

NO: R083

COUNCIL DATE: May 9, 2011

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## REGULAR COUNCIL

TO: **Mayor & Council** DATE: **May 9, 2011**

FROM: **General Manager, Planning and Development** FILE: **0450-01**

SUBJECT: **Metro Vancouver Regional Growth Strategy -  
Non-binding Dispute Resolution Process**

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## RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information; and
2. Authorize the City Clerk to forward a letter to Metro Vancouver that advises that the City of Surrey Council has resolved that the City of Surrey will directly participate in the non-binding dispute resolution process related to the City of Coquitlam's objections to the proposed Regional Growth Strategy, known as "Metro Vancouver 2040: Shaping Our Future".

## BACKGROUND

On January 21, 2011, the proposed Metro Vancouver Regional Growth Strategy Bylaw "Metro Vancouver 2040: Shaping Our Future" (the "RGS") was forwarded to local governments across the Region, including the City of Surrey, for acceptance. By legislation, all affected local governments must accept the RGS before it can be adopted by the Regional Board. During the 60-day acceptance period that followed, 23 of the 25 affected local governments accepted the RGS, including the City of Surrey.

Two affected local governments, Port Moody and Coquitlam, did not accept the RGS. Port Moody's stated objections to the RGS were relatively minor, and were resolved by the Metro Vancouver Board at its April 8, 2011 meeting. Coquitlam's objections to the RGS were more substantial, triggering a dispute resolution process according to Section 859 of the *Local Government Act*. A letter, dated April 12, 2011, from the City of Coquitlam to Metro Vancouver, attached as Appendix I to this report, documents the objections of the City of Coquitlam.

The *Local Government Act* sets out two alternative approaches to resolving disputes around the acceptance of an RGS, these being, a binding arbitration process, and a non-binding dispute resolution process. The decision over which process is followed rests with the Minister of Community, Sport and Cultural Development.

At its meeting on April 8, 2011, the Metro Vancouver Board resolved to request that the Minister select a binding arbitration process to resolve Coquitlam's objections to the RGS. The City of Coquitlam appealed to the Minister to select a non-binding dispute resolution process.

On April 28, 2011, the Minister forwarded a letter, a copy of which is attached as Appendix II to this report, outlining her decision to direct the Coquitlam concerns with the RGS to a non-binding process with a prompt starting date and the expectation of a timely resolution. The dispute resolution process is to be designed and commenced by May 16, 2011, with a progress report sent to the Minister by June 30, 2011. If the Minister at any time is of the opinion that agreement cannot be reached between the parties within a reasonable timeframe, she may direct the dispute to binding arbitration.

## DISCUSSION

While the design of the dispute resolution process must be agreed upon between Metro Vancouver and the City of Coquitlam as the principal parties to the dispute, the non-binding resolution process also allows other affected local governments (including the City of Surrey) to participate in the process. If Surrey chooses to participate in the process, it must declare this intention to Metro Vancouver before May 16, 2011.

The City of Coquitlam and Metro Vancouver are currently designing the dispute resolution process, with the matter being discussed at a meeting of the Metro Vancouver Intergovernmental Affairs Committee on May 4, 2011. Information from that Committee meeting will be provided on table at the Regular meeting of Surrey City Council on May 9, 2011, the meeting at which this report will be on the agenda for Council's consideration.

As prescribed in Section 859(5) *Local Government Act*, if a local government chooses to participate in the dispute resolution process, it will be allocated a proportionate share of the costs associated with the process. This cost apportionment is based on the total assessed property value within each of the participating local governments, including Metro Vancouver in comparison to the sum of the combined assessed property values within the jurisdiction of all of the participants. The costs associated with the RGS dispute resolution process have not yet been determined and will be dependent on the complexity and duration of the process.

If the City chooses not to participate directly as a party to the process, it can request to observe the proceedings to monitor discussions leading to resolution of the disputed matters.

Whether the City of Surrey chooses to participate or not, Council will be obligated to consider and vote to either accept or reject any changes to the RGS that arise out of the non-binding dispute resolution process. Council may not reject any parts of the RGS that it had previously accepted and that are not being proposed for amendment as a result of the dispute resolution process. Given that Coquitlam's objections to the RGS are fundamental and substantial in nature, amendments to the RGS could be quite significant. If any affected local government does not accept the amendments to the RGS that result from the current dispute resolution process, a binding arbitration process is initiated in relation to the position of that local government.

