

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *S & R Sawmills Ltd. v. Greater Vancouver  
Sewerage and Drainage District,*  
2025 BCSC 2453

Date: 20251210  
Docket: S242403  
Registry: New Westminster

Between:

**S & R Sawmills Ltd.**

Plaintiff

And

**Greater Vancouver Sewerage and Drainage District**

Defendant

Before: The Honourable Mr. Justice Gibb-Carsley

## **Reasons for Judgment**

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Place and Dates of Trial:

New Westminster, B.C.  
June 2-6 and 9-13, 2025

Place and Date of Judgment:

New Westminster, B.C.  
December 10, 2025

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**I. Introduction**

[1] The expropriation of property is one of the ultimate exercises of governmental authority. For a government to take all or part of a person's property without agreement is a significant interference upon that person's private property rights: *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, 1997 SCC 400 [Dell] at para. 20. This trial concerns the determination of the fair market value of a property that was expropriated from the plaintiffs, S&R Sawmills Ltd. ("S&R") by the defendant, the Greater Vancouver Sewerage and Drainage District (the "District").

[2] On March 12, 2021 (the "Expropriation Date"), the District expropriated land owned by S&R located on the south shore of the Fraser River near the Golden Ears Bridge (the "Property"). The District required the Property to construct and expand a portion of the Northwest Langley Wastewater Treatment Plant.

[3] The District contends that the value of S&R's interest in the Property on the Expropriation Date was \$37,650,000. The District paid S&R an advanced payment of \$33,510,000 and an adjustment payment of \$4,617,597.48. The District contends that it has fully compensated S&R for the value of the Property. In fact, the District asserts that based on subsequent appraisal reports it overcompensated S&R by \$477,597.48 and seeks a return of what it contends is an overcompensation.

[4] S&R asserts that the District paid less than the fair market value for the Property. More specifically, S&R contends that the fair market value of the Property at the Expropriation Date was \$40,774,000. As I will describe, S&R also argues that the District improperly reduced the amount paid to S&R by an amount the District argues relates to compensation paid to a tenant on the Property, Mainland Sand and Gravel ("Mainland"). In short, S&R seeks an order from this Court that the District pay \$3,316,402.52, plus interest, which S&R asserts is the difference between the amount that the District has already paid S&R for the Property and the fair market value of the Property on the Expropriation Date.

[5] The ultimate issue before the Court in this trial is relatively simple: did the District pay S&R fair market value for the Property? However, reaching a conclusion requires the Court to make several factual determinations underpinning how the fair market value of the Property is to be assessed. These determinations include: (a) assessing competing appraisal reports to determine the value per acre of the Property; (b) assessing competing expert reports regarding the usable area of the Property; and (c) what valuation discount, if any, should be made for areas of the Property that cannot be fully utilized for commercial purposes because of some form of restriction on that area of the Property.

[6] As referenced above, another issue is whether a lease on the Property held by Mainland affects the fair market value. S&R asserts that the lease is either a neutral or positive factor thus increasing the value of the Property at the Expropriation Date. The District contends that the existence of the lease obligations is a liability and reduced the market value of the Property by \$490,000 on the Expropriation Date. I note that while the District paid Mainland \$490,000 for its leasehold interest, it now says that the value of that interest was only \$450,000 and so seeks to withhold that amount from its payment to S&R for the Property. As such, the amount in dispute for Mainland's leasehold interest is \$450,000.

[7] In these reasons for judgment, I will first set out the background facts for context. I will then provide the applicable legal principles relevant to expropriation of land in British Columbia under the *Expropriation Act*, R.S.B.C. 1996, c. 125, [Act]. I will then turn to my analysis and determination.

## **II. Background Facts**

[8] The parties provided the Court with an Agreed Statement of Facts dated June 2, 2025 (the "ASOF"). Many of the facts set out below are from the ASOF or from testimony that I find is non-controversial. Accordingly, unless otherwise indicated, I accept the below as fact.

[9] In the materials presented at trial all areas of the Property were expressed in units of both acres and hectares. In these reasons, I will only use acres.

**A. The Property**

[10] S&R is a family operated sawmill business that commenced operations in 1960. In 1986, S&R purchased the Property. Jeremy Pollon, the current Vice-President of S&R, testified that S&R owns multiple properties, including the property immediately to the west of the Property. Mr. Pollon testified that S&R owns and operates a sawmill known as the “D Mill” on that neighbouring property, but that the Property was never to his knowledge used as part of the “D Mill” operation.

