

CITY OF BATHURST

BY-LAW NO. 2009-03

A BY-LAW TO CLOSE STREETS AND/OR PORTION OF STREETS WITHIN THE CITY OF BATHURST

The Council of the City of Bathurst under authority vested in it by of the *Municipalities Act*, R.S.N.B. 1973, c.M-22, as amended (the “Municipalities Act”), enacts as follows:

1. Pursuant to section 187 of the *Municipalities Act*, the following streets and/or portions of streets are closed permanently to all forms of traffic; Alex Anderson Avenue, Harbourview Court, Lombardy Crescent, and a portion of the following streets: Queen Elizabeth Drive, Arden Avenue, Woodland Drive & McLean Lane. These are further defined in schedules attached: A, B, C, D, E, F.
2. The City of Bathurst has published a notice of its intention and considered objections to the by-law in accordance with the *Municipalities Act*.
3. This by-law shall come into force immediately after its enactment and adoption.

ARRÊTÉ N° 2009-03

UN ARRÊTÉ AUTORISANT LA FERMETURE DE RUES ET/OU DES PORTIONS DE RUES DANS LA VILLE DE BATHURST

En vertu du pouvoir que lui confère la *Loi sur les municipalités*, L.R.N.-B., (1973), ch. M-22, tel que modifiée (la « Loi sur les municipalités ») le conseil municipal de la City of Bathurst adopte ce qui suit:

1. En vertu de l’article 187 de la *Loi sur les municipalités*, les rues et/ou portions de rues suivantes sont barrées de manière permanente à toute forme de circulation; l’avenue Alex Anderson, la cour Harbourview, la rue Lombardy et une portion des rues suivantes : la promenade Queen Elizabeth, l’avenue Arden, la promenade Woodland, et la ruelle McLean, tel que démontré dans les annexes ci-jointes: A, B, C, D, E, F.
2. En vertu de la *Loi sur les municipalités*, la ville de Bathurst a publiée un avis de son intention et d’inviter des oppositions à l’arrêté selon les exigences de la *Loi sur les municipalités*
3. Le présent arrêté entrera en vigueur immédiatement suivant son édicition et adoption.

Enacted on July 20, 2009

Édicté le 20 juillet 2009

IN WITNESS WHEREOF, the City of Bathurst affixed its Corporate Seal to this By-Law.

EN FOI DE QUOI, la City of Bathurst a apposé son sceau municipal sur le présent Arrêté.

CITY OF BATHURST

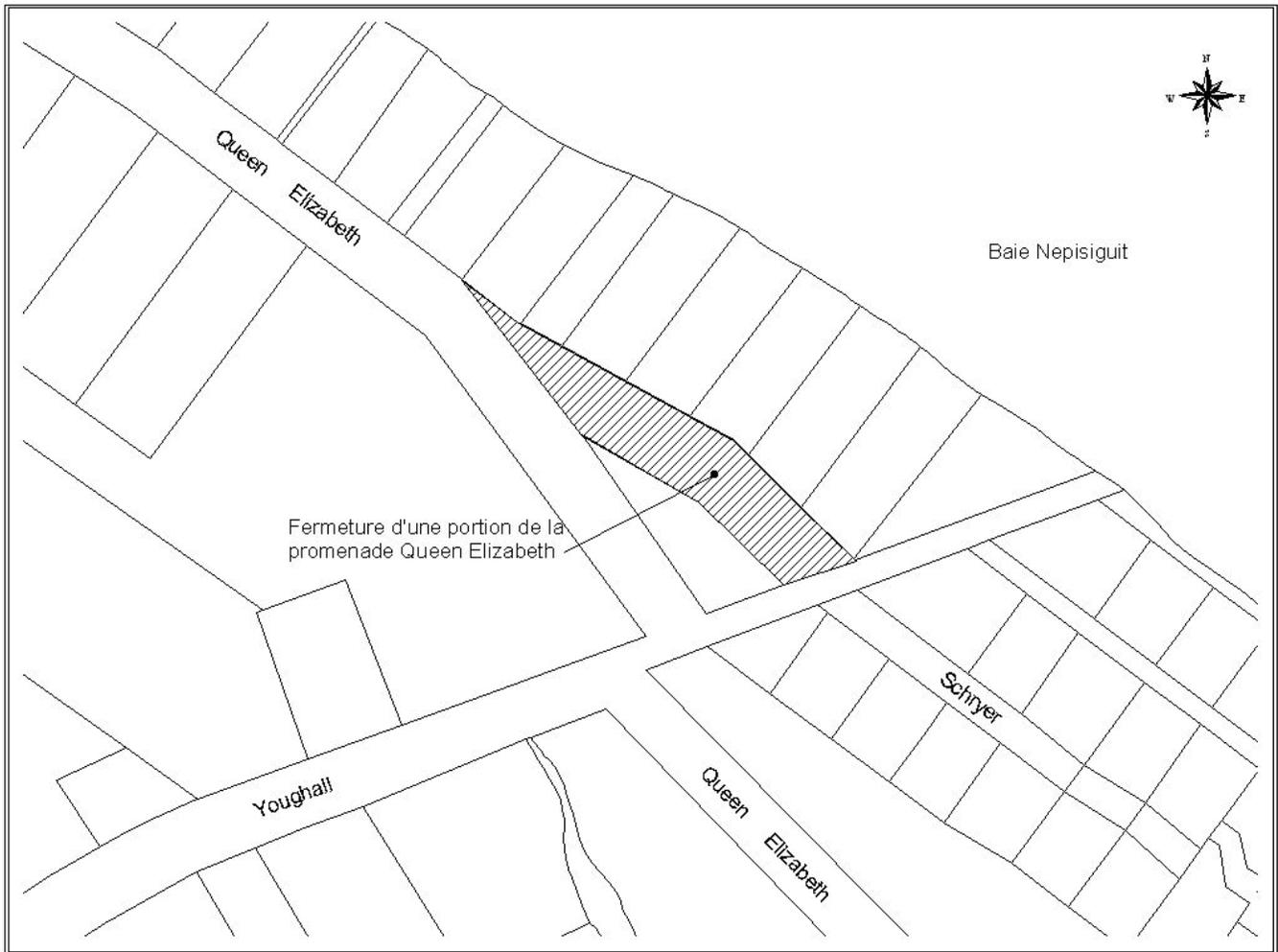
Per/Par : (Signed by Stephen Brunet)
MAYOR / MAIRE

