

THE LAND DEVELOPMENT PROCESS:

FROM THE LEGAL PERSPECTIVE

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Pat Kendall and Joanna Track

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I. INTRODUCTION

There are several perspectives from which land development can be viewed. For example, the developer's perspective will include elements of land assembly, feasibility studies, and marketing. The lender's perspective will involve financial calculations, credit references and security instruments. This paper examines the land development process from the legal perspective – specifically, the legal perspective of a B.C. local government selling its land for development.

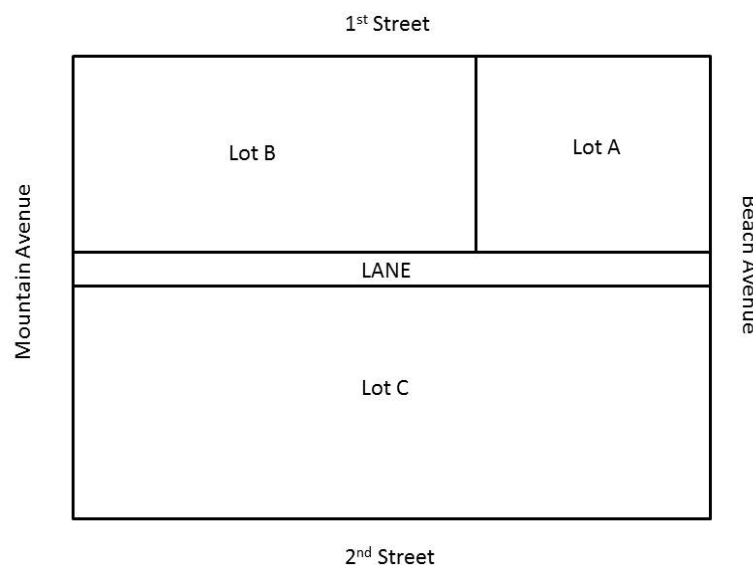
This paper outlines the various steps and stages for the following eight development processes:

1. sale of municipal land
2. rezoning
3. amendment to the Official Community Plan ("OCP")
4. road closure
5. road dedication
6. development permit
7. subdivision
8. building permit and occupancy permit

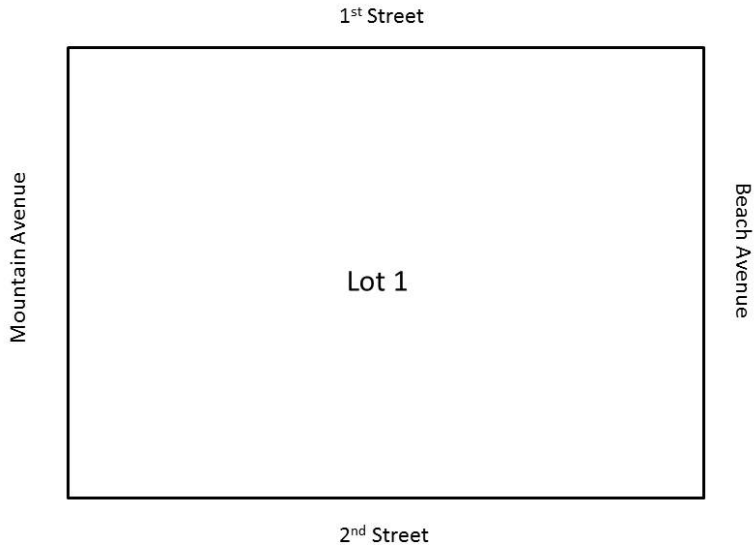
At the end, we will create a sample timeline merging the various steps and stages of each development process.

