



The Village of  
**PORT CLEMENTS**  
*"Gateway to the Wilderness"*

36 Cedar Avenue West  
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Port Clements, BC  
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7:00 p.m. Regular Meeting of Council Monday, October 15<sup>th</sup>, 2018

**AGENDA**

1. **ADOPT AGENDA**
2. **PETITIONS, DELEGATIONS & OPENING OF SEALED TENDERS**
3. **MINUTES**
4. **BUSINESS ARISING FROM THE MINUTES & UNFINISHED BUSINESS**  
UB-1 – Gwaii Communications Internet/Cable fibre install – CAO Decock
5. **ORIGINAL CORRESPONDENCE**  
C-1 – Request for Apology from Council – Teri Kish
6. **FINANCE**
7. **GOVERNMENT**  
G-1 – Adoption of Procedural Bylaw 422-1
8. **NEW BUSINESS**
9. **REPORTS & DISCUSSIONS**
10. **ACTION ITEMS**
11. **QUESTIONS FROM THE PUBLIC & PRESS**
12. **IN-CAMERA**
13. **ADJOURNMENT**



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## REPORT TO COUNCIL

Author: Ruby Decock, CAO  
Date: October 15, 2018  
RE: Gwaii Communications Proposed Underground Internet Install Follow Up

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### BACKGROUND:

In spring 2017, Council had written a support letter for Gwaii Communication's application for the Connect to Innovate Program and to Norther Development Initiative Trust. Council supported the initiative as it was designed to improve internet service within Haida Gwaii. In March 2018, Gwaii Communications received funding from the Federal Government for their project. The initiative is to improve broadband capacity throughout Haida Gwaii using fibre optic technology. Gwaii Communications will also be installing television services in this package. Council had an information meeting with Gwaii Communications on October 4, 2018 and at that meeting Council made Gwaii Communications fibre install project a priority for the October 15, 2018 Council meeting.

### DISCUSSION:

The initial project proposal to Council involved an above ground internet/cable television wiring to households within the residential areas of Port Clements. Gwaii Communications has identified that they are now proposing to install underground fibre on the Village of Port Clements infrastructure (land/roads). Upon review of the install there are several issues that must be addressed prior to permission of install of infrastructure:

1. Easement Agreement Required.
2. Notice of Disposition of Land
3. Descriptive plan on order of install.

#### 1. EASEMENT AGREEMENT or PARTNERSHIP AGREEMENT REQUIRED

As per section 25 of the *Community Charter*, the Village of Port Clements "must not provide a grant, benefit, advantage or other form of assistance to a business including:

- a) any form of assistance referred to in section 24 (1)
- b) an exemption from a tax or fee."

Therefore, as Gwaii Communications is a for profit business, the Village of Port Clements would have to sign an agreement to install the underground fibre cable on Village property. Gwaii Communications has not proposed any type of agreement; however, this would be required. It is unclear at this time as to the type of agreement the Village would be able to enter into with Gwaii Communications, but there are two possibilities:

- a. **Partnership Agreement** – This may be possible with Gwaii Communication as per section 21 of the *Community Charter*, a written agreement will be required for the install of the fibre. In speaking with legal counsel, they mentioned that they are hesitant that this would fit the need for the service to be "on behalf of the municipality" as per the requirements of section 21. Legal counsel identified that they would need further research time and information on the nature of the installer and their business /operation to provide a better answer to this.

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- b. **Easement Agreement** - As the fibre infrastructure is going to be installed on Village Property on a long term basis and not easily removed for lack of repair or lack of payment of fee an easement would be required for the company to keep their infrastructure on Village Property.

I have spoken with the Mark Halwa, the project coordinator, and he said he needs to know what the VOPC needs in the agreement. He has also requested that the CAO list all the mandatory information for the agreement. The CAO is not a legal expert on agreements and can only list the concerns for the VOPC and will require additional legal counsel to ensure that the VOPC is receiving the best advice for the agreement.

In addition, if a partnership agreement is not possible, then there should also be something in the agreement to determine if a fair market value fee is required if the agreement is to be an easement or the determination of whether partnership agreement would need to be possible.

## 2. **NOTICE OF DISPOSITION OF LAND**

As the install of Gwail Communications fibre is along the Village of Port Clements road right of way, under the *Interpretation Act*, an easement is a form of land disposition. As per section 26 (3) of the *Community Charter*, a notice in the paper must be published in a local paper for 2 consecutive weeks.

## 3. **DESCRIPTIVE PLAN ON ORDER OF INSTALL**

Gwail Communications has presented their proposed locations for the install of the underground install; however, the company has failed to provide details on the order of install and site preparation requirements for fibre install within the Village of Port Clements and the connectivity plan is not in place. The estimated time for install is 20 days in November for the entire Village, but the final connectivity is not scheduled until January 2019.

## 4. **DESCRIPTIVE PLAN ON ORDER OF INSTALL**

Gwail Communications needs to identify the process in which they will be planning install with time lines. The "Last Mile" project proposal identifies a 20 day install, but it doesn't provide a work plan. The plan will require addressing the following:

- a. **Start & End points.**
- b. **Interruptions to existing utility services or road closures.**
  - i. Flagging for traffic control.
  - ii. Tree removal and disposal – this is will occur on either plans on the main roadways or in the laneways. Either way – tree removal will be necessary.
- c. **Depth of install**
  - i. **Should be included in agreement**

Administratively, the following requirements would need to occur to permit the install of the internet cable:

- Service/Easement agreement between the Village of Port Clements and Gwail Communications
- Legal advice/investigation into what is required to set up such an agreement as this is not a specific location, but a long term impact to the Village of Port Clements infrastructure.
- Public advertisement about the proposed agreement with Gwail Communication. This would be a legal requirement as per the *Community Charter* since this is called property disposal under the *Interpretation Act*.
- Length of term – will need to be investigate the term of the agreement and renewal, etc.

