



Governance and Priorities Committee Report

For the Meeting of August 20, 2015

To: Governance and Priorities Committee **Date:** August 5, 2015
From: Robert Woodland, Director of Legislative & Regulatory Services
Subject: Closing City Right of Way – Clawthorpe Park

RECOMMENDATION

That Council instructs City staff to:

1. Draft a bylaw closing the part of Clawthorpe Avenue that is already integrated into Clawthorpe Park and removing its highway dedication for Council's consideration of three readings and adoption.
2. Make an application to remove internal lot lines on Plan VIP1222 in order to create a single lot from Lots 23 to 28.
3. File a plan dedicating as park the two new lots created by implementation of the above recommendations.

EXECUTIVE SUMMARY

The purpose of this report is to seek Council's authorization to proceed with a proposed road closure and park dedication at Clawthorpe Avenue at North Dairy Road.

At its meeting on March 12, 2015, the Governance and Priorities Committee discussed the possibility of closing Clawthorpe Avenue at North Dairy Road as part of the Clawthorpe Park playground and park renewal project, and directed staff to consider such a road closure and report back with the implications.

As shown in Appendix A, the section of Clawthorpe Avenue outlined red is already fully integrated into the park. Although there is no vehicular access to/from North Dairy Road, no record could be found of a road closure for any part of Clawthorpe Avenue. The playground and renewal works will be completed this month, and it is recommended that the City formalize the status of Clawthorpe Park as outlined above.

PURPOSE

The purpose of this report is to seek Council's authorization to proceed with a proposed road closure and park dedication at Clawthorpe Avenue at North Dairy Road.

BACKGROUND

At its meeting on March 12, 2015, Committee received an update on the results of the public engagement and next steps for Clawthorpe Park playground and park renewal project. The 2015 Financial Plan proposes upgrading the park to replace aging play equipment and to better meet the needs of the community. The possibility of closing Clawthorpe Avenue at North Dairy Road to add to the park was discussed, and staff were directed to consider such a road closure and report back with the implications. A location plan is attached in Appendix A.

As shown in Appendix A, the section of Clawthorpe Avenue outlined red is already fully integrated into the park. Although there is no vehicular access to or from North Dairy Road, no record could be found of a road closure bylaw for any part of Clawthorpe Avenue.

The remainder of the park comprises six City lots, shaded blue in Appendix A, all of which are zoned R1-B Single Family Dwelling. These lots were reserved for park purposes by Bylaw No. 80-4 which is attached in Appendix B.

ISSUES & ANALYSIS

Many City parks comprise a collection of individual lots and some may also include sections of road which have not been formally closed (as in Clawthorpe Park). Further complicating this situation is that in the past the City adopted some road closure bylaws which did not remove the highway dedication. As a result, the legal status of some park lands likely remains that of a closed road and not a fee simple lot.

While putting all park lands into a better legal state is desirable, it would require considerable resources and staff time to do so. This could, however, form part of a real estate strategy to be developed by the new real estate function that is in the *2015 – 2018 Strategic Plan* for this year.

At present, park status is conferred on the six individual lots at Clawthorpe Park by Bylaw No. 80-4 which reserved these lands for park purposes along with seventeen other park locations. The lands specified in this bylaw may be used as parks only and no other municipal uses. The only way to remove the park reservation status is by bylaw, which must have the prior approval of the electors.

The legal status of the lands comprising Clawthorpe Park is complex as there is a mix of fee simple lots and a section of road which retains its highway status but is actually green space fully integrated into the park. The park use specified in Bylaw No. 80-4 is not noted on any of the six titles of the lots. There is merit to undertaking the steps necessary to create a more uniform legal status for these park lands.

Under the *Community Charter*, the Province of BC holds a special authority over all roads and highways called a "right of resumption". This authority means that the Province may resume the freehold and possession of any highway vested in a municipality by the *Community Charter* should the Lieutenant Governor in Council consider that this is required for any transportation purpose (amongst other things). When a municipality closes a highway, however, the Province's right of resumption can be cancelled with the approval of the Provincial Cabinet.

If the City closes the relevant section of Clawthorpe Avenue, it would result in five of the residential lots (#1619, #1623, #1627, #1631 and #1635) shown in Appendix A becoming "land-locked" since they would have no road frontage. In order to avoid any issue with raising title to the closed section of road, an application should be made to remove the internal lot lines so that

the whole area shaded blue in Appendix A becomes a single lot with road frontage on North Dairy Road.

OPTIONS & IMPACTS

Option 1 – Formalize the Legal Status of the Lands as Park (Recommended)

This would involve:

- Closing the relevant section of Clawthorpe Avenue and raising title to it; and
- Removing the internal lot lines on Plan VIP1222 to create a single lot from the existing six lots in Clawthorpe Park, and
- Dedicating as park the two newly created lots.

In order to seek the cancellation of the Province's right of resumption, a municipality must close the road, remove its highway dedication, raise title to the piece of property and dispose of it. Because the City would retain ownership of the closed section of Clawthorpe Avenue as part of the park, the final element required to cancel the right of resumption (disposal) would not be met. As a result, there is a theoretical risk that the Province could exercise its right to reopen the closed highway at some future time. This risk is believed to be low since North Dairy Road is classified as a secondary arterial road and the section of Clawthorpe Avenue in question has been part of the park for many years.

Option 2 – Maintain the Status Quo

The other option is to do nothing and leave the status of the section of Clawthorpe Avenue that is already green space and the six lots as they are. However, this would mean that capital funding intended for the park renewal project has been spent partly on land which is still legally a road.