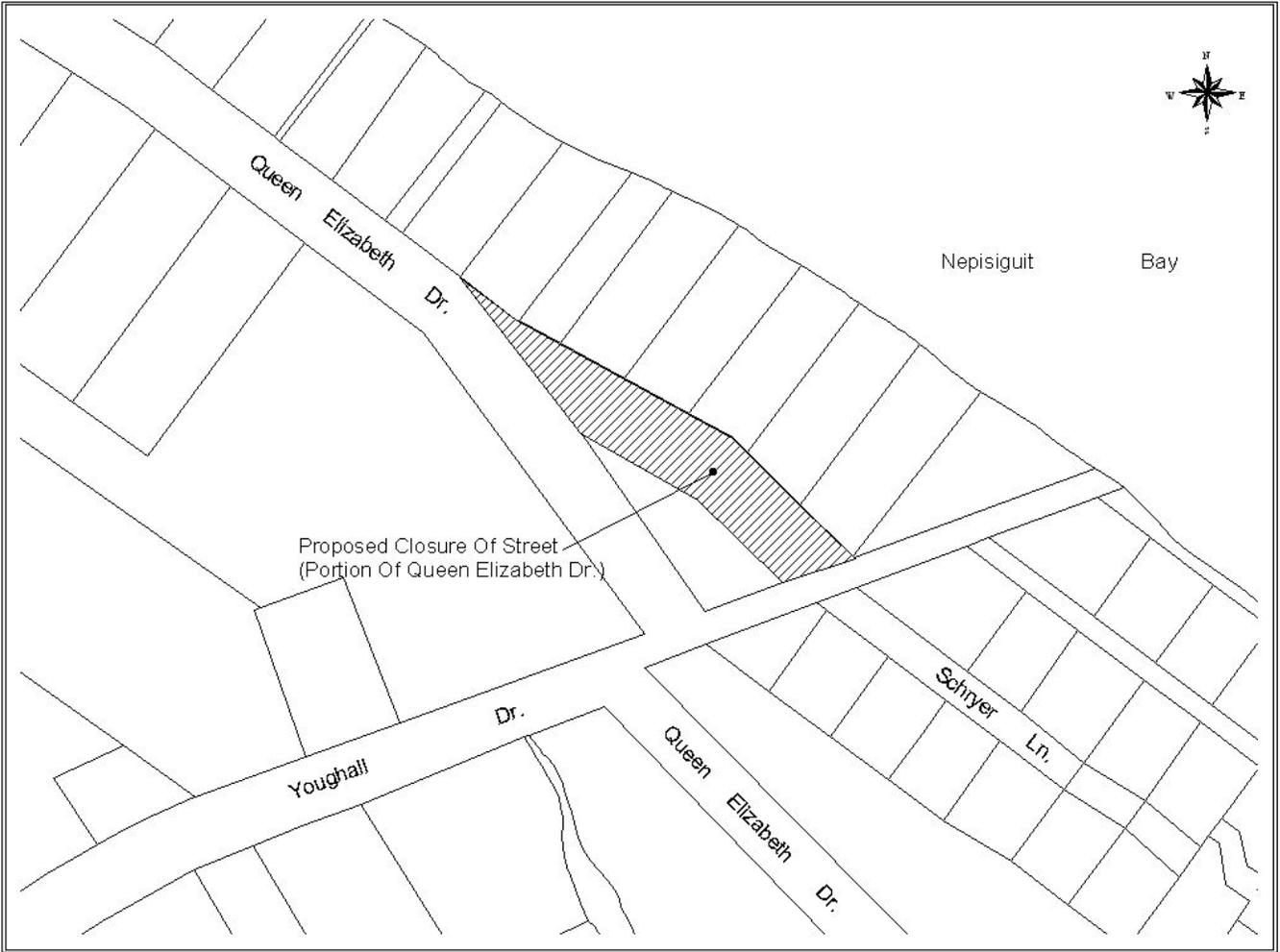
Per/Par: (Signed by Lola Doucet)
CITY CLERK / SECRÉTAIRE MUNICIPALE

First Reading: June 12, 2009 (in its entirety)
Second Reading: July 20, 2009 (by title only)
Third Reading & Enactment: July 20, 2009 (by title only)