II. EXAMPLE DEVELOPMENT

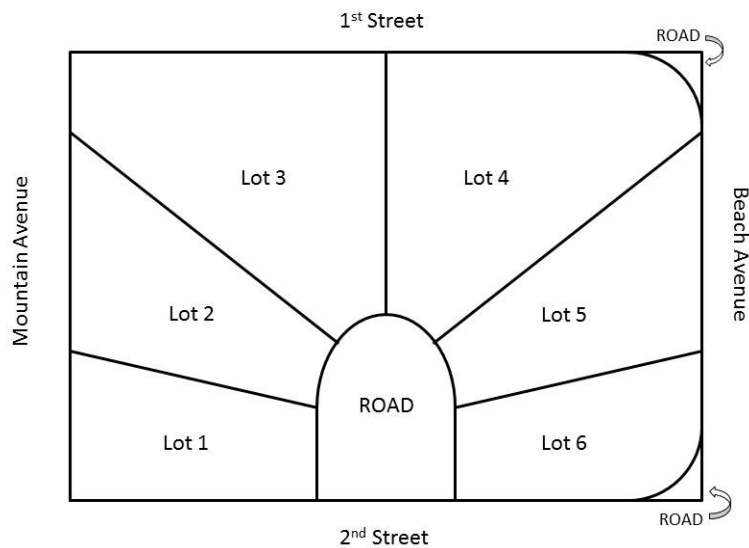
We are going to use the following example development. In the plan below, the developer, Manhas Development Co., owns Lot B and Lot C. The City of Springbank owns Lot A, as well as the laneway.



Manhas Development wishes to purchase Lot A from the City, as well as the area of the lane. As a condition of the land sale, the City requires the developer to consolidate his lands with Lot A and the lane. This plan shows the consolidated land as Lot 1.

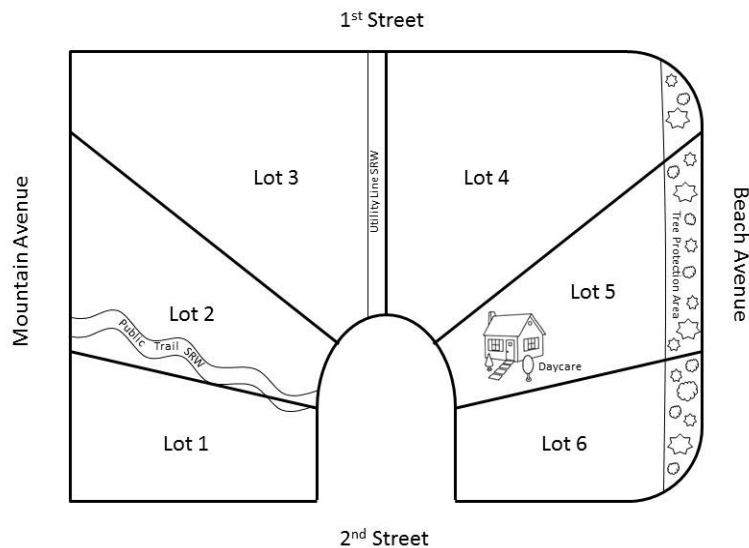


The developer wishes to subdivide the land into six lots, which will be served by an internal dedicated roadway. The developer is willing to dedicate as highway the two corners of the property along Beach Avenue to facilitate traffic flow. The subdivision and road dedication are shown in the following plan:



The City has identified the need for underground municipal utility lines to extend from the internal road to 1st Street. The City also wishes to have public pedestrian access from the internal road to Mountain Avenue. The City wishes to have the mature trees preserved along Beach Avenue.

Finally, the City wishes to ensure that the developer constructs a public daycare centre on Lot 5 within two years of the land sale and uses Lot 5 only for this purpose, and that Lots 4 and 6 are not developed until the daycare is constructed and the City has issued an occupancy permit. These are all shown on the plan below.



This development requires both rezoning and an amendment to the OCP. This area is also in a development permit area.

How can all of this be accomplished? What are the required steps and stages, and how are they integrated together?

In our example, we have provided for a two-stage process:

1. The first stage includes the land sale, rezoning, OCP amendment, road closure and transfer, the consolidation of the lands, and the registration of a development covenant.

2. The second stage includes the six-lot subdivision, the road dedications, the public trail, the municipal utility line, the tree protection covenant, the daycare issues, the development permit, and the building and occupancy permits.

III. SALE OF MUNICIPAL LAND

In some cases, development begins with the purchase of land from the local government. In our example development, the City of Springbank owns Lot A, as well as the laneway, and Manhas Development has approached the City with a proposal to purchase both Lot A and the laneway for the purpose of creating 6 new lots. The City has a recent appraisal for Lot A, and considers the offer to be fair market value. The City and Manhas Development enter into negotiations.

