

## Attachment 1

*Council Report dated September 16, 2019  
1823 Hamilton Street*

## **REPORT**

### *Development Services*

**To:** Mayor Côté and Members of Council      **Date:** 9/16/2019

**From:** Emilie K Adin, MCIP      **File:** 05.1010.40  
Director of Development Services

**Item #:** 280/2019

**Subject:** 1823 Hamilton Street: Remedial Action Requirement

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### **RECOMMENDATION**

- 1) ***THAT*** Council receive the report of the Director of Development Services dated July 8, 2019 regarding the two-storey dwelling (the “House”) located on land legally described as PID: 011-094-168, Lot 7 Suburban Block 9 Plan 4588 with the civic address of 1823 Hamilton Street, New Westminster (the “Property”) and note the concerns as stated in this report and its attachments, that:
  - a. *the unfinished roof of the House has been covered with tarpaulins and on windy days pieces have blown off the roof onto neighbouring properties and become a hazard and with the fluttering noises become a disturbance to the neighbourhood;*
  - b. *the exterior wall at the north elevation has remained unclad since 2013 and has become visually offensive to the neighbourhood;*
  - c. *the scaffold has been erected around the House exterior since 2013 and where parts have fallen onto neighbouring properties and has become a hazard and a visually offensive to the neighbourhood;*
  - d. *the front retaining wall is constructed without adequate drainage and reported to discharge groundwater onto the City sidewalk, and in winter becomes icy and a slipping hazard for pedestrians in the neighbourhood.*
- 2) ***THAT*** Council, under the authority provided by sections 72 and 73 of the Community Charter, find the tarped covering the House to be in and to create an unsafe condition to the neighbourhood.

- 3) **THAT** Council, under the authority provided by sections 72 and 74 of the Community Charter, find the fluttering noises of the tarp covering the House to be a nuisance to the neighbourhood.
- 4) **THAT** Council, under the authority provided by sections 72 and 74 of the Community Charter, find the unclad exterior wall of the House facing north to be visually offensive to the neighbourhood.
- 5) **THAT** Council, under the authority provided by sections 72 and 73 of the Community Charter, find the scaffolding surrounding the House to be in and to create an unsafe condition to the neighbourhood.

**THAT** Council, under the authority provided by sections 72 and 74 of the Community Charter, find the scaffolding surrounding the House to be visually offensive to the neighbourhood.

**THAT** Council, under the authority provided by sections 72 and 73 of the Community Charter, find the drainage for the retaining wall to be inadequate to prevent ground water from flowing onto the City sidewalk thereby creating a hazardous condition in winter for pedestrians.

**THAT** Council hereby require the registered owners of the Property, Reginald and Layne Cairns (the "Owner") to:

- a. obtain a *Qualified Professional* to act as intermediary and work with City staff;
  - b. have the *Qualified Professional* apply for and obtain a *Building Permit* to perform the remedial work of roofing, cladding of the building, and drainage for the retaining wall;
  - c. have the *Qualified Professional* facilitate inspections as required for the purpose of completing the *Building Permit*, and
  - d. have the *Qualified Professional* organize the removal of the scaffolding upon completion of the construction work.
- 6) **THAT** the time specified by Council for the completion of the requirements (the "RAR") imposed on the Owner by this resolution be as follows:
- a. the application for a permit or permits to remediate building must be submitted no later than 60 days after the day that notice of this resolution has been sent to the Owner in accordance with Section 77(1) of the Community Charter; and

- b. all other work required to fulfill the RAR must be completed no later than 180 days after the day that notice of this resolution has been sent to the Owner in accordance with Section 77(1) of the Community Charter.*
- 7) **THAT** Council direct City staff to send the notice to all affected persons as required by section 77 of the Community Charter.
- 8) **THAT** if the owner fails to comply with the timelines provided that staff return to Council seeking further direction.
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### **EXECUTIVE SUMMARY**

The City solicitor and staff recommend that Council order remedial work be performed to address unsafe and nuisance conditions related to the tarped roof, an unclad wall, scaffolding, and retaining wall. Council has the statutory authority to impose a Remedial Action Requirement (RAR) by resolution.

From 2007, the owner commenced an extensive renovation and building raise to create a basement with a secondary suite, and construct a retaining wall. The Owner has constructed contrary to the approved plans. Staff efforts to assist the owner and gain voluntary compliance were exhausted. In 2013 staff ceased to review and inspect the building and property, and required the owner hire a Qualified Professional to act as an intermediary. The owner did not meet this requirement and a stop work order was posted resulting in the unfinished construction work.