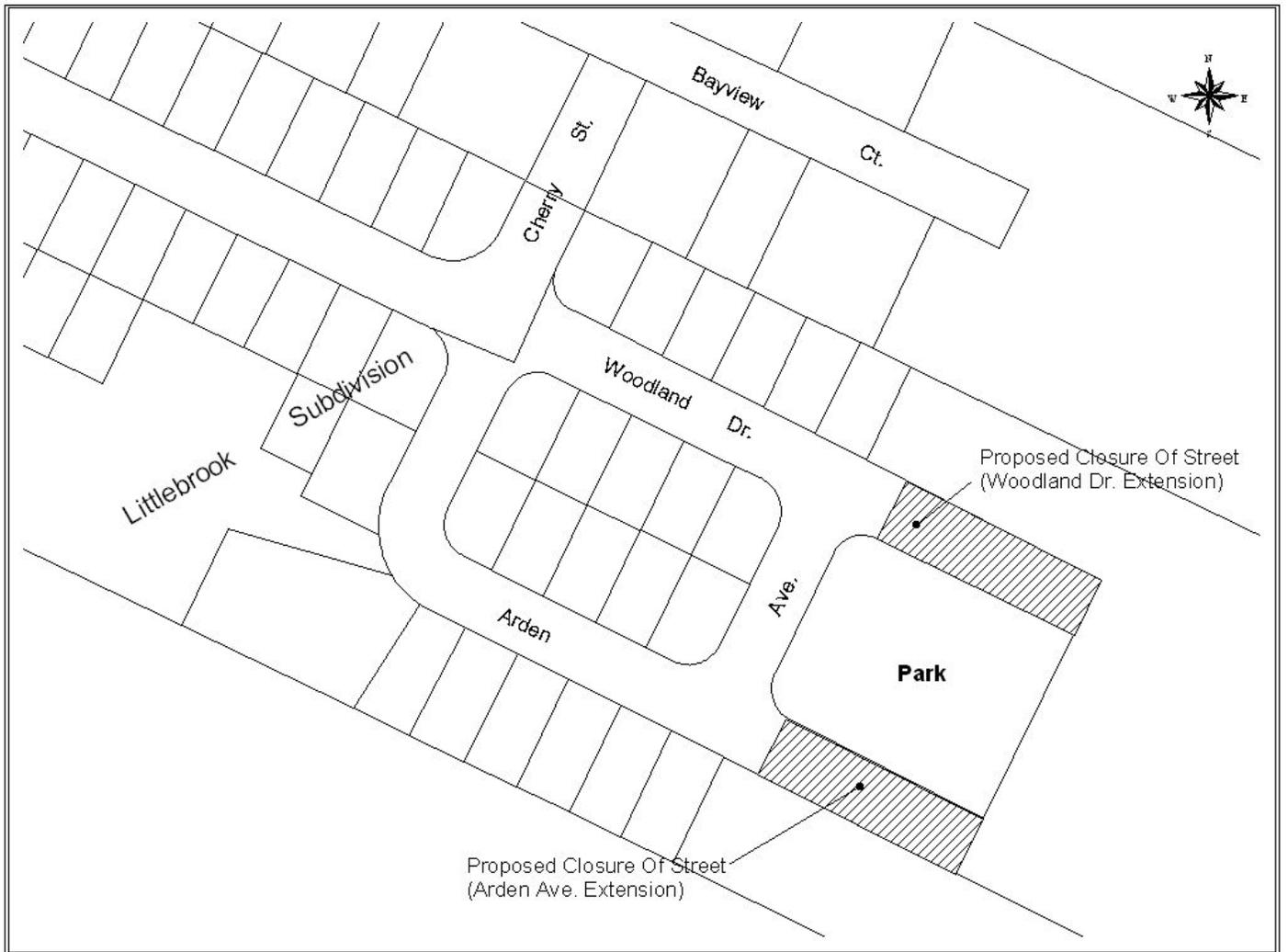
Première lecture : le 12 juin 2009 (en entier)
Deuxième lecture : le 20 juillet 2009 (par titre seulement)
Troisième lecture et édicition : le 20 juillet 2009 (par titre seulement)

Schedule/Annexe « D »





Schedule/Annexe « E »