To ensure that the City of Surrey's interests are protected through the dispute resolution process, it is recommended that Council resolve that the City of Surrey will participate directly in the non-binding dispute resolution process.

The most recent correspondence from the City of Coquitlam to Metro Vancouver, dated May 3, 2011, is attached as Appendix III.

## CONCLUSION

The Minister of Community, Sport and Cultural Development has directed the objections of the City of Coquitlam related to the Metro Vancouver RGS to a non-binding dispute resolution process. As an affected local government, the City of Surrey may choose to participate directly in the process, as long as it accepts a proportionate share of the costs, which have not yet been determined. The City may also choose to observe the process without active participation. Regardless of its level of participation, Council will be obligated to make a decision as whether to accept or reject any amendments to the RGS that are the result of the dispute resolution process. Given the significance of the objections that are in dispute, staff recommends that the City of Surrey participate directly in the non-binding process with a view to ensuring that Surrey's interests are properly represented in relation to the development of alternatives to address the Coquitlam concerns. On this basis, it is recommended that Council authorize the City Clerk to forward a letter to Metro Vancouver that advises that the City of Surrey Council has resolved that the City will directly participate in the non-binding dispute resolution process related to the City of Coquitlam's objections to the proposed Regional Growth Strategy.

*Original signed by*  
Jean Lamontagne  
General Manager,  
Planning and Development

DL:saw

Attachments:

- Appendix I Letter, dated April 12, 2011, from the City of Coquitlam to Metro Vancouver
- Appendix II Letter, dated April 28, 2011, from Minister Ida Chong to Metro Vancouver
- Appendix III Letter, dated May 3, 2011, from the City of Coquitlam to Metro Vancouver



April 12, 2011  
Our File: 13-6440-01/000/2011-1  
Doc #: 1053182.v3

Honourable Ida Chong  
Minister of Community, Sport and Cultural Development  
PO Box 9056, STN PROV GOVT  
Victoria, BC V8W 9E2

Dear Minister Chong:

**RE: Proposed Metro Vancouver Regional Growth Strategy**

I am writing to request your support of the City of Coquitlam's consensus building approach to achieve timely and effective resolution to the proposed Regional Growth Strategy.

As you are aware on April 8, 2011 the Metro Vancouver Board narrowly rejected our Council's unanimous request to enter into a non-binding dispute resolution process to deal with our differences of opinion on the RGS. The Board's decision is regrettable as we believe it was affected by inaccurate statements related to our position. Our Council remains unanimous in our desire to resolve our disputed issues by respecting the region's long standing history of dialogue and entering into a non-binding dispute resolution process as outlined in the Act.

Coquitlam chaired the technical committee which made significant improvements to the proposed Regional Growth Strategy and is one of the most knowledgeable stakeholders on this issue. While the current version is an improvement over previous drafts, we feel it still falls short of what is needed to adequately plan our region. Clarification regarding legal, administration and financial implications as well as dispute resolution processes and the addition of a clear definition of land uses/activities which are deemed 'Regionally significant' are possible in a relatively short time frame with the right people at the table. This will provide greater consistency across Metro Vancouver and will provide a successful Regional Growth Strategy for Metro Vancouver. With those improvements I am confident that Coquitlam will endorse a revised Metro Vancouver Regional Growth Strategy.

**Coquitlam's Concerns regarding the proposed RGS**

Coquitlam is strongly supportive of the concept of Regional Planning. As such, Coquitlam's decision to not accept the proposed RGS was difficult and was not taken lightly. As required by



the Act, Coquitlam's specific reasons for non-acceptance were outlined in our March 22, 2011 correspondence to the Metro Board. Coquitlam supports the legislation, both in spirit and in letter. Our non-acceptance of the RGS Bylaw is not in any way a rejection of the relevant regional growth strategy legislation, but rather it is based on our concern over how that legislation has been interpreted and applied, and over specific provisions in the bylaw. Importantly, we feel a non-binding resolution has the capacity to reach consensus on our key concerns including:

- The proposed RGS does not define "regional significance". Leaving such an importance concept to be inferred by the various land use designations and limiting policies in the bylaw will lead to uncertainty, ambiguity and dispute. Through the aid of a facilitator we believe this technical definition can be identified, discussed and collectively accepted.
- A regional plan with greater oversight control brings with it additional processes to implement, monitor and amend the plan over time. These additional regional and possible Municipal staff resource needs, legal and other cost implications are unclear and should be clarified for all parties before the bylaw is implemented. This work would be greatly aided through the development of a joint strategy, which could only really be developed by a dialogue-based process, rather than a process of binding arbitration.
- While Provincial legislation sets out dispute resolution parameters, there are unanswered questions around the ability for interested groups or the public to provide input on future amendments to Municipal Councils and the Metro Vancouver Board in dealing with plan amendment applications and any resulting disputes that arise. We are open to working with metro staff to develop a jointly acceptable process to involve key stakeholders at this time and in the future.
- Evident in the proposed RGS are inconsistencies across the region related to the designation of industrial, mixed employment, and conservation and recreation lands. We believe a consensus approach can establish clear criteria to eliminate inconsistencies in the bylaw and minimize future disputes.
- Finally, without the necessary decision-making process to engage the Metro Board and Municipal Councils across the region at an earlier stage, the RGS has taken a leap in conferring a greater degree of control and oversight authority to the Regional District, seemingly to address issues articulated by Metro Vancouver staff but not directly or substantively considered and confirmed by the elected representatives on the Board or by the municipalities affected. A direct conversation between elected representatives of shared interests can resolve this issue.

Under such circumstances, the *Local Government Act (LGA)* clearly sets out a process to resolve disputes, beginning with non-binding dispute resolution; it is that process that we proposed to Metro Vancouver and still believe is in the best interest of all parties.

### **Dispute Resolution**

The Regional Growth Strategies provisions of the *LGA* contemplates that individual local governments may have unresolved concerns prior to ratification, and in fact sets out two distinct phases of resolving such concerns.

- The first stage is to request the Province to appoint a facilitator (as provided for in Section 856 of the *LGA*), to support discussions between Metro Vancouver and the local government(s) that has (have) concerns; this is the most logical route, and is the route we requested in our letter of March 22, 2011 to the Metro Board.
- If that step is deemed to have been unsuccessful or is deemed to be unlikely to achieve success, then the second stage is the more "hardball" approach of binding arbitration (Section 860), but that is meant to be used only after it is clear that the dispute cannot likely be resolved through the non-binding approach set out earlier in the Act.

We believe that at this critical juncture, it is necessary that the HOW of the RGS should be dealt with at the political level, an end that is best realized through non-binding resolution. A consensus building process is felt to be superior at this time and in this context for several reasons:

- a binding settlement process will involve immediate legal involvement with significant cost and relationship damaging implications;
- the RGS process to date has been primarily staff driven, and continuing with administrative delegation in the dispute resolution process negates the political dimension that is critical to properly address this matter;
- as a regional district is not a directly elected level of government but rather a collective of its Municipal members, resorting to an administrative, legalistic binding arbitration process where the parties cannot directly discuss, explore and reach solutions is inconsistent with the concept of a regional district and the past practices of our region.

Both the legislation and past practices of the region favour collaborative, consensus building dialogue to resolve differences. In line with this preferred approach to dispute resolution, we propose that up to three Board and three Coquitlam Council members be appointed to a panel to

discuss the issues, identify and consider solution options and recommend measures to resolve the outstanding issues. Senior Metro Vancouver and City staff would assist and support the panel; as well, a facilitator appointed by the Minister of Community, Sport and Cultural Development would be beneficial in helping the participants in reaching resolution. The Facilitator could also invite other key stakeholders to address the panel.

The City of Coquitlam believes that the opportunity for timely meaningful dialogue to resolve our specific issues is an important first step that may very well avoid a more adversarial mechanism. For this reason, Coquitlam is asking for your support in requiring a non-binding dispute resolution process to allow us to work productively towards consensus.

It seems only logical that, if one local government expresses concern over a policy, the most valid opinion about whether that concern can be resolved with further discussion is the opinion of that local government. We believe strongly that face-to-face facilitated discussion will produce a resolution. The Board of Directors at Metro Vancouver was very divided on this question – binding vs. non-binding. We believe that if the Chair had permitted our amendment, as required by the Board's own procedures, the majority of the Board would have supported the non-binding approach set out in Section 856.

Thank you very much for your consideration.