Since 2018, staff has received complaints from individual neighbours regarding the property, as well as petition of ten neighbours stating the building is a hazard, nuisance, and an eyesore. Neighbours advise they have had to endure these hardships related to the unfinished construction work for over 6 years and are seeking relief from the City. Staff has also received recent complaints of unauthorized construction work inside the building. Staff is asking Council to find the property and building to be a hazard and nuisance to consider imposing an RAR.

### **PURPOSE**

To request Council to find the property and building at 1823 Hamilton Street to be a hazard and nuisance to consider imposing an RAR on the property owners.

**BACKGROUND**

The property at 1823 Hamilton Street is owned by Reginald Thomas Cairns and Layne Tan Cairns. The Land Title Certificate forms Appendix A. The property is in the West End neighbourhood of the City and is zoned Single Detached/NR-1.

**2007**

In April 2007 staff received a complaint regarding the property. Upon investigation staff found construction work had occurred in contravention of the Building Bylaw and issued a stop work order requiring the property owner apply for and obtain a building permit.

From May and September of 2007:

- a services permit was issued for drain-tile installation,
- a DVP was issued for varying the setback, and
- a building permit was issued for construction of a 1.8 metre (6 ft.) retaining wall at the front of the property.

**2008**

In February 2008, staff conducted the form inspection and found construction work had occurred contrary to the approved permit plans, and in contravention of the Building Bylaw. Staff allowed the owner to proceed with the cement pour subject to receipt of revised engineered drawings to reflect the design changes and placing drain tile at the bottom of the wall prior to back filling.

In April 2008, a building permit was issued to:

- raise the existing house;
- install a new basement with a secondary suite;
- renovate the main and upper floors; and
- associated permits were issued for hydronic heating and for plumbing.

**2013**

On January 23, 2013, the owner was notified to retain a qualified professional to certify the plans and to work as the primary contact with staff for plan review and inspection services of

the property. The owner was also notified that the building permit will expire and be cancelled beyond six months from the date of the letter.

On August 6, 2013, a letter was sent to remind the owner of his obligations and to advise that permits will expire on September 16, 2013. As the owner did not meet these requirements, the permits were cancelled and a stop work order was posted on the building. On September 23, 2013 the City solicitor notified the owner that all five permits have lapsed, and failure to obtain permits may result in further enforcement measures.

On October 8, 2013 at a follow up inspection, the Building Inspector reported the removal of the stop work order in contravention of the Building Bylaw. A municipal ticket was issued and the owner was instructed to leave the stop work order in place.

#### 2014 to mid-2018

There are no records of complaints being received by staff relating to the unauthorized construction work.

#### 2018 to Present

From August 2018 to present, numerous complaints have been received from the neighbourhood regarding the lack of progress to complete the construction work on the exterior of the building. Complaints relate to: unfinished and tarped roof; unclad exterior wall; unsecure scaffolding; and hazardous conditions of the front retaining wall related to improper drainage.

More recently City staff has received numerous neighbourhood complaints regarding construction occurring on the interior of the building without permits in violation of the stop work order posted in 2013. Based on reports received by neighbourhood residents observing the delivery and fabrication of construction materials in the backyard, and hearing hammering and sawing inside the building, it is alleged that further changes to the interior may be occurring.

### **POLICY AND REGULATIONS**

#### **Community Charter**

Division 12 of Part 3 of the *Community Charter* grants Council the authority to impose, by resolution, a requirement on an occupier or owner to take remedial action on a building or structure that Council identifies as hazardous or nuisance-causing. Attachment B contains relevant excerpts of Community Charter Division 12 — RARs.

Section 72 authorizes Council to impose an RAR in relation to hazardous conditions or declared nuisances.

Section 73 authorizes Council to impose an RAR in relation to hazardous condition if: the council considers that the matter or thing is in or creates an unsafe condition, or the matter or thing contravenes the Provincial building regulations or a bylaw under section 8 (3) (1) [*spheres of authority — buildings and other structures*] or Division 8 [*Building Regulation*] of this Part.

Section 74 authorizes Council to impose an RAR in relation to nuisance condition if Council considers the property to be so dilapidated or unclean as to be offensive to the community.

Division 12 also sets out the procedural requirements for imposing an RAR. If a person ordered to perform an RAR fails to do so in the time required, Council may authorize City staff and contractors to perform the action and recover the cost from the owner of the affected property, including by recovering it as property taxes.

### **Building Bylaw No. 6897, 2003**

This Bylaw gives the City authority to issue permits, set permit fees, and to conduct inspections pertaining to the construction of buildings. The Bylaw enables the City to adopt/enforce the British Columbia Building Code (the “Building Code”) which establishes minimum standards for construction in order to minimize health and safety risks to the general public and building occupants.