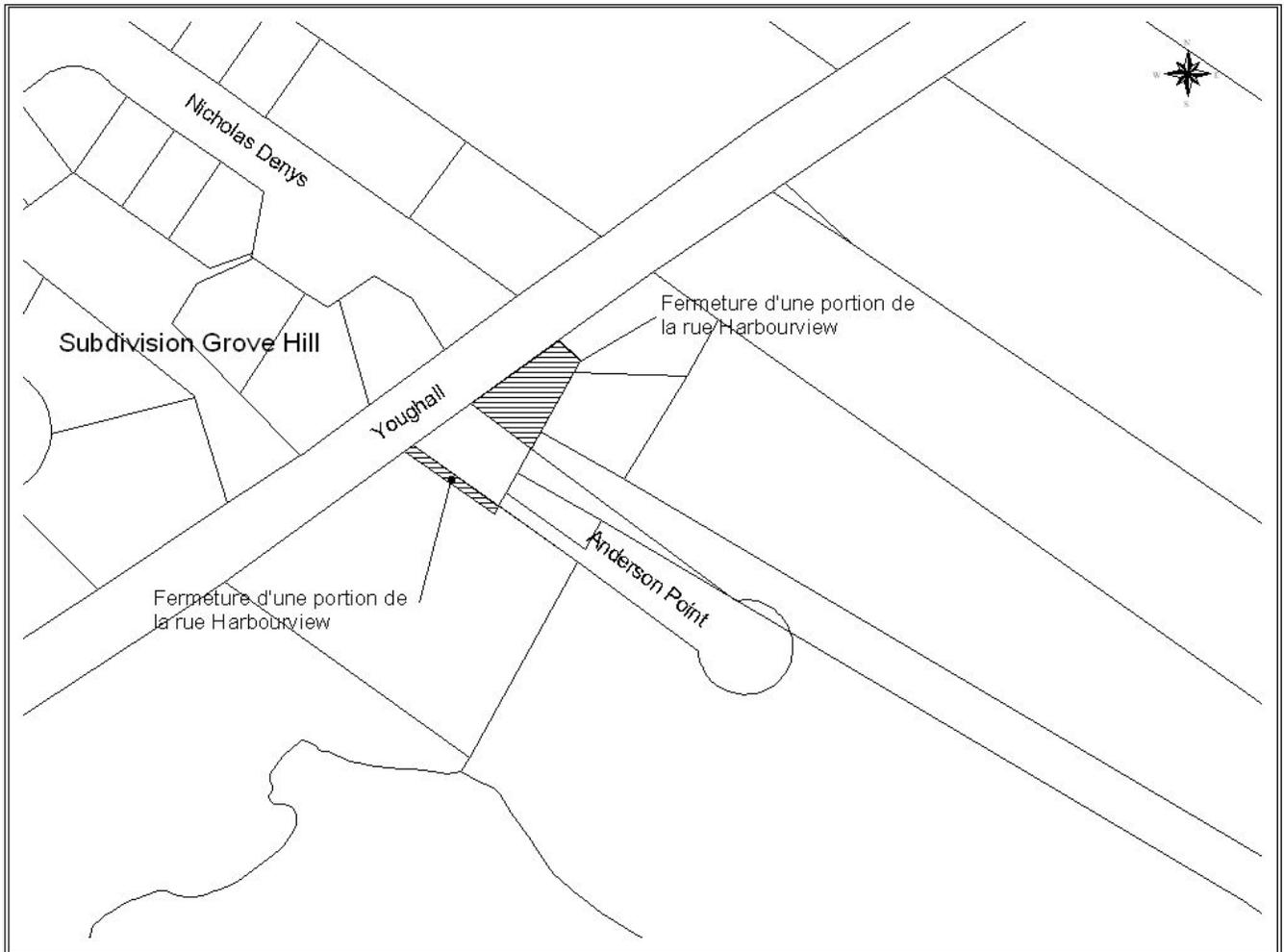


