



Corporate *NO: L009*

Report *COUNCIL DATE: May 28, 2002*

Regular Council – LAND USE			
TO:	Mayor & Council	DATE:	May 27, 2002
FROM:	General Manager, Planning & Development	FILE:	7901-0137-00
SUBJECT:	Preservation and Protection of the Rock Tree - Rezoning and Subdivision Application at 12200 Block – 92 Avenue		

RECOMMENDATION

That Council receive this report as information.

INTENT

The purpose of this report is to inform Council of actions staff have taken to implement Council's decision to preserve and protect the "Rock Tree" within the proposed subdivision at the 12192 and 12218 - 92 Avenue.

BACKGROUND

At the Regular Council – Land Use Meeting of May 13, 2002, Council considered Corporate Report L008 (Appendix I) that presented three options for addressing the future of the tree known as the "Rock Tree", that is located on the property at 12192 and 12218 – 92 Avenue. The options were: (1) remove the tree, (2) protect and preserve the tree on the building lot within which it is located, or (3) preserve the tree with the City acquiring the proposed lot on which the tree is located and the two neighbouring lots. Council adopted Option (2). Under this option the Rock Tree will be preserved on private property without the City being involved in acquiring any lots. Council requested that staff report back on measures taken to minimize the City's liability in relation to the preservation of the tree under Option (2). At the same Regular Council – Land Use meeting, Council granted final adoption to a Rezoning By-law No. 14523 to allow subdivision of the site on which the tree is located. The Approving Officer signed the subdivision plan for the subject property on May 22, 2002.

DISCUSSION

The following documents the actions that have been taken by staff to preserve the subject tree while minimizing the City's exposure to liability:

1. The site servicing plan and the related Servicing Agreement have been revised to adjust the alignment of the proposed street to provide additional clearance between the edge of the proposed pavement and the Rock Tree.
2. Susan Murray, an arborist retained by the City, was requested to provide a second report to advise on tree preservation measures. She has submitted such a report (Appendix II).
3. A Restrictive Covenant will be registered against Lots 9 and 10 (Lot 10 is the lot on which the Tree is located) concurrently with the registration of the subdivision plan. Following advice from the City Solicitor, the Restrictive Covenant shifts the responsibility of protecting and monitoring the Rock Tree to the owner of the lot on which the tree is located, to minimize the City's liability. Provisions of the Restrictive Covenant are summarized below:
 - The tree, the boulder within which the tree is growing, a 6-metre (20 ft) radius no-disturbance zone and an 8-metre (26 ft) radius no-disturbance zone are all defined in the Restrictive Covenant;
 - The owner cannot construct any foundation within 2 metres (6.5 ft) of the 8-metre no-disturbance zone;
 - The owner cannot change the natural grade or disturb the ground and no pavement of any kind, no parking of vehicles and no storage of any material are allowed within the 6-metre and the 8-metre no-disturbance zones, except that a portion of the driveway only, serving the dwelling on Lot 10, may be constructed within the 8-metre no disturbance zone;
 - Planting materials within the 6-metre and 8-metre no-disturbance zones are specified;
 - The boulder cannot be disturbed in any way;
 - A 1.2 metre (4 ft) high split log rail fence is to be constructed by the owner, to the City's specifications and be maintained in good repair, along the perimeter of the 6-metre no disturbance zone around the tree;
 - The owner is required to maintain the Rock Tree in accordance with the requirements as specified in Susan Murray's second report, which is attached to the Covenant and not to prune the Rock Tree without the prior approval of the City, which will not be considered without the submission by the owner of an assessment by a certified arborist stating that the tree requires pruning and documenting how that pruning is to be carried out to protect the health of the tree;
 - The owner acknowledges and agrees that, notwithstanding the provisions of the Tree Preservation By-law, if the owner ever seeks to remove the tree, a tree removal permit will not be issued, except with the approval of City Council and that any application for removal of the tree must be accompanied by a complete assessment of the tree, undertaken by an arborist certified by the International Society of Arboriculture that will include, but will not be limited to the results of a resistograph test to assess the extent of decay in the tree and measurements of changes in the dimensions of the cracks in the boulder within which the tree is located; and
 - The owner of the lot is required to monitor the health of the Rock Tree by a certified arborist, at least once a year.

To establish, accurately, the current state of the tree, City staff has retained the services of a second consultant arborist to take resistograph readings on the tree, to document the current state of the tree with a series of photographs and to accurately measure the current dimensions of the cracks in the boulder, within which the tree is located. These

readings and related documentation will provide a datum against which any future arborist reports on the tree can be compared.

Legal Services has reviewed this report.

CONCLUSION

The registration of a Restrictive Covenant and the documentation of the current state and health of the Rock Tree, all as documented in this report, will collectively act to preserve and protect the Rock Tree while minimizing the City's exposure to liability.

Murray D. Dinwoodie
General Manager,
Planning and Development

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Appendix I Corporate Report L008

Appendix II Susan Murray – Arborist Report

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