The City does not want to sell Lot A or the laneway as stand-alone parcels, and requires that Manhas Development consolidate Lot A and the laneway with Lots B and C on the closing date. It is a term of the land sale agreement that Manhas Development obtain a survey plan to consolidate the lands to create a single parcel, and to register that consolidation plan together with the transfer documents. As this is merely a consolidation of existing parcels, approving officer approval is not required.

Manhas Development wants to ensure that the land is rezoned before it completes the purchase, in order to ensure that it can carry out its proposed development. If the land is not rezoned, then Manhas Development does not want to purchase Lot A or the laneway. Because Manhas Development wishes to purchase a piece of road, Manhas Development also wants to ensure that the City has adopted the necessary road closure bylaw before it is bound to complete the purchase. Manhas Development does not want to purchase Lot A if it cannot also purchase the laneway.

The parties agree to make rezoning and adoption of a road closure bylaw conditions precedent to the land sale. A condition precedent is an act or event that must exist or occur before a duty to perform something promised arises. In the context of a land sale, conditions precedent usually allow the buyer to do or obtain something prior to being bound to complete the transaction, such as obtaining financing or obtaining a satisfactory property inspection. In this case, rezoning and adoption of a road closure bylaw will be conditions precedent and, if the land is not rezoned by a specific date and the road closure bylaw is not adopted by a specific date, the agreement will be at an end and the parties will be able to walk away. It is important to remember that making something a condition precedent does not obligate Council to adopt any bylaw or pass any resolution.

When selling land, a local government has a great deal of control, and can ask for various promises and concessions from a motivated buyer. In many cases, this may take the form of one or more covenants, requiring the buyer to develop the land in a specific way, to carry out

certain tasks by a specified date, to protect certain land features, or to grant rights of access to the public.

In the sample development, the City likes the proposal presented by Manhas Development, and wants to ensure that Manhas Development creates the proposed 6 lots. The City also requires Manhas Development to construct a walking trail from the internal road to Mountain Avenue, and grant the City a statutory right of way for public access. The City also requires Manhas Development to construct a public daycare on Lot 5 within 2 years of the land sale, and to use Lot 5 only for that purpose. The City is concerned with traffic flow along Beach Avenue, and asks Manhas Development to dedicate the corners of the property as road. The City want to ensure mature trees along Beach Avenue are protected.

In order to ensure the development is completed as required, the City requires that Manhas Development grant a development covenant promising:

- (a) not to subdivide the lands except as shown on the proposed subdivision plan (6 lots plus road dedication);
- (b) not to subdivide the lands until it has constructed a walking trail from the internal road to Mountain Avenue, or has provided security for such construction, and has granted an SRW in favour of the City for public access along the proposed walkway;
- (c) not to subdivide the lands until it has granted a tree preservation covenant over an 8 metre-wide strip along Beach Avenue;
- (d) to construct a daycare building on Lot 5 and obtain an occupancy permit for that building within 2 years of the land sale;
- (e) not to construct any improvements on Lot 4 or Lot 6 until it has constructed the daycare building on Lot 5, has obtained an occupancy permit for the daycare building, and has granted the City a new covenant promising to use Lot 5 only for the purpose of a public daycare.

The required development covenant will be attached to the land sale agreement as Schedule A. The land sale agreement will require Manhas Development to grant the development covenant on the completion date, and the covenant will be registered over Lot 1 immediately following the transfer and consolidation of the lands. Following subdivision of Lot 1 into 6 new lots, the development covenant may be released from Lots 1, 2, and 3. Following completion of the daycare, the covenant may be released from Lots 4, 5 and 6. At that time, a new covenant must be registered on title to Lot 5 to ensure Lot 5 is used for a public daycare in perpetuity.

Before the City can sign the land sale agreement, it must give notice of its intention to dispose of land pursuant to section 26 of the *Community Charter*. This notice must be published in a local newspaper once each week for two consecutive weeks. Once the required notice has been published, Council for the City of Springbank must pass a resolution approving the land sale and authorizing execution of the land sale agreement.

IV. REZONING

In order for Manhas Development to develop the land in the manner proposed, the property must be rezoned. As mentioned, Manhas Development wants to ensure that the property is rezoned before it is bound to complete the land sale. Manhas Development is responsible for making the rezoning application, at its own cost.