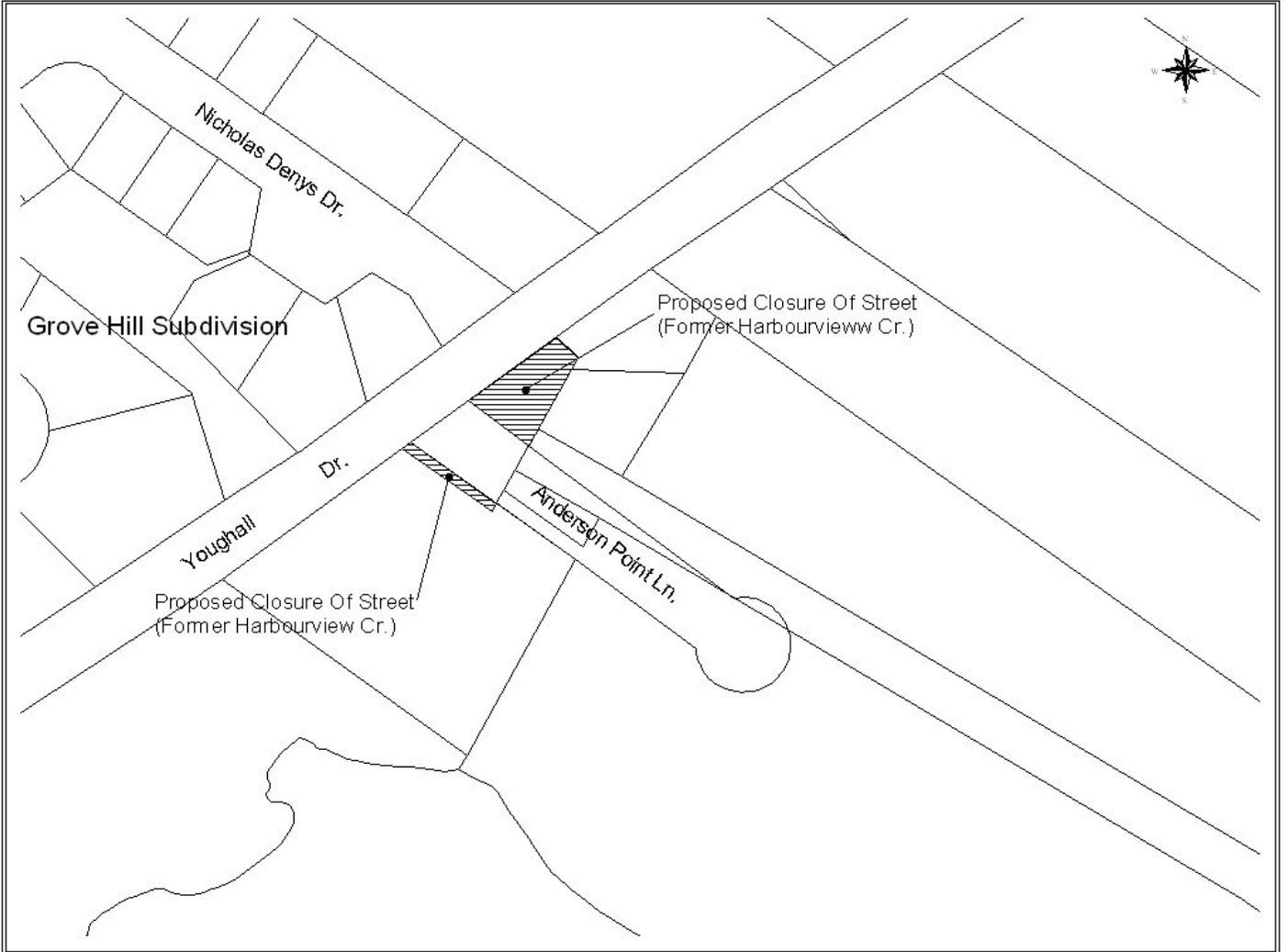
Schedule/Annexe « A »