### **Building Bylaw Enforcement Guidelines**

The City’s Building Bylaw Enforcement Guidelines provide principles and procedures for obtaining voluntary compliance from property owners regarding infractions related to buildings as well as a framework for progressive action when attempts to gain voluntary compliance has failed.

Attempts to gain voluntary compliance include: alerting property owners to violations and providing education regarding resolution of the issues, issuing stop work orders, issuing 30 and 14 day compliance notices, issuing municipal tickets, and engaging in long form information court proceedings.

Stronger enforcement actions all require Council involvement and approval and include: placing a notice on title (aka a “section 57”), issuing an RAR, or seeking a Supreme Court Order. The guidelines identify the following criteria for considering the last two options:

- the life and fire safety of occupants and/or the public;
- structural concerns related to the unapproved work;
- the presence of significant community concerns as demonstrated by complaints;
- improper construction causing the building not to perform properly as mandated by the BC Building Code (non-structural issues); or
- concurrent violations of the Zoning Bylaw.

Life, health, fire safety, and structural concerns are given more weight and require further enforcement action be taken. However, any of the factors, could provide the impetus for further action depending on the circumstances.

### **Sewerage and Drainage Regulation Bylaw No. 7746, 2015**

The Sewerage and Drainage regulation bylaw regulates, prohibits and imposes requirements in relation to the municipal service of sewerage and drainage. Section 13 requires that every owner ensure all drainage originating from such owner’s property is contained entirely on that property and connected to and discharged into the municipal drainage system, when such a system is available to the property.

## **DISCUSSION**

### **Section 73 of the Community Charter**

This section of the Community Charter authorizes Council to impose an RAR in relation to hazardous conditions if either the Council considers that the matter or thing is in or creates an unsafe condition, or the matter or thing contravenes the Provincial building regulations or a bylaw under section 8 (3) (1) [*spheres of authority — buildings and other structures*] or Division 8 [*Building Regulation*] of this Part. Staff has determined the current state of property meets both those conditions.



### Hazardous Conditions

Since 2018, local residents have reported the following unsafe conditions:

- pieces of the tarped roof have blown off onto the neighbouring properties;
- pieces of the scaffolding have fallen onto the neighbouring properties;
- ongoing water flowing from the property's retaining wall onto the City sidewalk and road creating very icy conditions in winter.

### Contraventions of the British Columbia Building Code (BCBC) and City Bylaws

- The purpose for roofing is to limit the probability of inadequate control of indoor comfort, generation of mold, and deterioration of building materials. The purpose of cladding is to minimize or prevent the ingress and damage from precipitation. The BCBC permits the use of roofing materials and cladding that meet listed material standards issued by the Canadian General Standard Board, a department of the Federal Government. The tarped roof does not provide adequate protection, nor meet the required BCBC material standards.
- The BCBC requires the drainage system behind the retaining wall at the property be constructed similar to the foundation wall of a building. In this case, the owner failed to install a drainage tile system behind the retaining wall. This has resulted in numerous complaints of groundwater flowing onto the City sidewalk, and in winter becoming icy and a slipping hazard. The owner has also breached the City's Sewerage and Drainage Bylaw by not containing the ground water drainage entirely on the property and not connecting to the available Municipal Drainage System.
- The Building Inspector's Report in Attachment C provides more detail.

### **Section 74 of the Community Charter**

This section of the Community Charter gives Council the authority to impose an RAR in relation to a declared nuisance.

- Nuisance Condition

Since 2018, local residents have reported nuisance disturbances caused by the tarped roof on windy days creating a flapping noise.

- Unsightly Conditions

Since 2018, the neighbours have reported unsightly conditions that relate to the: tarped roof on the building; erected scaffolding; and unclad exterior wall at the north elevation. These conditions have existed for over 6 years.

### **NEXT STEPS**

Given the hazards and nuisances identified at the property, and the owner's persistent refusal to comply with City bylaws, staff recommends taking a stronger enforcement approach as prescribed by our Building Bylaw Enforcement Guidelines. City staff is concerned about the hazardous and nuisance conditions of the tarped roof, scaffolding, and inadequate retaining wall drainage and the unclad wall being visually offensive. The community has repeatedly complained about these hazards and nuisances and are seeking relief.

By taking stronger enforcement, the City would uphold its community standards and aesthetic values and send a message to others in the community regarding the importance the City places on those. Since the criteria for strong enforcement options have been met, it is recommended that Council impose an RAR on the owners as listed in the recommendations.