We will assume this development will proceed with an ordinary zoning bylaw under section 903 of the *Local Government Act*. Like all bylaws, a zoning bylaw must receive three readings and then be adopted. Section 135 of the *Community Charter* requires that there be one day between third reading of a bylaw and adoption of that bylaw. However, that rule is modified by section 890(9) of the *Local Government Act* which allows third reading and adoption of an official community plan or zoning bylaw to occur at the same meeting.

Zoning bylaws must not be adopted unless a public hearing is held under section 890(1) of the *Local Government Act*:

Public hearings

890 (1) Subject to subsection (4), a local government must not adopt an official community plan bylaw or a zoning bylaw without holding a public hearing on the bylaw for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw.

The public hearing must held after first reading and before third reading:

890 (2) The public hearing must be held after first reading of the bylaw and before third reading.

Despite the general rule requiring a public hearing, it is possible for the local government to waive the public hearing if section 890(4) of the *Local Government Act* applies:

890 (4) A local government may waive the holding of a public hearing on a proposed bylaw if

- (a) an official community plan is in effect for the area that is subject to a proposed zoning bylaw, and
- (b) the proposed bylaw is consistent with the plan.

For the purposes of our example development, we assume that a public hearing cannot be waived and it must be held.

Section 892 outlines the requirements for the local government to give notices of the public hearing.

After a public hearing, and in response to concerns of citizens raised at the public hearing, a local government may, at the time of third reading of the zoning bylaw, impose requirements that it wishes the developer to meet before the bylaw is considered for adoption. In our example development, in response to concerns of the public about increased traffic resulting from the proposed development, the Council of the City of Springbank has imposed a requirement for the developer to provide a traffic study. Manhas Development obtains the required traffic study, and the traffic consultant concludes that nothing further is required to facilitate traffic from this development other than the dedication of the Beach Avenue corners that staff had already anticipated.

Some zoning bylaws require approvals. For example, under section 52 of the *Transportation Act*, a zoning bylaw affecting a controlled access highway requires approval.

Development near controlled access highway

52 (1) In this section:

"controlled area" means, in relation to an intersection of a controlled access highway with any other highway, land and improvements within a radius of 800 metres from the intersection;

(3) A zoning bylaw of a municipality or regional district does not apply to a controlled area unless

(a) the bylaw has been approved in writing by the minister or any person designated in writing by the minister before its adoption, or

(b) the bylaw is in compliance with the terms of an agreement referred to in subsection (2) between the minister and the municipality or regional district.

Under section 135(4) of the *Community Charter*, approvals of a bylaw must be obtained after third reading.

135 (4) If this or another Act requires that a bylaw receive

(a) approval of the Lieutenant Governor in Council, a minister or the inspector, or

(b) approval of the electors or assent of the electors,

the approval or assent must be obtained after the bylaw has been given third reading and before it is adopted.

For the purposes of our example development, let's assume the Manhas development requires approval of the Ministry of Transportation and Infrastructure under section 52 of the *Transportation Act*.

V. OCP AMENDMENT

An amendment to the OCP is not required for every development. In many cases, a development will already be consistent with the OCP. However, for the purposes of our example, let's assume an amendment to the OCP is necessary. As with the rezoning application, Manhas Development is responsible for making the OCP amendment application, at its own cost.

An OCP is a bylaw and is amended by bylaw, pursuant to section 876 of the *Local Government Act*:

876 (1) A local government may, by bylaw, adopt one or more official community plans.

As mentioned above, section 890 requires a public hearing before the adoption or amendment of an OCP:

Public hearings

890 (1) Subject to subsection (4), a local government must not adopt an official community plan bylaw or a zoning bylaw without holding a public hearing on the bylaw for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw.

There is no ability to waive the public hearing required for an OCP.

Notice of the public hearing for an OCP amendment is required to the same extent as notice of a rezoning bylaw.

In addition to the public hearing, amendment of an OCP requires consultations, considerations, and potentially approvals. These will be discussed in detail this afternoon by Alyssa Bradley and Bill Buholzer in their presentation “What’s New (and Old) in Processing Part 26 Applications”. For the purposes of our example development, it is important to know that some of these steps must be undertaken after 1st reading of the OCP amendment bylaw.