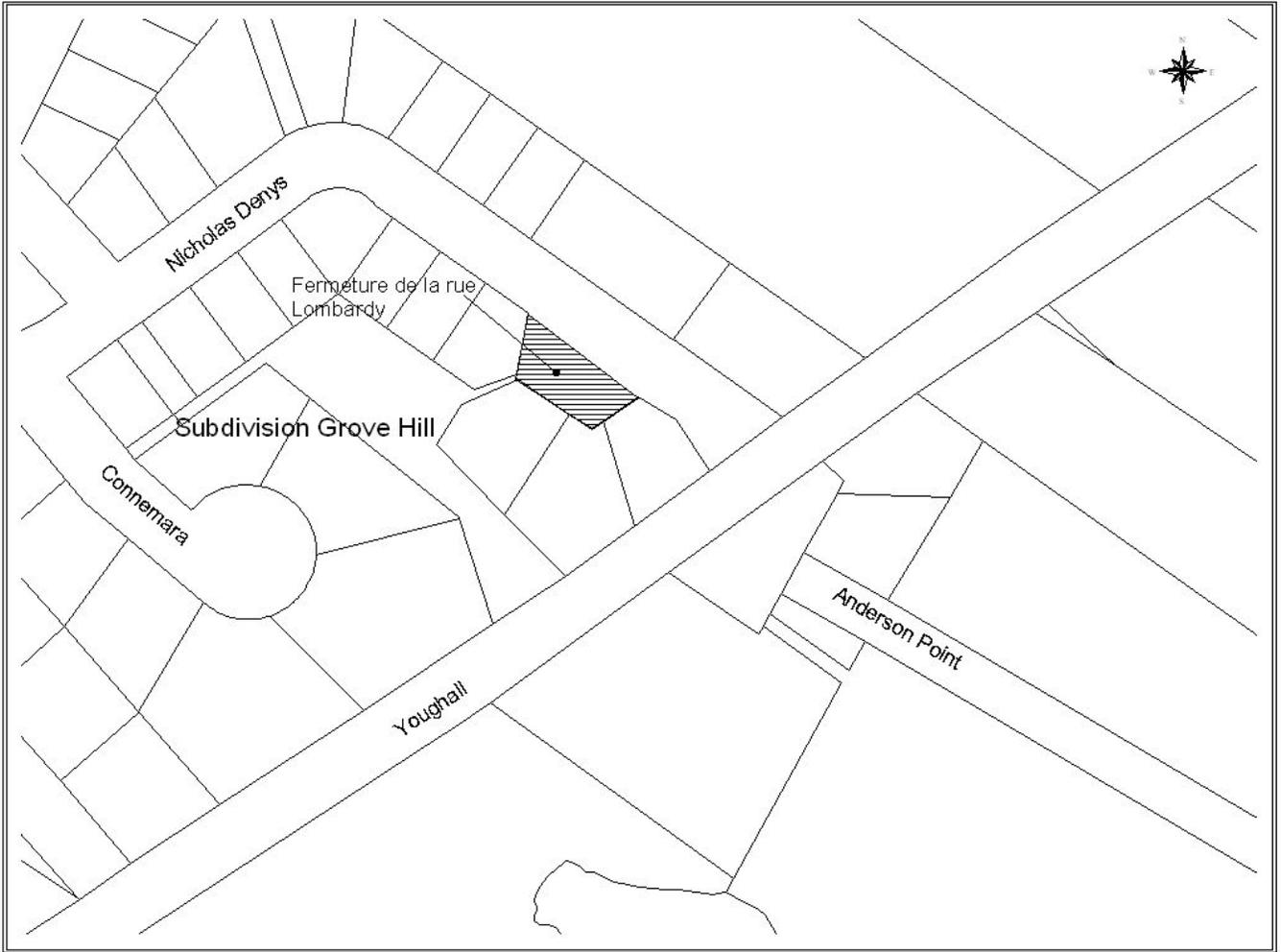


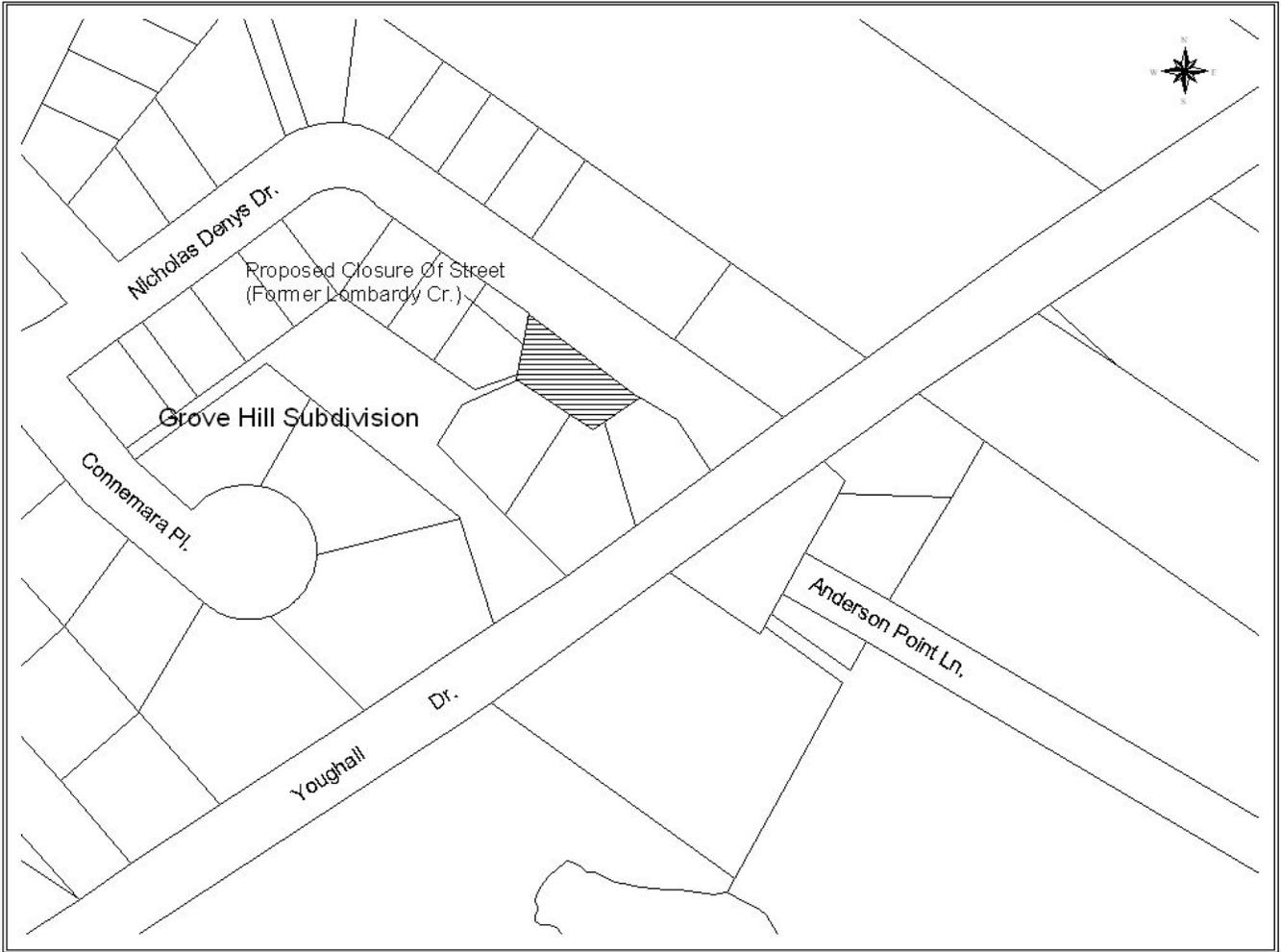
Schedule/Annexe « B »