[11] The Property is located on the southern bank of the Fraser River near the Golden Ears bridge in Langley, British Columbia. The Property has a civic address of 19909–101 Avenue in Langley, British Columbia and a legal address as follows:

Parcel Identifier: 023-739-941

Lot A, District Lot 123, Group 2, New Westminster District, Plan LMP32902

[12] The general characteristics of the Property are not in dispute. The Property is an irregular shape. It contains a rectangular “handle” area at the northern boundary abutting the Fraser River and a perpendicular narrow rectangular shape running north-south along the western boundary of the Property. The general appearance of the Property is that of an upside down “hockey stick” shape. The shaft of the stick on the western boundary of the Property and the blade of the hockey stick which the parties refer to as the “handle” to the north along the southern bank of the Fraser River.

[13] The parties agree that the gross site area of the Property is 15.05 acres. The parties also agree that not all of the Property’s gross site area is usable for commercial purposes. This is because there are charges registered on title and a small watercourse, described as a ditch, which runs south to north (into the Fraser River) down the western border of the Property. These restrictions on the Property are the main issues of dispute between the parties. More specifically, the parties

dispute both the area impacted by the restrictions and to what extent the market would discount the Property because of the restrictions.

[14] Three charges, when combined, encumber a total of a 5.24 acre area of the Property and consist of the following:

- a) Covenant T124056, registered in favour of the Province of British Columbia in December 1981, which impacts the area of the Property located within a 30 m setback of the Fraser River (the “Fraser River Frontage”);
- b) Statutory Right of Way (“SRW”) AE38396, registered in favour of the Township of Langley in March 1991, which impacts the area of the Property shown on SRW Plan 88330, which consists of an area running along the Property’s western boundary, including a portion of the Fraser River Frontage (the “Westerly Charge Area”); and
- c) SRW BB1697265, registered in favour of the Township of Langley in September 2010, which impacts the area of the Property shown on SRW Plan BCP45963, including a portion of the Fraser River Frontage (the “Handle Charge Area”).

(Collectively, the “Charges”).

[15] The size of the areas impacted by the Charges is not in dispute as between the parties. They individually encompass the following:

- a) 4.10 acres of the Property are located in the Fraser River Frontage;
- b) 2.10 acres of the Property are located in the Handle Charge Area, 1.36 acres of which overlap with the Fraser River Frontage; and
- c) 0.84 acres of the Property are located in the Westerly Charge Area, 0.44 acres of which overlap with the Fraser River Frontage.

[16] It is important to reiterate that there are overlapping areas where more than one of the Charges apply to the Property. The total amount of the overlap is 1.80 acres which consists of 1.36 acres of overlap between the Handle Charge Area and the Fraser River Frontage, and 0.44 acres of overlap between the Westerly Charge Area and the Fraser River Frontage. Accordingly, while the total area of all of the Charges together is 7.04 acres, the total area of the Property encumbered by charges is only 5.24 acres (7.04 acres of charge – 1.80 acres of overlap) because of the overlap. Given these calculations, the area of the Property unencumbered by the Charges is 9.81 acres, which represents the gross area (15.05 acres) less the areas subject to the Charges (5.24 acres).

[17] The area impacted by the watercourse running along the western boundary of the Property is contested. The parties accept that pursuant to the Official Community Plan (“OCP”) of the Township of Langley (the “Township”) the watercourse is a Class “B” watercourse located on the Property along the western boundary line. In these reasons, I will refer to the watercourse as the “Ditch” or the “Western Riparian Area”.

### **B. The Mainland Lease**

[18] After S&R purchased the Property in 1986, it remained vacant until 2001. In 2001, S&R began leasing a portion of the Property to Mainland. Mainland’s operations included the storage and shipping of sand and gravel. Mainland would dredge sand and materials from the Fraser River in pipes located on the Property and then process and sell the aggregate.

[19] I accept that based on the testimony from Mr. Pollon and the ASOF, that from 2001 to 2014, S&R and Mainland, while separate business entities, operated in a close familial-type relationship. In 2014, Mainland was sold to a large American company. Mr. Pollon’s testimony was that after the sale, the relationship became more formal.

