”) authorize Council to impose a remedial action requirement on a person that has obstructed, filled up or damaged a ditch, drain, creek or watercourse and to require that person to undertake restoration work in accordance with the directions of Council or a person authorized by Council;

WHEREAS Sections 72 and 74 of the Charter authorize Council to declare a drain, ditch, or watercourse, or a matter or thing that is in or about a drain, ditch or watercourse a nuisance and to impose a remedial action requirement in relation to that nuisance on the owner of land on which the drain, ditch or watercourse is located and to require the owner to alter or otherwise deal with the nuisance in accordance with the directions of Council or a person authorized by Council;

WHEREAS Gurcharan Enterprises Ltd. is the registered owner (the “Owner”) of land with the civic address 11678 130 Street, Surrey, B.C. and legally described as PID: 024-646-407, Lot

2 Section 4 Block 5 North Range 2 West New Westminster District Plan LMP44274 (the "Property");

WHEREAS there is a ditch commonly known as the East Bridgeview Canal that was constructed for drainage purposes that runs through a City statutory right-of-way on the Property (the "Canal") that has been obstructed, filled in or damaged without the City's approval or consent (the "Unauthorized Fill");

THEREFORE Surrey City Council:

Declares that the Owner has obstructed, filled up, damaged or destroyed the Canal on the Property within the meaning of Section 75 of the Charter;

Declares that the Unauthorized Fill in and about the Canal on the Property is a nuisance within the meaning of Section 74 of the Charter; and

Requires the Owner to, no later than thirty (30) days after notice of this requirement under Section 77 of the Charter has been sent by the City to the Owner to:

- a. Remove the Unauthorized Fill in and about the Canal on the Property and undertake and complete the restoration work identified in Section 3 of the engineer report prepared by Delcan dated January 25, 2011 in respect of the Canal (the "Engineer Report") and any additional measures as directed by a registered Professional Engineer approved by General Manager, Engineering to restore the Canal to its previous condition (collectively, the "Remedial Work") including the removal to a property with a valid Soil Deposition Permit of the Unauthorized Fill from the Property; and
- b. Obtain certification in writing from a registered Professional Engineer approved by the General Manager, Engineering that the Remedial Work has been completed in accordance with the requirements of the Engineer Report.

(collectively known as the "Remedial Action Requirement"); and

Authorizes staff to notify the Owner that the Owner may request that Council reconsider the Remedial Action Requirement by providing the City written notice within fourteen (14) days of the date on which the notice of the Remedial Action Requirement under Section 77 of the Charter is sent to the Owner and that if any or all of the actions required by the Remedial Action Requirement is not completed by the date specified for compliance, the City may take action in accordance with Section 17 of the Charter and undertake any or all of the actions required by the Remedial Action Requirement without further notice to and at the expense of the Owner."

The owner of the property, Gurcharan Enterprises Ltd., sought reconsideration of the decision of Council and on April 4, 2011 and April 18, 2011, Council held a Hearing to reconsider its decision. At the conclusion of the reconsideration Hearing, Council adopted the following resolution:

1. "Council confirms the Remedial Action Requirement imposed by Council pursuant to Resolution No. R11-338 imposed by Council at the February 28, 2011 Regular Council Land Use Meeting and amended by Council at the April 4, 2011 Regular Council Land Use Meeting

and further amends the date specified for compliance with the Remedial Action Requirement in Resolution No. R11-338 to be no later than sixty (60) days after April 18, 2011; and

- 2. Without affecting the Remedial Action Requirement, that staff work with the Owner to develop to the satisfaction of the General Manager of Engineering, modifications to the Remedial Work to address the needs of the City and, to the extent reasonably possible, the concerns of the Owner, with the development of the modifications and implementation of the Remedial Work to be at the Owner's expense; and*
- 3. That staff report back to Council on progress within 30 days."*

This report is being forwarded with respect to item 3, in the above-referenced resolution of Council as the next Regular meeting of Council is on May 30, 2011, which is beyond the 30 day timeframe stipulated in the resolution.

DISCUSSION

Since the confirmation of the Remedial Action Requirement by Council on April 18, 2011, staff has had several meetings and regular correspondence with the property owner's engineer, CitiWest Consulting Ltd., with a view to developing modifications to the Remedial Work to ensure that the drainage function served by the subject ditch is properly addressed, the restrictions and requirements of DFO are respected and, to the extent reasonably possible, the interests and concerns of the property owner are addressed.

A solution has not yet been fully developed. Staff are currently reviewing concept drawings submitted on May 6, 2011 by CitiWest Consulting Ltd, on behalf of the Owner.

Staff is hopeful that modifications to the Remedial Work can be developed in sufficient detail so that they can be presented for approval by the Department of Fisheries and Oceans (DFO) at the City's next regularly scheduled Environmental Review Committee (ERC) meeting (with DFO) on May 18, 2011.

CONCLUSION

This report provides a brief update for Council on the work being undertaken in relation to Council's resolution of April 18, 2011 as referenced above. A more fulsome report on this matter will be provided to Council as part of the agenda for the Regular Council meeting on May 30, 2011. A copy of this report is being forwarded to the owner of the subject property.

Vincent Lalonde, P.Eng.
General Manager, Engineering

JA/brb