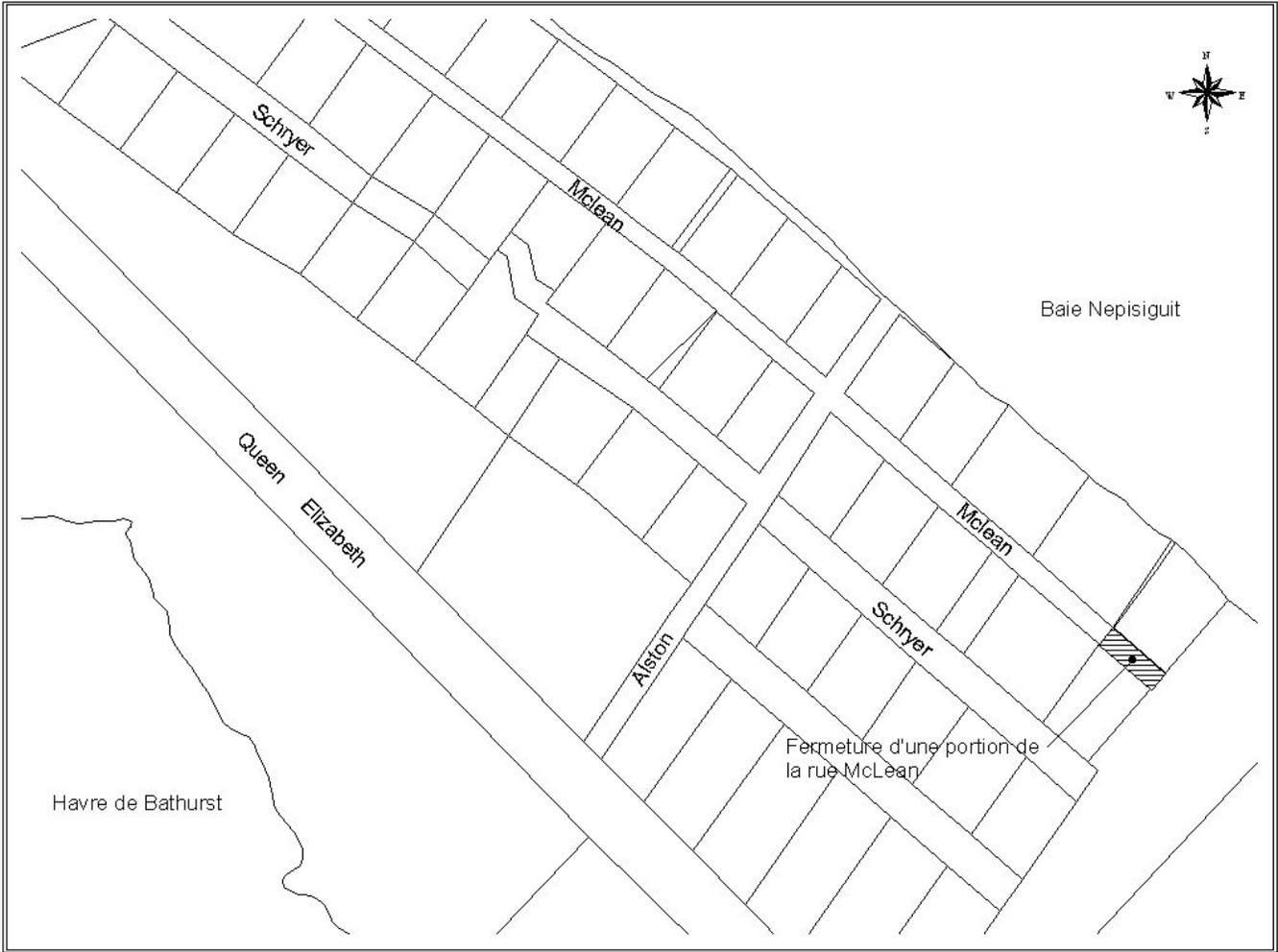


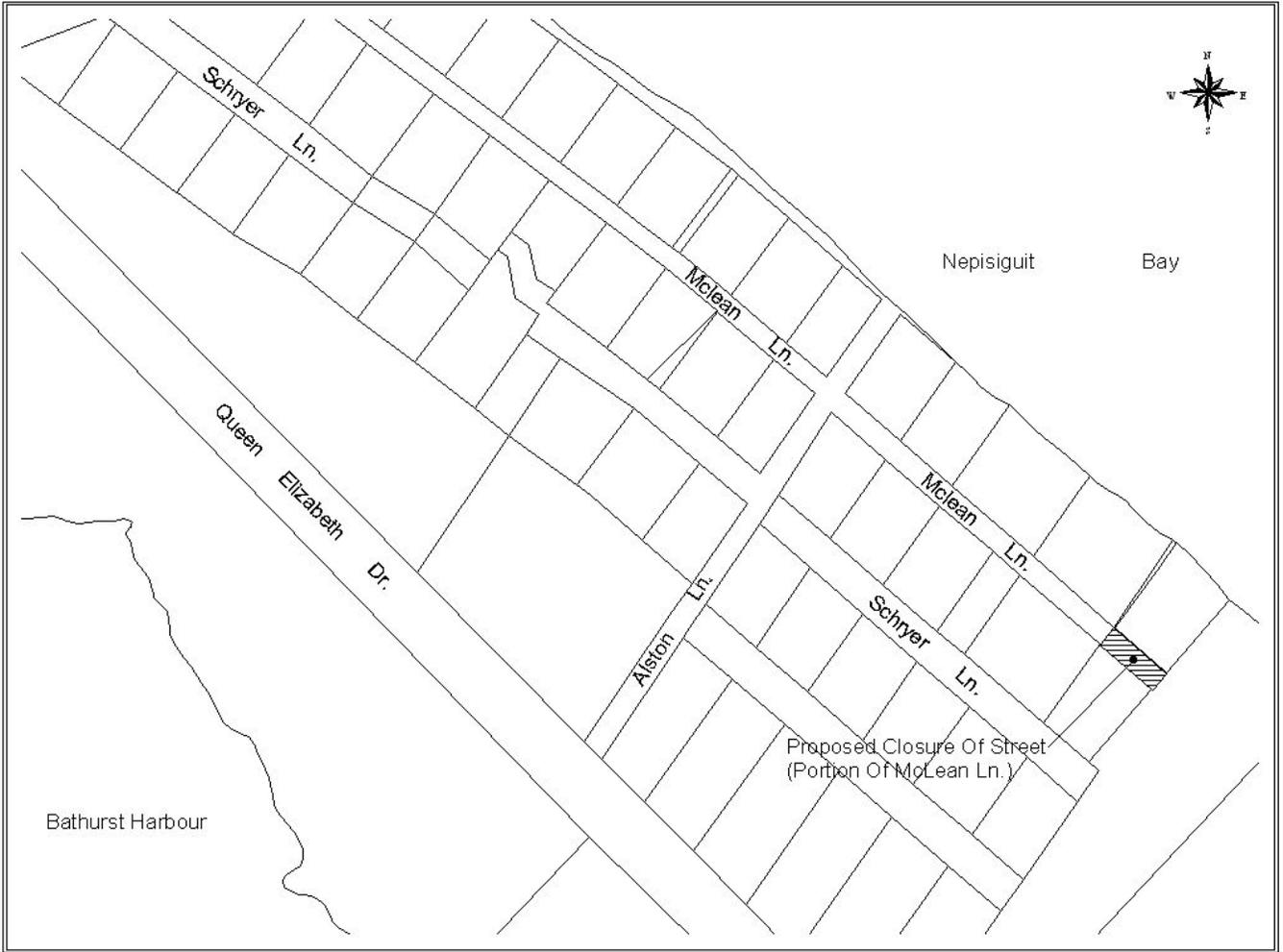
Schedule/Annexe « C »