2015 – 2018 Strategic Plan

The Clawthorpe Park playground improvements were planned prior to the introduction of the 2015 - 2018 Strategic Plan, but they are in keeping with Objective 8 – Enhance and Steward Public Spaces, Green Spaces and Food Systems. The City is fulfilling its stewardship responsibilities by resolving the legal status of the lands comprising Clawthorpe Park.

Impacts to 2015 – 2018 Financial Plan

The course of action recommended is likely to incur costs of approximately \$4,000 in survey and land registration fees. There is no impact on the Financial Plan as these costs can be paid from the property management budget as a one-time project.

Official Community Plan Consistency Statement

Section 9.1 of the Official Community Plan commits the City to maintain and enhance the existing network of parks and open spaces through the development of a Parks Master Plan.

CONCLUSIONS

The playground and renewal works will be completed this month. In light of the capital invested in the project, it is recommended that the status of the various lands comprising Clawthorpe Park be improved by means of the road closure and consolidation. For greater certainty, a registered plan

should be deposited at the Land Title Office dedicating as park the two newly created lots that would be created by the road closure and lot consolidation.

Respectfully submitted,




Neil Turner
Property Manager



Robert Woodland
Director of Legislative & Regulatory Services

Report accepted and recommended by the City Manager: _____

Date: _____


August 14, 2015

List of Attachments

Appendix A – Location Plan
Appendix B – Bylaw 80-4

Appendix A
Location Plan



Appendix B

No. 80-4

A BY-LAW OF THE CITY OF VICTORIA

to reserve various lands for park purposes,

The Municipal Council of the Corporation of the City of Victoria enacts as follows:

1. This By-law may be cited as the "Miscellaneous Parks Reservation By-law".
2. Pursuant to the provisions of Section 467 of the Municipal Act those lands in the City of Victoria hereinafter described are hereby reserved as park land for the enjoyment and recreation of the public:
 - (a) Robert J. Porter Park
Lot 46, Fairfield Farm Estate, Victoria City, Plan 884;
 - (b) David Spencer Park
Lots 8, 9, 18 and 19, Block 10, Section 48, Victoria City, Plan 835;
 - (c) Hollywood Park
Lots G and H, Section 68, Victoria District, Composite Plan 2203;
 - (d) Pemberton Park
That part of Amended Lot 11(D.D.58190-I) Section 68, Victoria District, Plan 3071, lying northwesterly of a straight line joining the most northerly corner of Lot 10, Section 68, Victoria District, Plan 3071 with the most westerly corner of Lot 12, Section 68, Victoria District, Plan 3071;
 - (e) Ellice Street Playlot
Lots 15, 17 and 19, Block P, Section 4, Plan 33-A;

- (f) Jackson Street Playground
Lots 1 to 5, Section 4, Victoria City,
Composite Plan 2571, Lot 3, Section 4,
Victoria District, Plan 796 and Lot 33,
Section 4, Victoria District, Plan 1306;
- (g) Raynor Avenue Playlot
Lots 3 and 4, Block 2, Section 31,
Esquimalt District, Plan 833;
- (h) Fairfield Hill Park
Remainder Lot 1, Fairfield Farm Estate,
Victoria City, Plan 3649;
- (i) Highview Playlot
Lots 1, 2 and 3, Block 3, Section 4,
Victoria City, Plan 1200;
- (j) Clawthorpe Street Playlot
Lots 24, 25, 26 and 27 and Amended Lots
23 and 28 all in Block 4, Sections 29/30,
Victoria District, Plan 1222;
- (k) Bay Street Playground
Re-amended Lot 13 (DD 98687-I) of Section
75, Victoria District, Plan 433 except
Parcel 'A' (DD 123621-I) thereof;
Parcel 'A' (DD 123621-I) of Re-amended
Lot 13 of Section 75, Victoria District
Plan 433;
Lots 8, 9 and 16, Section 75, Victoria
District, Plan 433;
- (l) Oswald Street Playground
Lots 3 to 9 inclusive, Block 1, Section
29/30, Victoria District, Plan 844;
Lots 5 to 13 inclusive, Block 2, Section
29/30, Victoria District, Plan 844;

- (m) Redfern Street Playlot
Lots 31 to 44 inclusive, Block 4, Section 76, Victoria City, Plan 840;
- (n) Chapman Street Playlot
Lots 7 to 11 inclusive, Block 'B', Section 30, Fairfield Farm Estate, Victoria City, Plan 949;
- (o) Stadacona Park
Lot 6, Section 75, Plan 2307, Victoria District except that part thereof lying to the northwest of a line drawn parallel to the northwestern boundary of said Lot 6 and perpendicularly distant 16.00 feet southeasterly therefrom;
Lot 1, Section 75, Victoria District, Plan 9151 except that part thereof lying to the northwest of a line drawn parallel to the northwestern boundary of said Lot 1 and perpendicularly distant 16.00 feet southeasterly therefrom;
- (p) Gonzales Beach Area
Lot C, Section 19, Victoria District, Composite Plan 2475;
Parcel 'C' (D.D. 219674-I) of Lot 1 in Division 3 of Section 19, Victoria District, Plan 9;
(occupied by dwelling)
Lot 1, Section 19, Victoria District, Plan 239-A;
- (q) Queens Avenue Playlot
All that part of former Queens Avenue outlined in red on Plan 953 B.L.;
- (r) Topaz Park
Lot 1, Section 4, Victoria District, Plan 17978, and Lot A, Section 4, Victoria District, Plan 16258.

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Passed and received third reading by the
Municipal Council the 3rd day of
January, 1980.

Reconsidered and adopted by the Municipal
Council the 17th day of January,
1980.

"C.F.G. CRISP"

CITY CLERK

"W.D. TINDALL"

MAYOR