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Additionally, there is a serious liability concern with the lack of provision in Gwaii Communication's proposal for the ongoing monitoring and locating of their infrastructure for contractors or residents after installation is finished (such service is akin to the "call before you dig" program). At this time, the proposal may be assuming or expecting that municipal staff will be providing this service on their behalf. This increases staff workload with the effort to locate and then relate this information to the interested parties, and also puts a liability burden on staff and the municipality in the case of damages made to the infrastructure due to an error arising from staff's location of this infrastructure.

**CONCLUSION:**

This proposal needs more investigation on agreements, long-term impacts from underground installations as well as further exploration on long term planning considerations.

Although the fibre cable will be open access, the install will require a proper legal investigation and drafting of an agreement that addresses the Village of Port Clements

**IMPLICATIONS:**

Gwaii Communications is a business. Under the *Community Charter s. 24*, Council cannot aid a business and the install of the underground internet fibre will impact the Village of Port Clements existing operations. An agreement for the fibre install must be signed with Gwaii Communications. If an agreement is not signed with Gwaii Communications, the Village could cause long term costs to the residents. If the proper agreement is not defined and appropriately researched, Council could be held individually (not the Village of Port Clements) held liable by the public.

**STRATEGIC** (Guiding Documents Relevancy – Strategic Plan, Official Community Plan)  
Potential impact to long term services. Requires further investigation. This most likely will benefit the economic investment into the community.

**FINANCIAL** (Corporate Budget Impact)  
This may impact future budgeting with infrastructure maintenance and install. There will be costs associated with advertising and legal advice required for dealing with the agreement to install such services.

**ADMINISTRATIVE** (Policy/Procedure Relevancy, Workload Impact and Consequence)  
This will increase staff's workload due to determining the long term impact and consequences for installing fibre over the existing infrastructure. Also, it will require administrative staff to do some more investigation how Council can proceed with an agreement for such an install.

**RECOMMENDATION**

1. That Council permits the staff hires legal counsel to assist with writing up a legal agreement.

Respectfully submitted:



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## Ruby Decock

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**From:** Teri Kish <tkish@hotmail.com>  
**Sent:** October-09-18 9:34 AM  
**To:** cao@portclements.ca; Elizabeth Cumming  
**Subject:** Letter To Council for Oct 15th Meeting

To Mayor and Council,

I am writing this letter to demand a public apology for CAO Decock and Deputy Chief Cumming, the Residents of Port Clements and the Press.

I was shocked and appalled at the disrespectful and unprofessional treatment of CAO Decock by the Mayor and two other Councillors regarding issues with late, incorrect and not properly signed nominations papers that are legally binding documents.

Bringing forward a 'rumor' and then in the same sentence mentioning that there might have been unethical issues with the nomination process dealing with CAO Decock and her employee is a type of defamation of character, this is not proper behavior from elected officials.

There was a question put to CAO Decock a few times as to why she just could not extend the nomination process so that those that had issues at the deadline, due to their own negligence, could refile their paperwork.

CAO Decock explained that it was not possible. She explained that she was bound by legislation. She remained professional and calm in a tense public situation all the while she was being harassed by certain members of council.

This goes against the Employment Standards Act, Human Rights Code section for employees.

I believe as a resident of Port and with others that witnessed this behavior, being our elected officials you owe us ALL an explanation and an apology even if this is your last public meeting as the current council. I think it would be a negative mark left behind by this council that a few of them are in elected positions do to unfair practices. ....

Regards,

Teri Kish

VILLAGE OF PORT CLEMENTS  
BYLAW NO. 422 – 1, 2018

A Bylaw to Amend Council Procedural Bylaw No. 422, 2015

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The Council for the Village of Port Clements in open meeting assembled enacts as follows:

1. That "Procedural Bylaw No. 422, 2015" be amended as follows:
  - a) Under Part 1 – **Definitions** to include/amend:  
**Member** means a member of Council.  
Public Notice Posting Place – change "means the notice screen facing the exterior of the building at the Village Office and shall also fulfill the requirement for posting notices at the regular Council meeting place;" to "means the bulletin board beside the Council Chambers door"
  - b) Under Part 1 – Application of Rules of Procedure remove and replace 3 (2) with:  
"In cases not provided for under this Bylaw, the most recent release of Robert's Rules of Order apply to the proceedings of the Council, Committee of the Whole and Council committees to that extent that those rules are:
    - i) Applicable in the circumstances; and
    - ii) Not inconsistent with provisions of this Bylaw or the Community Charter."
  - c) Under Part 2 – Inaugural Meeting remove and replace 4 (1) with:  
"The first regular Council meeting following a general election must be held on the first Monday in the month following the general election."
2. This bylaw may be cited as "Procedural Bylaw Amendment No. 422-1, 2018."

READ A FIRST TIME the 1<sup>st</sup> day of October, 2018.

READ A SECOND TIME the 1<sup>st</sup> day of October, 2018.

READ A THIRD TIME the 1<sup>st</sup> day of October, 2018.

ADOPTED ON THE 1<sup>st</sup> day of October, 2018.

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Urs Thomas, Mayor

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Ruby Decock, CAO

Certified a true copy of Bylaw #422-1, 2018 \_\_\_\_\_, Chief Administrative Officer

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