[20] Prior to the expropriation, Mainland and S&R entered into various leases. For example, Mainland leased the Property prior to the final lease it entered into with S&R on a lease that had a term of January 1, 2013, to December 31, 2017.

[21] On or about September 13, 2017, Mainland sought to exercise its option to renew its existing lease that expired on December 31, 2017. However, on or about December 22, 2017, S&R and Mainland entered into a new lease with a four-year term of January 1, 2018, to December 31, 2021, with no ability for Mainland to renew (the “Mainland Lease”). As I will discuss below, S&R asserts that they entered into a shorter lease with no renewal term because S&R were aware of the impending expropriation. S&R also states that it lost negotiating leverage against Mainland as a result of it seeking a shorter term and not providing Mainland with an option to renew. Mr. Pollon’s evidence was generally corroborated by Jeff Davis, the vice president of Mainland.

[22] The Mainland Lease that was in place on the Expropriation Date had the following attributes:

- a. The lease was not assignable;
- b. The lease had no rights of renewal;
- c. The lease had 9.5 months remaining on its term as of the Expropriation Date;
- d. The lease provided cash flow to S&R of over \$700,000 per year, plus triple net cost recovery; and
- e. The lease contained the possibility to negotiate to extend the term if desirable, and by mutual agreement.

[23] After the Expropriation Date, the District allowed Mainland to remain on the Property and continue its operations until July 2021.

**C. The Expropriation**

[24] The District asserts that the expropriation of the Property was necessary to maintain wastewater services in the Township of Langley (the “Township”). The existing Northwest Langley Wastewater Treatment Plant services approximately 30,000 people in the Township. To accommodate population growth in the Fraser Sewerage Area, the District initiated an expansion project in or around 2016 that would allow the plant to serve approximately 280,000 people upon completion, and across a wider geographical area including Pitt Meadows and Maple Ridge.

[25] The existing Langley plant was located on a property directly adjacent to the east of the Property. By early 2017, the District determined that it was necessary to acquire fee simple rights to the Property for the purpose of constructing, operating and maintaining sewerage works so that the District had enough space to undertake the expansion project.

[26] In March 2017, the District asked S&R to meet. At a meeting on March 29, 2017, the District proposed that it would acquire the Property, or that it would enter into an option agreement to acquire the Property, for the purposes of expanding the treatment plant.

[27] On or about December 18, 2018, the District sent S&R a draft Option to Purchase agreement for the proposed purchase of the Property. The parties engaged in discussions over the next several months, including through counsel.

[28] On or about July 8, 2020, the District advised S&R that it wished to purchase the Property by January 2021. Mr. Pollon testified that this was a surprise to S&R. He testified that S&R had organized its affairs on the District’s representations that the District needed the land in January 2022. Specifically, S&R had shortened the term of the lease with Mainland from the customary five years to four years.

[29] On or about July 17, 2020, the District sent S&R a draft Offer to Purchase agreement for consideration. The offer was not accepted. On or about March 11, 2021, the District provided the following notices to S&R pursuant to the *Act*:

- a) A notice of advance payment dated March 1, 2021; and
- b) An advance payment in the amount of \$33,510,000.

[30] The District calculated the amount of the advance payment at \$33,510,000 by “apportioning” the amount of \$490,000 of the market value of S&R’s fee simple interest to Mainland. The District had valued S&R’s fee simple value of the Property at \$34,000,000 and deducted \$490,000 from that amount to arrive at the advance payment amount.

[31] After the initial payment, the District determined that the value of S&R’s interest in the Property on the Expropriation Date was \$37,650,000. In accordance with the *Act*, the District made an adjustment payment to S&R in the amount of \$4,617,597.48 on March 6, 2025, which was the difference of what it believed it owed S&R for the Property and what it had already paid to S&R for the advance payment plus interest.

[32] I pause to note that the District submits that it has, in fact, overcompensated S&R for the Property considering the expert opinion evidence it adduced at trial. This argument was not advanced in a counterclaim nor were there extensive submissions made regarding the exact calculation of the overpayment.

[33] It is with this understanding of the underlying facts that I now turn to a discussion of the relevant legal principles. I will address the facts that I find in relation to the various assessments of the property including its area and my determination of the Property’s valuation in my analysis below.

**III. Relevant Legal Principles**

[34] As referenced at the commencement of these reasons, the expropriation of property is one of the most powerful exercises of governmental authority.

