



**THE CORPORATION OF DELTA**  
**COUNCIL REPORT**  
**REGULAR MEETING**

**To:** Mayor & Council  
**From:** Delta Environment Advisory Committee  
**Date:** June 30, 2008

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**South Fraser Perimeter Road – Environmental Assessment**

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■ **CONSIDERATIONS:**

- A. THAT Council request Delta's Municipal Solicitor to provide a legal opinion of whether there would be sufficient grounds for a judicial review of the provincial environmental assessment process regarding South Fraser Perimeter Road.
- B. THAT Council request the BC Environmental Assessment Office to provide the public an opportunity to comment on the proposed shift of South Fraser Perimeter Road west of Crescent Slough prior to the completion of the Environmental Assessment process.
- C. THAT Council request the BC Environmental Assessment Office to release to the public Environment Canada's review and comments of the new alignment shift prior to the issuance of an Environmental Assessment Certificate for South Fraser Perimeter Road.

**PURPOSE:**

The purpose of this report is to bring forward for Council's information issues of concern to the Environmental Advisory Committee relative to the Environmental Assessment process for South Fraser Perimeter Road.

**BACKGROUND:**

At its meeting on May 22, 2008 the Environment Advisory Committee received a staff report for

information regarding the Draft Project Assessment Report for South Fraser Perimeter Road. This item was referred to the Environment Advisory Committee by Council.

## **DISCUSSION:**

### **Judicial Review**

At the Environment Advisory Committee meeting, the Committee discussed the Environmental Assessment process for South Fraser Perimeter Road. It was felt by Committee members that concerns noted in the Council report regarding the process leaving some outstanding issues not fully addressed to Delta's satisfaction, indicates a failure of the Environmental Assessment process. Specific items mentioned included the absence of consideration of the impacts of future development of Tsawwassen First Nation Treaty Settlement Lands and the resulting number of trucks and other vehicles that will be using South Fraser Perimeter Road. Committee members also stated that while Gateway is considering an alignment shift along the western edge of Burns Bog, there are no plans for general public consultation on this significant change to the project. In response to these concerns, the Committee passed a motion that Council request the municipal solicitor to provide a legal opinion of whether there would be sufficient grounds for a judicial review of the Provincial Environmental Assessment process regarding South Fraser Perimeter Road. (Consideration A)

The *BC Environmental Assessment Act* does not have any formal appeal mechanisms. The Provincial *Judicial Review Procedure Act* applies to the review of the decision of any person or tribunal on whom a statutory power of decision has been conferred, unless the Act conferring the power limited the right to review. This option of judicial review through the courts is available to members of the public, local government and interest groups to address perceived violations of *BC Environmental Assessment Act's* legal requirements, including judicial review of the manner in which Ministers' certification decisions or the Environmental Assessment Office's administrative decisions have been made. A judicial review does not look at technical issues such as how specific identified environmental impacts were measured. A similar process is available for the review of Federal Authorities decisions pertaining to the Screening of the project under the *Canadian Environmental Assessment Act*.

Environment Advisory Committee members discussed that should Council consider initiating the judicial review process, that a lawyer with the appropriate expertise in environmental assessment law be retained as soon as possible to begin collecting the information required for an application for judicial review. This would allow for initiation the judicial review process as soon as possible after a decision is made relative to an environmental certificate.

No recent applications have been made for judicial reviews of other projects located in Delta that have gone through the Federal and Provincial Environmental Assessment process. In 2005, the District of West Vancouver applied for a judicial review of the Sea to Sky Highway Project Federal Screening Environmental Assessment. This review was based on a number of issues including a lack of opportunity for the District to review the Federal Screening report and the District also stated that the assessment failed to include a risk assessment of a material environmental impact (windthrow from trees). After a four day hearing in Ottawa, the application for judicial review was dismissed. The District of West Vancouver was also required to pay a portion of BC and Canada's costs. Total costs to the District of West Vancouver for this challenge were in excess of \$250,000.

### **Public Consultation**

The Environment Advisory Committee also discussed public consultation opportunities relating to the new proposed shift of South Fraser Perimeter Road west of Crescent Slough. It was felt that the public should be given the opportunity to provide comments on this shift since there are significant changes to the impacts created from the road, including additional impacts to actively farmed land. It was also suggested that Environment Canada's views on the proposed shift should also be made public before the issuance of an Environmental Assessment Certificate. No comments from Environment Canada have been posted on the Environmental Assessment Office's website to date with respect to the new alignment. The committee passed two motions in this regard that are included as Considerations B and C of this report.

### **Financial Implications:**

Judicial reviews can require significant legal and financial resources. Costs vary widely depending on the scope of background research required and the length of the judicial review process.

### **CONCLUSION:**

Council regularly refers issues relating to the South Fraser Perimeter Road Environmental Assessment to the Environment Advisory Committee. At its recent meeting, the Environment Advisory Committee expressed concerns regarding the Environmental Assessment process and is asking that Council request the Municipal Solicitor to provide a legal opinion of whether there would be sufficient grounds for a judicial review of the provincial environmental assessment process for South Fraser Perimeter Road. The Committee also recommends that prior to Environmental Assessment decisions, the Environmental Assessment Office be requested to seek public comment on the recent shift of the alignment of South Fraser Perimeter Road and that Environment Canada's comments on this shift be made available to the public. It is therefore recommended that Council give consideration to the Committee motions relating to the South Fraser Perimeter Road Environmental Assessment.

Councillor Krista Engelland, Chair  
Delta Environment Advisory Committee