

COMMUNITY CHARTER

[SBC 20031 CHAPTER 26

Part 3 – Additional Powers and Limits on Powers

Division 5 – Highways

Permanent closure and removal of highway dedication

- 40** (1) A council may, by bylaw,
- (a) close all or part of a highway that is vested in the municipality to all or some types of traffic, or
 - (b) reopen all or part of such a highway that has been closed.
- (2) A council may, by bylaw, remove the dedication of a highway
- (a) that has been closed by a bylaw under subsection (1) (a), or
 - (b) that is to be closed by the same bylaw, or by a bylaw adopted by the council at the same time.
- (3) Before adopting a bylaw under this section, the council must
- (a) give notice of its intention in accordance with section 94 [*public notice*], and
 - (b) provide an opportunity for persons who consider they are affected by the bylaw to make representations to council.
- (4) In addition to the requirement under subsection (3), before adopting a bylaw under subsection (1) (a), the council must deliver notice of its intention to the operators of utilities whose transmission or distribution facilities or works the council considers will be affected by the closure.
- (5) A bylaw under subsection (2) must be filed in accordance with section 120 of the *Land Title Act* and, on filing, the property subject to the bylaw ceases to be a highway, its dedication as a highway is cancelled and title to the property may be registered in the name of the municipality in accordance with section 120 of the *Land Title Act*.
- (6) As a limit on subsection (2), a council may not remove the dedication of a highway that was dedicated by the deposit of a subdivision or reference plan in the land title office if

- (a) the highway has not been developed for its intended purpose, and
 - (b) the owner of the land at the time the plan was deposited is the owner of all of the parcels created by the plan, unless the owner of the parcels consents.
- (7) This section, and not section 30 [*reservation and dedication of municipal property*], applies to cancelling the dedication of a highway.
- (8) For certainty, this section applies to public highways under section 42 of the *Transportation Act*.

Restrictions in relation to highway disposition, closure or alteration

- 41** (1) As a restriction, if
- (a) a bylaw under section 40 (1) (a) [*authority to permanently close*] affects a highway, or part of a highway, that provides access to the ocean or a lake, river or other stream or watercourse, and
 - (b) the municipality is proposing to dispose of the highway or part, the municipality may only dispose of that highway or part if
 - (c) the municipality is exchanging the property for other property that the council considers will provide public access to the same body of water that is of at least equal benefit to the public, or
 - (d) the proceeds of the disposition are to be paid into a reserve fund, with the money from the reserve fund used to acquire property that the council considers will provide public access to the same body of water that is of at least equal benefit to the public.
- (2) If the effect of
- (a) a proposed highway closure under section 40 (1) (a), or

(b) a proposed highway alteration

will be to completely deprive an owner of the means of access to their property, the municipality must either

(c) obtain the consent of the owner before the owner is deprived of access, or

(d) in addition to paying any compensation required under section 33 (2) [*compensation for injurious affection*], ensure that the owner has another means of access that is sufficient for this purpose.

(3) As a restriction on the authority under section 40 (1), if the highway or part of a highway to be closed or reopened is within 800 metres of an arterial highway, the bylaw under that section may only be adopted if it is approved by the minister responsible for the *Transportation Act*.

(4) The operator of a utility affected by the closure of a highway under section 40 [*permanent closure and removal of highway dedication*] may require the municipality to provide reasonable accommodation of the utility's affected transmission or distribution facilities or works on agreed terms.

(5) If the parties are unable to reach an agreement under subsection (4), the matters must be settled by arbitration, and for that purpose the *Commercial Arbitration Act* applies.