Accordingly, the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected: *Dell* at para. 20; *Chen v. Langley (Township)*, 2024 BCSC 154 at paras. 124–125.

[35] The *Act* is a remedial statute. As such, it must be interpreted and applied “in a broad and purposive manner in order to comply with the aim of the *Act* to fully compensate a landowner whose property has been taken”: *Chen* at para. 124, citing *Dell* at paras. 20–23.

[36] The basic formula for determining the amount of compensation payable is set out under s. 31 of the *Act*, as follows:

31(1) The court must award as compensation to an owner the market value of the owner's estate or interest in the expropriated land plus reasonable damages for disturbance but, if the market value is based on a use of the land other than its use at the date of expropriation, the compensation payable is the greater of

(a) the market value of the land based on its use at the date of expropriation plus reasonable damages under section 34, and

(b) the market value of the land based on its highest and best use at the date of expropriation.

[37] Market value is defined under s. 32 of the *Act* as follows:

32 The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

[38] A general principle in valuation is that a court must apply “judgment” and is not to merely adopt the conclusions of one appraiser over the other without regard for the circumstances and the logical results: *Cyprus Anvil Mining Corp. v. Dickson*, 33 D.L.R. (4th) 641, 1986 CanLII 811 (B.C.C.A.) at paras. 51–52, 59; *Springman and Springman Limited v. Surrey (City)*, 2023 BCCA 130 at para. 15.

[39] Another concept arising from expropriation jurisprudence is a consideration of the impacts from the “shadow period” of expropriation. This principle captures the time frame from the announcement of the intended expropriation but before the actual land is taken: *Dell* at para. 43. During this period, the steps taken by a government authority for the expropriation can cause damage to an owner: *Dell* at paras. 28, 37–39, 42 and 45.

[40] The core concept of expropriation is not complicated. A government authority can take land that it does not own but must fairly compensate the individual or corporation from whom it takes the land. The difficulty in expropriation cases arise in the determination of a fair and accurate assessment of value of the expropriated land. This is especially difficult because the expropriated land is never put on the market and the party from whom the land is expropriated may never have planned to sell the land and has no control over the timing of the taking of the land by the government.

[41] Determining the proper market value of a property will largely, if not entirely, depend on the court’s view of the expert appraisal evidence. The court’s task is not necessarily to accept the opinion of one appraiser over another. The strength of the appraiser’s opinion will rest on the information used by them and the valuation approach taken to answer a hypothetical question. The court may accept all, some or none of the opinions offered in arriving at its valuation: *Spera (Lynn Creek Holdings Ltd. v. North Vancouver (District))*, 2024 BCSC 1395 at paras. 71–72.

[42] It is with these legal principles in mind that I turn to my analysis.

#### **IV. Analysis**

##### **A. The Issues**

[43] The ultimate issue in this trial is relatively straightforward. The parties ask the Court to assess the fair market value of the Property on the Expropriation Date. However, arriving at that determination raises complicated issues requiring the Court to make several factual determinations primarily based on the expert opinions.

[44] The assessment of the market value of the Property at the Expropriation Date consists of several components in dispute between the parties. These components, which form the issues for determination are as follows:

- a) assessment of the price per acre for the usable area of the Property;
- b) calculation of the area of the Property that is fully usable (not restricted in use). This requires determining the area of the Property that is encumbered which includes the following areas:
  - i. The Fraser River Frontage;
  - ii. The Handle Charge Area;
  - iii. The Westerly Charge Area; and
  - iv. The Western Riparian Area (the Ditch impacted by being designated as a Class “B” watercourse);
- c) an assessment of how the market would assess the value of these above listed encumbered areas of the Property; and
- d) the market value, if any, of Mainland’s leasehold interest in the Property and how that interest impacts the market value of the Property.

[45] I will address each of these issues below, but first I will turn to an objection raised by S&R regarding the admissibility of an expert report provided by the defendant at the commencement of trial. I addressed the objection and provided my reasons for admitting the report into evidence at trial but will briefly restate the parties’ positions and my reasons and caveats to admitting the expert report.