VI. ROAD CLOSURE

In our example development, Manhas Development wishes to purchase the laneway and consolidate it with Lots A, B, and C to create Lot 1. In order to transfer title to the laneway, the City must close and raise title to the laneway, and remove its dedication as highway.

Section 40 of the *Community Charter* allows a council to, by bylaw, close all or part of a highway and remove its dedication:

Permanent closure and removal of highway dedication

40 (1) A council may, by bylaw,

close all or part of a highway that is vested in the municipality to all or some types of traffic, or

reopen all or part of such a highway that has been closed.

(2) A council may, by bylaw, remove the dedication of a highway

that has been closed by a bylaw under subsection (1)(a), or

that is to be closed by the same bylaw, or by a bylaw adopted by the council at the same time.

Before adopting a bylaw to close a road and remove its dedication, the council must give notice of its intention to adopt such a bylaw by publishing notice in a local newspaper once each week for two consecutive weeks, and must provide an opportunity for anyone who considers they are affected by the bylaw to make representations to council. Council must also give notice of its intention to close the road to any utility operators whose works may be affected by the closure.

There are a number of restrictions in relation to the closure and disposition of highway, particularly in relation to a highway that provides access to the ocean or other watercourse, or

where closure of the highway would completely deprive an owner of access to their property. Additionally, if the highway to be closed is within 800 metres of an arterial highway, the bylaw may only be adopted if it is approved by the Minister of Transportation. In our example development, the laneway is within 800 metres of an arterial highway.

Once a bylaw closing the road and cancelling its dedication as highway has been adopted, the bylaw must be filed in the land title office, along with a survey plan. Once the bylaw and plan have been filed, the registrar will raise title to the road and register it in the name of the municipality. The land remains subject to the Province's right of resumption in relation to a municipal highway, unless the corporate officer files a statement in the land title office, certifying that the municipality has, by bylaw, closed the road and removed its dedication, the closed road is not adjacent to a park, conservancy, recreation area, or ecological reserve, and the land is to be disposed of in exchange for land to be used as highway, or to an adjacent landowner for the purpose of consolidating it with the owner's adjacent parcel or parcels.

In our example development, Council for the City of Springbank must adopt a bylaw to close the laneway and remove its highway dedication. Since the laneway is within 800 metres of an arterial highway, MOT approval is required prior to adoption of the bylaw. The bylaw must be deposited in the land title office on the closing date, along with a road closure survey plan, and a consolidation plan. Since the closed laneway is being sold to an adjacent landowner for consolidation with the owner's adjacent parcels, an application will be filed to cancel the Province's right of resumption.

VII. ROAD DEDICATION

The City requires Manhas Development to dedicate an interior roadway, as well as the corners of Lot 1 along Beach Avenue, at the time of subdivision. Section 107 of the *Land Title Act* says that deposit of a subdivision, reference, or explanatory plan showing a portion of the land as a highway operates as an immediate and conclusive dedication by the owner to the public of that portion of land shown as highway. Upon deposit of the plan, title to the highway vests in the municipality.

In order for Manhas Development to dedicate the required road, the subdivision plan to create Lots 1 through 6 must show the interior roadway as highway and the corners at Beach Avenue as highway, pursuant to section 107 of the *Land Title Act*. Once the subdivision plan is registered in the Land Title Office, the road dedication will be complete.

VIII. DEVELOPMENT PERMIT

We mentioned above that the Manhas Development lands are in a development permit area. The *Local Government Act*, section 919.1(1) allows lands to be designated for the following purposes:

Designation of development permit areas

919.1 (1) An official community plan may designate development permit areas for one or more of the following purposes:

- (a) protection of the natural environment, its ecosystems and biological diversity;
- (b) protection of development from hazardous conditions;
- (c) protection of farming;
- (d) revitalization of an area in which a commercial use is permitted;
- (e) establishment of objectives for the form and character of intensive residential development;
- (f) establishment of objectives for the form and character of commercial, industrial or multi-family residential development;
- (g) in relation to an area in a resort region, establishment of objectives for the form and character of development in the resort region;
- (h) establishment of objectives to promote energy conservation;
- (i) establishment of objectives to promote water conservation;
- (j) establishment of objectives to promote the reduction of greenhouse gas emissions.