Yours truly,



Richard Stewart  
Mayor

- c - Honourable Christy Clark, Premier
- Iain Black, MLA Port Moody - Coquitlam
- Doug Horne, MLA Coquitlam Burke Mountain
- Diane Thorne MLA Coquitlam Maillardville
- Lois Jackson, Chair Metro Vancouver Board
- Lois-Leah Goodwin, Executive Director, Ministry of Community, Sport and Cultural Development
- Karen Rothe, Manager, Growth Strategies Metro Vancouver and Fraser Valley, Ministry of Community, Sport and Cultural Development

Apr. 28. 2011 3:20PM Science and Universities

No. 1841 P. 2



INFROMATION ITEM - Provided On Tabl  
TAC April 29, 201

April 28, 2011

Ref: 145171

Her Worship Mayor Lois E. Jackson  
Chair  
Metro Vancouver  
4330 Kingsway  
Burnaby, BC V5H 4G8

Dear Chair Jackson:

Thank you for your letter of April 8, 2011, and the enclosure, notifying me of the results of Metro Vancouver's Regional Growth Strategy (RGS) bylaw ("Metro Vancouver 2040: Shaping Our Future") acceptance process, as required under section 859 of the *Local Government Act* (Act). I understand from your letter that, originally, both the City of Port Moody (Port Moody) and the City of Coquitlam (Coquitlam) did not accept the RGS; however, that on April 8, 2011, the Board unanimously passed a resolution to settle Port Moody's differences, as provided for under section 853(2) of the Act, and that the Coquitlam is now the only affected local government that has not accepted the RGS.

As the Minister of Community, Sport and Cultural Development, I have a statutory obligation under section 859(2) of the Act to direct the RGS to dispute resolution if an affected local government refuses to accept a proposed RGS. My decision as to whether to direct the RGS process to non-binding dispute resolution or arbitration is based on the likelihood of a successful resolution through a non-binding process.

I appreciate that this process has been underway for four years and that considerable time and collaborative effort have been expended on the part of elected officials and staff to achieve agreement on the proposed RGS, whereby 23 of 24 affected local governments have accepted the RGS. You indicate that, during its April 8, 2011 meeting, the Board resolved that Coquitlam's objections to the RGS are unlikely to be resolved using a non-binding dispute resolution process and that I be requested to direct the RGS to a binding resolution process. You also indicate that this resolution is based on the efforts previously made to address Coquitlam's concerns and its fundamental opposition to the RGS. I have received correspondence from Coquitlam indicating their interest in pursuing a non-binding dispute resolution process, which is consistent with the Coquitlam Council March 22, 2011 resolution requesting that the Minister appoint a facilitator. I also understand that Coquitlam wishes to resolve outstanding issues in a timely fashion.

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Ministry of Community, Sport  
and Cultural Development

Office of the Minister

Mailing Address:  
PO Box 9056 Stn Prov Govt  
Victoria BC V8W 9E2

Phone: 250 387-2283  
Fax: 250 387-4312

Location:  
Room 323  
Parliament Buildings  
Victoria BC V8V 1X4

[www.gov.bc.ca/cscd](http://www.gov.bc.ca/cscd)



Her Worship Mayor Lois E. Jackson  
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After due consideration, I am directing the RGS to non-binding dispute resolution. The extensive time, effort, and resources of the preceding work should provide a strong foundation for resolution of outstanding issues. In accordance with section 859(2.1) of the Act, I am specifying that the dispute resolution process start no later than May 16, 2011. In the interest of reaching a timely resolution, please provide an update to Ministry staff on progress being achieved by June 30, 2011.

The Act provides that the design of the non-binding dispute resolution process be determined by agreement between Metro Vancouver and Coquitlam (as the affected local government that refused to accept the RGS). Metro Vancouver must notify all affected local governments of the non-binding process and invite them to participate. I expect that these steps will be completed as quickly as possible in order to begin the non-binding process by May 16, 2011. I would also like to note that the costs for the process are to be shared between all of the parties participating in the non-binding process as per section 859(5) of the Act, unless you can agree on an alternative cost-sharing arrangement. To assist you with reaching agreement on the RGS, you may wish to consider engaging a neutral third party to facilitate discussions. If you are unable to reach agreement on the design of the non-binding process, I will, in accordance with the legislation, direct you to an appropriate process. If you cannot reach agreement, please let me know as soon as possible.

If you are able to reach agreement on an amended draft RGS bylaw through the non-binding process, the Metro Vancouver Board must again submit the RGS to all affected local governments for a 60-day acceptance period prior to adoption of the bylaw. Please note that during this acceptance period an affected local government cannot object to a provision it accepted during the first 60-day acceptance period. Only the amended portions of the RGS, if the RGS is amended during the non-binding process, can be subject to an objection.