**B. Preliminary Objections to Admissibility of Supplementary Expert Report and Scope of Expert Qualification**

[46] At the commencement of trial, S&R objected to the District’s attempt to include a supplemental expert report prepared by Brett Garnett on May 16, 2025,

(the “Garnett Supplementary Report”). Further, S&R applied to have the Court narrow the scope of expert qualifications for Mr. Garnett such that he would be prohibited from providing opinion evidence in respect of the issue of classifications of riparian waterways.

[47] I admitted the Garnett Supplementary Report. I determined that the probative value of including the report outweighed the prejudicial effect of admitting the evidence: *R. v. Mohan*, [1994] 2 S.C.R. 9, 1994 CanLII 80 at 21. I considered the factors set out by the Supreme Court in *Mohan* and *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 [*White Burgess*], and determined that the Garnett Supplementary Report was admissible.

[48] In considering the court’s gatekeeping function at the second stage analysis under *R. v. Abbey*, 2009 ONCA 624 at para. 85 and *White Burgess*, I found that the probative value outweighed the prejudicial effect of admitting the evidence. However, while I admitted the report, I concluded that ultimately I would determine the amount of weight to place upon the report and Mr. Garnett’s evidence regarding the substance of the Garnett Supplementary Report once I had the full context of the experts offered at the trial, given there were at least nine expert reports tendered at the trial in total.

[49] I was satisfied that given the number of expert reports put before the Court, and that the reports were key to resolving the issues, that it was important to have a complete picture of the experts’ opinions including the Garnett Supplementary Report as it was based on additional assessments made by Mr. Garnett from updated sketch plan information and area measurements of regions on the Property provided by another expert. While filing responsive expert evidence must not continue indefinitely, I found that admitting the evidence was not prejudicial to S&R and it would be probative to material facts in issue. At the time of the objection, I was of the view that ultimately, I would determine what weight should be placed upon the Garnett Supplementary Report and I would be in a better position to do so with an understanding of the expert evidence adduced during trial.

[50] Further, while I admitted the Garnett Supplementary Report, I accepted S&R's concerns that Mr. Garnett was not qualified to give expert opinion evidence in riparian waterways or their classification. As I will describe below, he is not a Qualified Environmental Professional ("QEP") which he candidly acknowledges in his reports. His opinion is that of a real estate appraiser and so his conclusions and opinions are limited to his view as to how the market would respond when faced with property that has restrictions placed upon it. To be clear, I do not accept Mr. Garnett's evidence for the truth or expertise as to how the Western Riparian Area would be classified by a QEP or by the Township or what actual impacts it might have on development of the Property other than how the market might view the presence of the restrictions.

[51] I will now turn to my analysis of the factors and sub-issues that will ultimately lead to my conclusion as to the appropriate market value of the Property on the Expropriation Date.

### **C. Per Acre Value of the Usable Area of the Property**

[52] As a starting point, I must determine the price per acre for the usable area of the Property. For the usable area of the Property, I am considering the Highest and Best Use ("HABU") of the Property based on the use for which it is zoned with no specific restrictions or limitations on the Property. The price per acre represents what the market would pay for similar land in similar circumstances. I note that from the per acre value of the usable area of the Property, I will later apply discounts to areas of the Property that are encumbered to reflect that the market would pay less for land upon which it has limited options for use or development.

[53] In respect of the value per acre of the usable area of the Property, both S&R's expert, Stuart Carmichael, and the District's expert, Mr. Garnett, provided conclusions. Mr. Carmichael opined that the value of the usable land was \$3,800,000 per acre. Mr. Garnett opined that the value was \$3,750,000 per acre.

[54] I recognize that the \$50,000 per acre difference in the parties' experts is remarkably similar and represents a difference of only 1.3%. Indeed, both Mr. Carmichael and Mr. Garnett testified that both acreage land value results at trial were within an acceptable tolerance among appraisers. That said, given that the usable area of the Property is almost 10 acres, a \$50,000 difference in valuation per acre represents a significant fluctuation of half a million dollars.

[55] In support of the appraisals Mr. Carmichael and Mr. Garnett examined the sale price of properties they believed were comparable to the Property. The use of comparable properties and how the Court may interpret the comparison approach was considered by our Court in *Chen v. Chilliwack (City)*, 2015 BCSC 382:

[23] Under the direct comparison approach the market value of a property is estimated by comparing it to sale prices for similar properties. Adjustments are made from the comparable to the subject property to take into account differences in various attributes, such as location, improvements to the property and the condition of those improvements, size, time of sale etc. Thus, if the comparable is superior with respect to a particular attribute a downward or negative adjustment is made to the subject property. Conversely, if the comparable is inferior an upward or positive adjustment is made.