### **INTERDEPARTMENTAL LIAISON**

The City Solicitors were consulted in preparing this report.

### **OPTIONS**

1. That Council impose a Remedial Action Requirement by adopting the resolution contained in the recommendation section of this report.
2. That Council take no further action on this issue.
3. That Council provide staff with alternative direction.

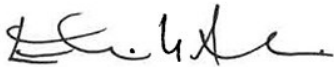
Staff recommends Option 1.

### **ATTACHMENTS**

Appendix A: Land Title Certificate  
Appendix B: Community Charter Excerpt  
Appendix C: Building Inspector's Report

This report has been prepared by:  
Christy Mereigh, Manager of Inspections  
Kim Deighton, Manager, Licensing and Integrated Services

Approved for Presentation to Council



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Emilie K Adin, MCIP  
Director of Development Services



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Lisa Spitale  
Chief Administrative Officer

## Appendix A

### *Land Title Certificate*

**TITLE SEARCH PRINT**

File Reference:

Declared Value \$397000

2019-06-19, 16:32:47

Requestor: Building Dept

**\*\*CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN\*\*****Land Title District**

Land Title Office

NEW WESTMINSTER

NEW WESTMINSTER

**Title Number**

From Title Number

CA1933327

BF380436

**Application Received**

2011-03-14

**Application Entered**

2011-03-18

**Registered Owner in Fee Simple**

Registered Owner/Mailing Address:

REGINALD THOMAS CAIRNS, PLUMBING INSPECTOR  
LAYNE TAN CAIRNS, CLERK  
1823 HAMILTON STREET  
NEW WESTMINSTER, BC  
V3M 2P3  
AS JOINT TENANTS

**Taxation Authority**

New Westminster, The Corporation of the City of

**Description of Land**

Parcel Identifier:

011-094-168

Legal Description:

LOT 7 SUBURBAN BLOCK 9 PLAN 4588

**Legal Notations**

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE LOCAL  
GOVERNMENT ACT, SEE BB298573

**Charges, Liens and Interests**

Nature:

MORTGAGE

Registration Number:

CA1933328

Registration Date and Time:

2011-03-14 13:35

Registered Owner:

COAST CAPITAL SAVINGS CREDIT UNION

Nature:

ASSIGNMENT OF RENTS

Registration Number:

CA1933329

Registration Date and Time:

2011-03-14 13:35

Registered Owner:

COAST CAPITAL SAVINGS CREDIT UNION

# TITLE SEARCH PRINT

2019-06-19, 16:32:47  
Requestor: Building Dept

File Reference:

Declared Value \$397000

Nature:	LAND TAX DEFERMENT ACT AGREEMENT
Registration Number:	WX2032828
Registration Date and Time:	2016-11-14 10:30
Registered Owner:	HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA
Remarks:	RESTRICTS DEALINGS

## Duplicate Infeasible Title

NONE OUTSTANDING

## Transfers

NONE

## Pending Applications

NONE

## Appendix B

### *Community Charter Excerpt*

- (3) After complying with subsection (2), the municipality may enter on property, including property outside the municipality, for the purpose of undertaking the proposed works.

### **Orders and awards respecting drainage or reclamation works**

**71** (1) This section applies if, on account of proceedings taken under this Act or the *Local Government Act* for drainage or reclamation works and local assessments for them,

- (a) damages are recovered against the municipality or parties constructing the drainage or reclamation works, or
- (b) other relief is given by an order of a court or an award made under this Act or the *Local Government Act*.

(2) In the circumstances referred to in subsection (1),

- (a) the council must make the changes in drainage or reclamation works necessary to comply with an order or award, and
- (b) the money required for the municipality to comply with the order or award must be recovered by taxes imposed on the same basis as the existing assessments for those works.

## **Division 12 — Remedial Action Requirements**

### **Council may impose remedial action requirements**

**72** (1) A council may impose remedial action requirements in relation to

- (a) matters or things referred to in section 73 [*hazardous conditions*],
- (b) matters or things referred to in section 74 [*declared nuisances*], or
- (c) circumstances referred to in section 75 [*harm to drainage or dike*].

(2) In the case of matters or things referred to in section 73 or 74, a remedial action requirement

- (a) may be imposed on one or more of
  - (i) the owner or lessee of the matter or thing, and
  - (ii) the owner or occupier of the land on which it is located, and
- (b) may require the person to



- remove or demolish the matter or thing,
- (i) fill it in, cover it over or alter it,
- (iii) bring it up to a standard specified by bylaw, or
- (iv) otherwise deal with it in accordance with the directions of council or a person authorized by council.