One of the underlying principles of the RGS legislation is to ensure certainty and closure with respect to the resolution of any outstanding issues. Consistent with that principle, if acceptance is not reached within 60 days following the completion of the non-binding process, the matter will proceed directly to final settlement under section 860 of the Act. Section 860 references three settlement processes: peer panel settlement, final proposal arbitration, or full arbitration. I would also like to emphasize that even if this matter proceeds to one of the final settlement options, Metro Vancouver and affected local governments may continue to negotiate throughout the process and arrive at a solution at any time.

For reference, I would suggest that all participating parties review the relevant section of the Act regarding dispute resolution:

[www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96323\\_29](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96323_29).

Her Worship Mayor Lois E. Jackson  
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The parties may also wish to reference the "Regional Growth Strategies: An Explanatory Guide," which can be found at:  
[www.cscd.gov.bc.ca/lgd/intergov\\_relations/library/RGS\\_Explanatory\\_Guide\\_2005.pdf](http://www.cscd.gov.bc.ca/lgd/intergov_relations/library/RGS_Explanatory_Guide_2005.pdf).

Again, I appreciate that the RGS has been underway for four years and there is a strong desire by the Board and Councils to have the new RGS in place in the near future. I am confident that in the next few months the outstanding objections to the RGS can be resolved in a timely and effective manner. You have worked long and hard to develop an RGS to guide growth and development in your region over the next 30 years and I appreciate that you still have more work ahead of you. I wish you all the best as you carry out the non-binding dispute resolution process. Ministry of Community, Sport and Cultural Development staff are available to provide you with advice on the next steps in the process as needed.

Sincerely,



Ida Chong, FCGA  
Minister

pc: Mayors and Chief Administrative Officers of member municipalities

Chairs and Chief Administrative Officers of Fraser Valley Regional District and  
Squamish-Lillooet Regional District

Chief Kim Baird, Tsawwassen First Nation

Mr. Don Fast, Deputy Minister  
Ministry of Community, Sport and Cultural Development

Mr. Mike Furey, Assistant Deputy Minister, Local Government Department  
Ministry of Community, Sport and Cultural Development

Ms. Lois-Leah Goodwin, Executive Director  
Intergovernmental Relations and Planning Division  
Ministry of Community, Sport and Cultural Development

Mr. Ian Jarvis, Chief Executive Officer, TransLink

Ms. Nancy Olewiler, Board Chair, TransLink

Mr. Johnny Carline, Chief Administrative Officer, Metro Vancouver

Mr. Doug Raines, Chief Administrative Officer, Tsawwassen First Nation



May 3, 2011  
Our File: 01-0480-20/RD13-01/2011-1  
Doc #: 1058865.v1

Lois Jackson, Chair  
Metro Vancouver  
Main floor, Head Office  
4330 Kingsway  
Burnaby BC V5H 4G8

Dear Chair Jackson:

**RE: Proposed Metro Vancouver Regional Growth Strategy**

I am writing further to Minister Chong's April 28, 2011 letter to propose a non-binding resolution process under section 859(3) of the *Local Government Act*.

We propose that three Board members and three Coquitlam Council members be appointed to a panel to discuss the issues, identify and consider solution options and recommend measures to resolve the outstanding issues. Since the issues involve adjustments to the political decision making process, it is essential that the resolution process be directed by elected individuals. Senior Metro Vancouver and City staff would be able to assist and support the panel; as well, a facilitator would be appointed by mutual agreement as we believe that it would be beneficial in helping the participants in reaching resolution.

With regard to the three Coquitlam panel members, Council has appointed Councillors Reid and Robinson and myself to represent the City.

In accordance with the Minister's letter and Section 859(4) of the Act, each other member local government should be invited to specify one member of each Council to participate in the resolution process. In addition, the facilitator and/or either side will be entitled to invite other key stakeholders to address the panel.

If you require further information or would like to discuss the proposed process in further detail, please contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "Richard Stewart". The signature is fluid and cursive, with a large loop at the end.

Richard Stewart, Mayor  
Cell 604-314-4345

c - Honourable Ida Chong, Minister of Community, Sport and Cultural Development  
Metro Vancouver Member Municipalities



Office of the Mayor | City of Coquitlam  
3000 Guildford Way, Coquitlam, BC V3R 7K2  
Office: 604.927.3001 | Fax: 604.927.3015  
www.coquitlam.ca