[56] I have carefully reviewed the basis upon which Mr. Carmichael and Mr. Garnett reached their conclusions at the price per acre of the usable area. As I will describe below, each opinion has strengths and potential shortcomings. I find it appropriate to take the average value per acre between the value offered by each appraiser. As such, I conclude that the value of a usable unrestricted acre of the Property is \$3,775,000 per acre. I come to this conclusion for the following reasons.

[57] There are simply too many variables for me to make a meaningful assessment of the valuation per acre of the Property that favours one appraiser's conclusion over the other. In terms of the comparables used by Mr. Garnett and Mr. Carmichael, the valuations per acre vary based on a number of factors, including whether the land is vacant or improved and the purpose for which it is to be developed. In other words, there are several variables in each offered comparator.

[58] Further, I accept that the total size of the Property may be a significant factor in determining the value per acre. A review of the comparables generally indicates that there were fewer comparables with an area as large as the 15.05 acre area of the Property. While this could mean that it is a scarcer resource, I accept Mr. Garnett's testimony that "there is generally perceived to be a smaller pool of potential purchasers who can afford to purchase and utilize larger industrial properties." This conclusion accords with common sense. However, I do not find it determinative such that I should prefer Mr. Garnett's opinion in its entirety.

[59] In coming to my conclusion to average the per acre valuations, I accept that property appraisals involve an element of crystal ball gazing to determine an accurate per acre land value. The two valuations are remarkably close; this gives me comfort that the per acreage value of the Property is within a small tolerance of what both parties suggest is appropriate.

[60] I will now turn to the various areas and encumbrances to determine the total area of the useable or unencumbered land.

#### **D. Area of the Useable Land**

##### ***i. The Experts Assessment of the Encumbered Areas of the Property***

[61] The parties agree that the gross area of the Property is 15.05 acres. However, the parties disagree as to how much area of the Property is subject to some form of restriction or encumbrance, either through the formal charges on title to the Property or based on the riparian waterway restrictions in place due to the classification of the Ditch as a Class "B" watercourse.

[62] In their initial reports prepared for trial, both Mr. Garnett and Mr. Carmichael agreed that 9.50 acres of the Property was unencumbered. However, Mr. Garnett reduced his assessment of the useable area of the Property first to 9.10 acres in his report dated March 12, 2021. In the Garnett Supplementary Report, Mr. Garnett further reduced his assessment of the unencumbered area of the Property from 9.10

acres to 9.01 acres. I will address the basis of Mr. Garnett's reduction in the unencumbered area of the Property below.

[63] To determine the unencumbered area of the Property, I must first determine the area of the Property that is encumbered by some form of restriction, either from the Charges or from the Western Riparian Area in order to deduct those areas from the total 15.05 acre area.

***The PLG Report***

[64] On April 15, 2025, Oleg Verbankov of Pacific Land Group (PLG) prepared a "Usable Area Review" of the Property (the "PLG Report"). The purpose of the PLG Report was to calculate the areas of the Property subject to the Charges and restrictions. The PLG Report does not undertake to opine on the development potential or market value of the Property. In the PLG Report, Mr. Verbankov writes that to determine the unconstrained usable area of the Property he considered:

- a) The encumbrances (charges) registered on title to the Property;
- b) The non-assignable lease that S&R had with Mainland which identifies a lease area of 8.994 acres for the Property; and
- c) The physical utilization of the Property including the physical topography.

[65] The PLG Report gave two calculations of the usable area of the Property. The lower one being 9.66 acres and the larger one being 9.81 acres. The importance of the PLG Report in this matter is twofold. First, it sets out with more precision than the scaling provided by either Mr. Garnett or Mr. Carmichael the areas of the Property that are subject to the Charges. In the ASOF the parties accept the following measurements provided in the PLG Report:

- a) The Fraser River Frontage and Handle Charge Area (without overlap with Westerly Charge Area) is 4.40 acres;

- b) The Overlap between the Westerly Charge Area and the Fraser River Frontage is 0.44 acres; and
- c) The non-overlapping Westerly Charge Area is 0.40 acres.

[66] As such, at a minimum, 5.24 acres of the Property is subject to some form of restriction (4.40 acres + 0.44 acres + 0.40 acres).