12
Schedule/Annexe « F »





Attention: Ms. Lola Doucet

Ref: Proposed Street Closure – McLean Subdivision

Date: June 12th, 2009

Dear Madame:

I am writing in regards to the proposed street closure in McLean Subdivision.

I do not object to the sale of that portion of the McLean Avenue (separating lots #13 and 27A) provided that the City of Bathurst convey to the new owner the legal obligation to allow property owners within the McLean Subdivision a continued right of passage through this parcel of land. That is, a right of way in common (perhaps six feet in width) should be established allowing all property owners continued access on and through this parcel of land that they have enjoyed for more than 50 years.

To substantiate my proposition, please accept the following points as my understanding of the issue at hand:

- McLean Subdivision is one of the oldest registered subdivisions within the Province of New Brunswick. A subdivision plan was registered (L.H. Cookson) in July of 1924 and showed the parcel of land in question as being part of a road reserve to be used in common by all of the property owners within the subdivision;
- Members of my family, as well as their predecessors in title before them, have been using the roadways throughout McLean Subdivision (including the parcel in question) since the 1940's;
- I have been using the portion of the roadway in question since the 1960's and wish to continue to enjoy this access I acquired as a owner of a lot within the McLean Subdivision;
- it is my understanding that the City of Bathurst has acquired title to the roadway in question and that in so doing accepted the reservation/caveat of the seller (The Bank of Nova Scotia Trust Company) that the conveyance to the City "is expressly subject to whatever rights and privileges by prescription or otherwise the owners of lots in McLean Subdivision may have acquired over the years and the grantor does not warrant the title conveyed herein";
- As an Heir and Assign of Joseph Connolly, I have a beach access that abuts the parcel of land in question (**Indenture #7289, registered September 23rd, 1965 (Volume 222, pages 281 – 294)**) that I wish to continue to use as is my legal entitlement;
- it is my understanding that the City of Bathurst has infrastructure under this land in question for which they will require a service easement should the ownership be conveyed to others, and;
- it is well established in law that when a subdivision owner "subdivides his land by plan, registers the plan, and sells and conveys such lots described in the plan, there passes with the lots the grant of easement appurtenant to them" (meaning McLean Subdivision property owners have the legal right to continued access to all roadways within the subdivision).

Prior to making a determination on this parcel of land, the City of Bathurst should take into consideration the other surplus parcels within McLean Subdivision. I have been informed by City representatives that a number of parcels have been or will be under consideration for sale.

No property within this subdivision should be disposed of without a thorough understanding of the legal obligations the City of Bathurst has to the property owners within the subdivision, some of whom have owned land here since the 1940's. A policy should be established that will allow the City to dispose of other properties (if it sees fit) without infringing upon the rights and privileges of the long standing property owners. The approach to all property dispositions should be consistent and not done on an ad-hoc basis.

In closing, I wish to have continued access via this portion of Mclean to a beach access that I am entitled to by law. The sale of this property, without a conveyance to me (and other property owners) a right of way in common would constitute, in my opinion, a grievous oversight by the City of Bathurst.

Sincerely,

Bruce L. Delicaet.

*1752 Queen Elizabeth Drive,
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Canada E2A 4Y4
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Cell: (604) 557-6975*

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PRIVILEGED & CONFIDENTIAL**OPINION**

TO: City of Bathurst Council

FROM: Liza A. Robichaud

SUBJECT: Objection to closure of portion of MacLean Ave.

DATE: July 10, 2009

Objection

Mr. Bruce Delicaet has submitted an objection to the proposed closure of a portion of MacLean Avenue. The primary basis for his objection is his desire to have continued access to a Right of Way granted to the heirs of Joseph Connelly in 1965. The Right of Way granted was for a 6 foot strip along the southern boundary of the lands now owned by Jamie McNally.

Observations and comments

By closing the section of McLean Avenue between the two properties owned by Jamie McNally, we are not preventing Mr. Delicaet, or anyone else, from accessing that Right of Way. The start of the Right of Way begins at Schryer Avenue and can easily be accessed from that public roadway. There is also a public access to the beach at Alston. Closing McLean also does not impact on Mr. Delicaet's beach access or his right to use the beach in front of Mr. McNally's property. In fact, it would be out of Mr. Delicaet's way to access the Right of Way from McLean Avenue.

His second request of conveying a Right of Way in common to all property owners would defeat the purpose of decommissioning that section as a public street.

It is my opinion that the portion of McLean Avenue between the lots currently owned by Jamie McNally be decommissioned as a public street and transferred to Mr. McNally subject to a municipal service easement.