In our case, let's assume the OCP designates the Manhas Development lands under section 919.1(b) – protection from hazardous conditions.

Under section 920, a development permit is required at the time of any of the following triggering events:

920(1)

- (a) land within the area must not be subdivided;
- (b) construction of, addition to or alteration of a building or other structure must not be started;

(c) [Repealed]

(d) land within an area designated under section 919.1 (1) (a) or (b) must not be altered;

(e) land within an area designated under section 919.1 (1) (d), (h), (i) or (j), or a building or other structure on that land, must not be altered.

The only exception to the requirement for a DP when a triggering event occurs is if an exemption under section 919.1 (4) applies:

919.1(4) If an official community plan designates areas under subsection (1), the plan or a zoning bylaw may, with respect to those areas, specify conditions under which a development permit under section 920 (1) would not be required.

In our case, let's assume the OCP exempts the subdivision from the requirement for a DP. However, a DP would still be required at the time of development. Section 920 outlines what a development permit may include, depending on the purpose of the designation.

IX. SUBDIVISION

In order to create the proposed 6 lots, Manhas Development must apply to the City's approving officer for subdivision approval. The subdivision plan must show the 6 lots, as well as the areas that are to be dedicated as highway. As the City requires Manhas Development to subdivide Lot 1 as shown on the proposed plan, Manhas Development will want to ensure that the subdivision plan can be approved before it commits to grant the development covenant. Manhas Development will likely want to submit the proposed subdivision plan to the City's approving officer and obtain preliminary layout approval before granting the development covenant.

Pursuant to section 940 of the *Local Government Act*, the approving officer cannot approve the subdivision unless the owner has constructed and installed all works and services required under the City's subdivision servicing bylaw, or the owner has entered into a servicing agreement and provided security.

Assuming Manhas Development wants subdivision approval before installing the services, Manhas Development must enter into a servicing agreement with the City and provide security for the services. Assuming Manhas Development also wants subdivision approval before it constructs the walking trail (required under the development covenant), the City will include an

obligation to construct the public walkway as part of the servicing agreement. In this case, the City also requires Manhas Development to install a municipal utility line from the internal road to 1st Street, and will include this in the servicing agreement. The City will take security for all of these obligations.

The approving officer also requires Manhas Development to grant the City a statutory right of way for the municipal utility line at the time of subdivision.

X. BUILDING PERMIT/OCCUPANCY PERMIT

Once the six development lots are created by subdivision, the developer will be in a position to apply for building permits pursuant to the City's building bylaw, and, once the buildings are sufficiently constructed, the developer will be entitled to apply for occupancy permits under the building bylaw.

Pursuant to the terms of the development covenant, the developer will not be entitled to apply for a building permit for Lots 4 and 6 until the daycare centre on Lot 5 has been constructed and commenced operation.

