

Approved and ordered this 19th day of August

, A.D. 1924.

[Signature]
Lieutenant-Governor.

At the Executive Council Chamber, Victoria,

PRESENT:

The Honourable

in the Chair.

Mr. *Oliver*
Mr. *Hart*
Mr. *Manson*
Mr. *McLean*
Mr. *Pattullo*
Mr.

To His Honour

The Lieutenant-Governor in Council:

The undersigned has the honour to

REPORT AS FOLLOWS:-

CORPORATION of POINT GREY - APPELLANT;

and

VANCOUVER and DISTRICTS JOINT SEWERAGE AND

DRAINAGE BOARD -

RESPONDENT.

This is an appeal from a decision of the Vancouver and Districts Joint Sewerage and Drainage Board embodied in a resolution of the Board on the 9th June, 1924, as follows:--
"That the Engineer's plans, specifications and estimate of the cost of the Alma-Imperial Trunk Sewer be approved and the work of construction proceeded with immediately, and that Tenders be called for all kinds of materials required, said Tenders to be received up to 10 a.m. on Thursday the 19th day of June 1924."

The appeal is brought by the Corporation of Point Grey pursuant to the "Vancouver and Districts Joint Sewerage and Drainage Act", chapter 79 of the Statutes of British Columbia for the year 1914, section 36 of which (as reenacted in 1915) provides that if at any time any municipality within the sewerage district is dissatisfied with any decision of the Board regarding the carrying-out of the general scheme of the Act, an appeal shall lie to the Lieutenant-Governor in Council. This section also provides that, except as otherwise ordered by the Lieutenant-Governor in Council, no such appeal shall be heard unless notice of the appeal stating the grounds on which the appeal is based is served on the Board within one month after the decision appealed from.

Notice of the appeal, stating the grounds on which it is based, was served on the Board on the 19th June, 1924.

Mr. Russell, the Solicitor for the Board, submits that the appeal should be dismissed, contending that the notice should have been served and appeal brought following a decision of the Board respecting the work in question on the 26th February, 1919.

On that date, the Board after hearing the monthly report of its then Engineer, Mr. Creer, dealing inter alia with the "Imperial Street Trunk Sewer & Outfall", passed a resolution "That the Engineer's report be adopted, and that Mr. Creer be given four months' leave of absence". Mr. Russell contends that this was the only decision of the Board regarding the carrying out of the general scheme from which an appeal could be taken touching the matter in question, and that all subsequent decisions had only to do with matters of detail.

Perusal of the several resolutions of the Board between the date of Mr. Creer's report and the date of the decision now appealed from discloses that no work of construction was commenced under Mr. Creer's report and estimates, but that further investigation and consideration were given the matter from time to time, until in 1924 plans, specifications, and estimates referring to an Alma-Imperial Street Trunk Sewer were prepared by Mr. Slater, the present Engineer of the Board. It is to these plans, specifications and estimates that the formal resolution of the Board of 9th June, 1924, refers.

The matters covered by the general scheme of the Act are set out in section 14, which empowers the Board, inter alia, to construct sewers and works required for a system of sewerage and sewage disposal and surface-water drainage in substantial accordance with the report bearing date 1st February, 1913, made by R.S.Lea, and for that purpose to enter into contracts for construction of the works, or to execute the works and to purchase materials therefor.

Reference to Mr. Lea's report (as printed) at page 32, and to the accompanying plan, discloses that he provided for a trunk sewer on a defined location to serve an area of 720 acres designated as the "Imperial Street Area", and another trunk sewer to serve an area of 680 acres designated as the "Alma Street Area", both of these trunk sewers to discharge separately into the proposed English Bay interceptor. Mr. Lea's report also provides for both the Imperial and Alma Street areas to be sewerred on the separate system, while the proposed Alma-Imperial sewer is designed on the combined system, carrying both surface water and sanitary sewage.

From these considerations it should be sufficiently clear that the Board's resolution of 9th June, 1924, approving of Mr. Slater's plans and specifications for a proposed "Alma-Imperial Trunk Sewer" to serve in whole or in part the areas above referred to, and deciding to proceed with the work of construction and purchase of materials for this sewer, is a decision of the Board regarding the carrying-out of the general scheme of the Act, within the meaning of section 36 governing appeals. Viewed in this way, the notice of appeal was duly served, and the appeal should be considered on its merits.