(3) In the case of circumstances referred to in section 75, a remedial action requirement

- (a) may be imposed on the person referred to in that section, and
- (b) may require the person to undertake restoration work in accordance with the directions of council or a person authorized by council.

### **Hazardous conditions**

**73** (1) Subject to subsection (2), a council may impose a remedial action requirement in relation to any of the following:

- (a) a building or other structure, an erection of any kind, or a similar matter or thing;
- (b) a natural or artificial opening in the ground, or a similar matter or thing;
- (c) a tree;
- (d) wires, cables, or similar matters or things, that are on, in, over, under or along a highway;
- (e) matters or things that are attached to a structure, erection or other matter or thing referred to in paragraph (a) that is on, in, over, under or along a highway.

(2) A council may only impose the remedial action requirement if

- (a) the council considers that the matter or thing is in or creates an unsafe condition, or
- (b) the matter or thing contravenes the Provincial building regulations or a bylaw under section 8 (3) (l) [*spheres of authority — buildings and other structures*] or Division 8 [*Building Regulation*] of this Part.

### **Declared nuisances**

A council may declare that any of the following is a nuisance and may impose a remedial action requirement in relation to the declared nuisance:

- 74** (1)
- (a) a building or other structure, an erection of any kind, or a similar matter or thing;
  - (b) a natural or artificial opening in the ground, or a similar matter or thing;
  - (c) a drain, ditch, watercourse, pond, surface water, or a similar matter or thing;
  - (d) a matter or thing that is in or about any matter or thing referred to in paragraphs (a) to (c).
- (2) Subsection (1) also applies in relation to a thing that council considers is so dilapidated or unclean as to be offensive to the community.

#### **Harm to drainage or dike**

- 75** A council may impose a remedial action requirement if a person has
- (a) obstructed, filled up or damaged a ditch, drain, creek or watercourse that was constructed or improved under this Act or the *Local Government Act*, or
  - (b) damaged or destroyed a dike or other drainage or reclamation work connected with it.

#### **Time limit for compliance**

- 76** (1) The resolution imposing a remedial action requirement must specify the time by which the required action must be completed.
- (2) Subject to section 79 [*shorter time limits in urgent circumstances*], the time specified under subsection (1) must not be earlier than 30 days after notice under section 77 (1) [*notice to affected persons*] is sent to the person subject to the remedial action requirement.
- (3) The council may extend the time for completing the required action even though the time limit previously established has expired.

#### **Notice to affected persons**

- 77** (1) Notice of a remedial action requirement must be given by personal service or by registered mail to
- (a) the person subject to the requirement, and

## Appendix C

### *Building Inspector's Report*

# Internal Building Department Site Inspection Report

**EDMS Doc#:** 1447454

**File #:** BP005861

**Date of Inspection:** June 17, 2019

**Inspector:** Brian Hoskin

**Date of Report:** June 18, 2019

**Address:** 1823 Hamilton St.

**Owner:**

REGINALD & LAYNE CAIRNS

1823 HAMILTON STREET,

NEW WESTMINSTER, BC V3M 2P3

**Phone Number:** 778 846 0804

**Approved Use of Building:** Single family dwelling

**Present use of Building:** Occupied Dwelling - Under extensive renovation without permits

**Reason for Inspection:** To update file for Report to Council

**Observations:**

- Scaffold erected around front and side of house in close proximity to neighboring lot.
- We have received complaints from neighbours about the length of time construction has been taking place, noise and unsightliness of the tarp, and the scaffolding. Complainant's email states scaffold has been there for 4.5 years.
- Construction started in 2008. Note that building permits expire after 2 years under the Building Bylaw. Permits has now expired.
- Front retaining wall has been constructed without drain tile. This may cause a failure of the wall.
- Front upper deck has been built without scupper. This may cause flooding into the house.



**Pic 1:** Front elevation



**Pic 2:** Front/right elevation showing scaffolding





**Pic 3:** Front/right elevation showing tarped roof



**Pic 4:** Front elevation showing upper deck without scupper to protect from flooding



**Pic 5:** Front retaining wall



**Pic 6:** Front retaining wall showing tile has been installed over weeping holes. Note that there is no drain tile behind wall to relieve hydrostatic pressure. Overtime this may cause failure of the retaining wall.





**Pic 7:** Rear elevation, showing roof tarped and unfinished cladding.

(Below to be completed by Building Department Manager)

**Building Manager's Recommendations for Further Enforcement:**

Seek Councils approval to proceed with the following options:

1. Section 57 Notice on Title, and
2. Section 72 Council Remedial Order.