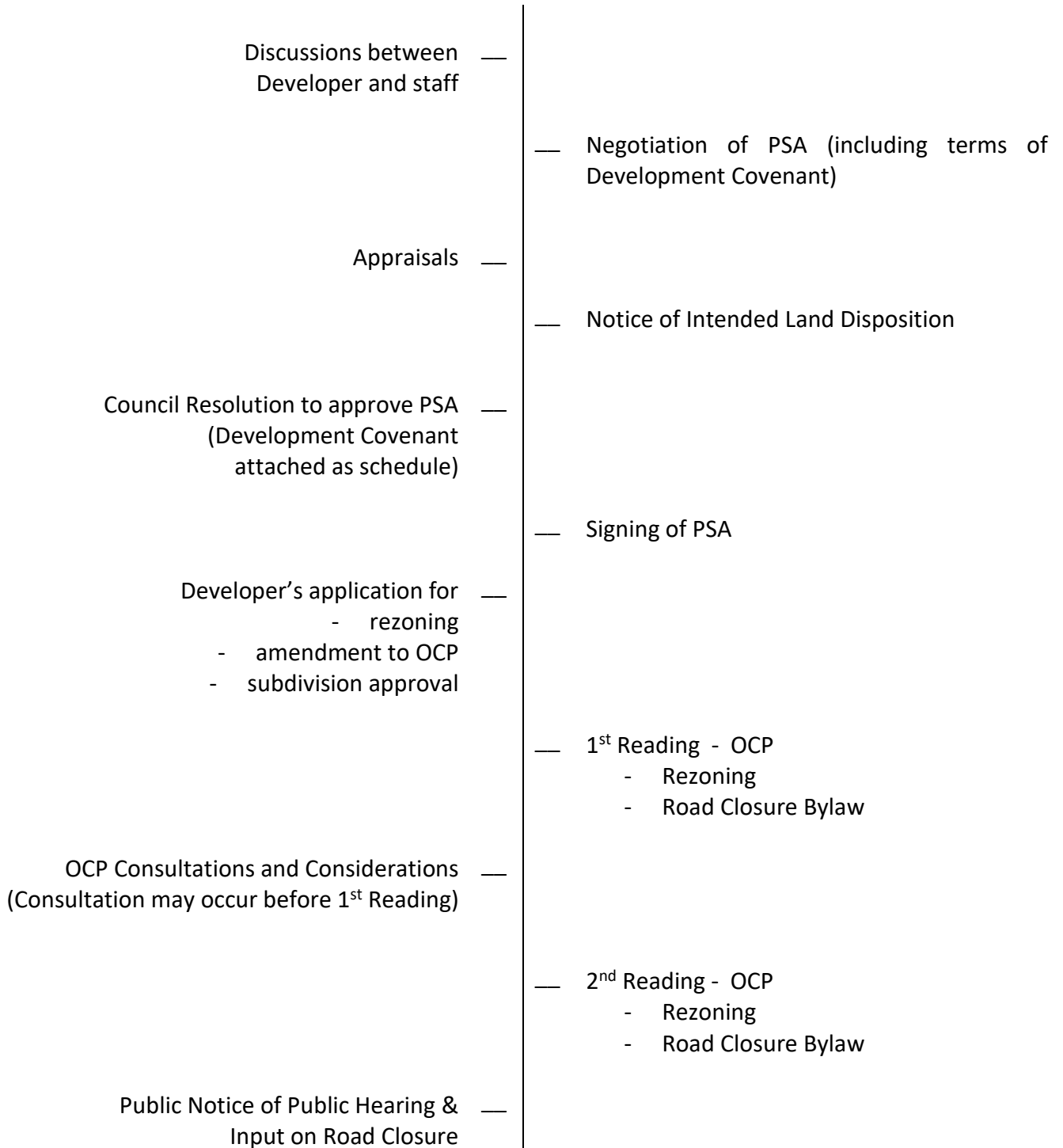
XI. LAND TITLE OFFICE PACKAGES

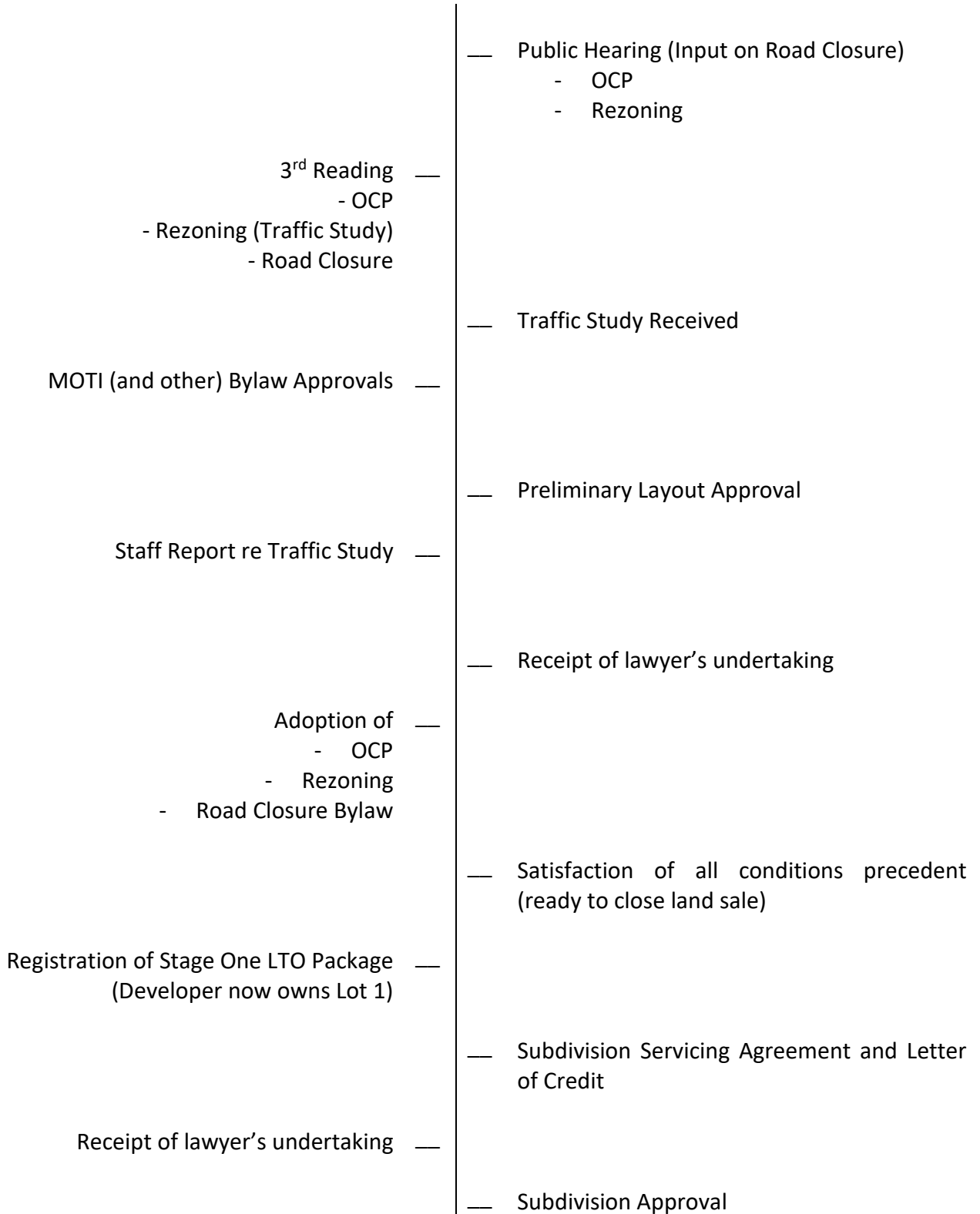
Before looking at the integrated timeline of all these steps and stages, it may be useful to consider the two Land Title Office packages that would be registered:

- (a) Stage One: Land Sale and Creation of Lot 1
 - Road closure bylaw, together with surveyed road closure plan
 - City's Form 17 application to raise title to former road in City's name
 - Certificate of Corporate Officer to cancel Province's right of resumption
 - Form A transfer of former road from City to Manhas Development Co.
 - Property Transfer Tax return, and cheque, by Manhas Development Co.
 - Form A Transfer of Lot A from City to Manhas Development Co.
 - Property Transfer Tax return, and cheque, by Manhas Development Co.

- Survey plan to consolidate Lots A, B, C and former road creating development Lot 1
 - Development covenant registered over Lot 1
- (b) Stage Two: Road Dedication and Creation of Lots 1 through 6
- Subdivision plan of Lot 1 creating Lots 1 to 6, dedicating internal roadway and dedicating Beach Avenue corners
 - Utility statutory right of way over Lot 3, together with SRW plan (construction of utilities is secured in subdivision servicing agreement)
 - Public trail statutory right of way over Lots 1 and 2, together with SRW plan (construction of trail is secured in subdivision servicing agreement)
 - Tree preservation covenant over Lots 4, 5 and 6, together with survey plan of covenant area
 - Discharge of development covenant from Lots 1, 2, and 3
- (c) Following construction of daycare:
- discharge of development covenant from Lots 4, 5, and 6
 - registration of new daycare covenant over Lot 5

DEVELOPMENT TIMELINE





Registration of Stage Two LTO Package
(creation of 6 lots and road dedication)

Development Permit issued

Building Permits issued for
Lots 1, 2, 3, and 5

Occupancy Permit issued for Lot 5

Building Permits issued for
Lots 4 and 6

Occupancy Permits issued for
Lots 1, 2, 3, 4, and 6