In the first ground of appeal contained in the notice given by the Corporation of Point Grey it is alleged that, -
 "The Engineer's plans and specifications referred to in the said decision and approved thereby are not in substantial accordance with the report of February 1, 1913, made by R.S.Lea, Esquire,

Consulting Engineer, referred to in Section 14 of the above-mentioned Act, in that the aforesaid plans and specifications provide for one Trunk sewer for the area to be served instead of two Trunk Sewers recommended by the said report of R.S. Lea, Esq."

This would appear to be a substantive ground of appeal, inasmuch as the decision of the Board to embark on the construction of works which were not in substantial accordance with the original report of Mr. Lea, and without having obtained the approval of the Lieutenant-Governor in Council respecting the proposed changes in the system, would not only be a decision beyond the powers conferred on the Board by section 14, but would constitute a decision regarding the carrying out of the general scheme of the Act, within the meaning of subsection (1) of section 36.

The plans and documents filed on this appeal show that the scheme proposed by the original report of Mr. Lea calls for:--

- (a) The sewerage of a separate Imperial Street Area (720 acres) by a trunk sewer starting at the proposed English Bay interceptor near the foot of Imperial Street and running south on that street to Sixth Avenue;
- (b) The sewerage of a separate Alma Street Area (680 acres) by a trunk sewer starting at the interceptor at the east boundary of the Jericho Club property and running in a south-easterly direction to the junction of Alma Street and Fourth Avenue, thence south on Alma Street to Tenth Avenue;
- (c) The providing for a system of surface water sewers separate from the sanitary sewers for each of these areas.

The scheme of the Alma-Imperial Street Trunk Sewer proposed by the Board, the construction of which is provided for by the decision now appealed from calls for:--

- (a) The sewerage of a combined area (nearly 1000 acres), comprising parts of the Imperial Street and Alma Street Areas before mentioned, by a trunk sewer with an outfall at the foot of Imperial Street and following, with the exception of a portion of Imperial Street between the outfall and First Avenue and a portion of Alma Street between Seventh and Tenth Avenues, a different location from that defined by the scheme of Mr. Lea for his proposed Imperial Street and Alma Street trunk sewers;
- (b) The sewerage of the combined area by a system carrying both surface water and sanitary sewage.

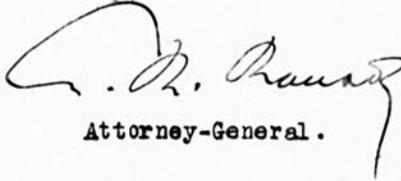
A comparison in this way of the general scheme of Mr. Lea, on which the Act is based, and the present scheme of the Board respecting the sewerage of the areas in question shows conclusively that the scheme now proposed to be carried out is not in substantial accordance with the report of Mr. Lea. The proposed changes have not been submitted to the Lieutenant-Governor in Council for approval, and the decision of the Board to carry out these works in the absence of such approval is not within the powers of the Board as defined in section 14 of the Act.

As the conclusion thus reached on this ground disposes of

the present appeal, it will not be necessary to go into the remaining grounds of appeal in detail. It may be noted that they appear to fall into two general groups. One group comprises matters which would more properly be considered on an application of the Board for approval of changes in the original scheme. The matters comprised in the other group are such as should receive (if they have not already received) the most careful consideration of the Board, but they are matters of administrative or engineering detail the decision of which under the Act is vested in the Board, and are not within the classes of matters as to which an appeal to the Lieutenant-Governor in Council is provided.

Under these circumstances His Honour is humbly advised that the appeal should be allowed, and that the decision of the Board should be set aside, certified copies of the Order made hereon to be transmitted to the Corporation of Point Grey and the Vancouver and Districts Joint Sewerage and Drainage Board.

DATED this 12th day of August, A.D. 1924.


Attorney-General.

APPROVED this 12th day of August, A.D. 1924.



Presiding Member of the Executive Council.