[67] Mr. Verbankov also conducted a top of bank assessment of the Ditch on the western boundary of the Property. However, Mr. Verbankov acknowledges that he is not a QEP and his estimate of the top of bank of the watercourse should not be considered as an official determination of the watercourse. Instead, he used a handheld GPS device to generally assess where that area would be unusable due to the steepness of the slope into the Ditch.

[68] The real issue other than how the market will value the areas of the Property that are under some form of restriction which I will address below, is what further area of the Property should be considered under some form of restriction based on a set back from the Ditch on the western boundary of the Property under environmental waterway restrictions. Before turning to that issue, I will set out Mr. Garnett's and Mr. Carmichael's opinions as to the usable areas of the Property.

***Mr. Carmichael's Opinion***

[69] Mr. Carmichael calculated the Fraser River Frontage (without overlap with the Westerly Charge Area) as 4.75 acres. He further calculated that the overlap between the Westerly Charge Area and the Fraser River Frontage and the non-overlapping Westerly Charge Area is 0.80 acres. This totals 5.55 acres leaving 9.50 acres unencumbered. In essence, Mr. Carmichael's opinion is that the non-overlapping Fraser River Frontage Charge is 4.75 acres. His opinion is that the Westerly Charge totals 0.80 acres. Mr. Carmichael expresses his conclusion somewhat differently than the PLG Report because he does not break down the Westerly Charge as between what overlaps with the Fraser River Frontage and what is only related to

the Western Riparian Area. Mr. Carmichael opines that the combined area that is under a form of restriction based on the Western Riparian Area and the Westerly Charge Area is 0.80 acres in total.

***Mr. Garnett's Opinion***

[70] Mr. Garnett, in his report prepared for trial, opined that the Fraser Frontage and Handle Charge Area (without overlap with the Westerly Charge Area) was 4.75 acres. In that report he opined that the non-overlapping Westerly Charge Area and the Westerly Riparian Area totalled 1.20 acres. These two areas totalled 5.95 acres leaving an unencumbered area of the Property of 9.10 acres.

[71] In the Garnett Supplementary Report, Mr. Garnett opines that the Fraser River Frontage and Handle Charge (without overlap with the Westerly Charge) is 4.40 acres. He opines that the Overlap between the Westerly Charge Area and the Fraser River Frontage is 0.44 acres. Further, he opines that the non-overlapping Westerly Charge Area is 0.40 acres, and the Westerly Riparian Area is 0.80 acres. The total of the limited use area is 6.04 acres leaving an unencumbered area of the Property at 9.01 acres.

[72] The basis of the change in Mr. Garnett's opinion is a sketch plan prepared by South Fraser Land Surveying (SFLS) and the report prepared by Mr. Verbenkov of PLG. In essence, those reports re-scaled the Fraser River Frontage Area combined with the overlap between the Westerly Charge Area and the Fraser River Frontage Area to 4.84 acres as opposed to 4.75 acres that was the area scaled by Mr. Garnett when he prepared his initial reports. The difference in the scaling of that area of 0.09 acres (4.84 minus 4.75 acres) accounts for the reduction in Mr. Garnett's conclusion that 9.01 of the Property is unencumbered as opposed to his previous opinion that 9.10 acres of the Property was unencumbered.

[73] I will address the details of Mr. Garnett's changes and the reliance on the PLG report in more detail now as I turn to my analysis of the assessment of the following disputed areas of the Property: (a) The Fraser River Frontage and the

Handle Charge Area; (b) the overlap between the Westerly Charge and the Fraser River Frontage Area; (c) the Non-overlapping Westerly Charge; and (d) the Western Riparian Area (the Ditch).

**ii. The Area of the Fraser River Frontage Area and Handle Charge Area**

[74] As set out above, in the ASOF and the PLG Report, the total area of the Property subject to the Fraser River Frontage is 4.10 acres. I accept that the overlap between the Westerly Charge Area and the Fraser River Frontage is 0.44 acres and the overlap between the Fraser River Charge and the Handle Charge is 1.36 acres. As such the area in the Fraser River Frontage Area and the Handle Charge Area less the overlap with the 0.44 acre overlap with the Westerly Charge Area is 4.40 acres (4.10 acres (total Fraser River Frontage) + (2.10 acres – 1.36 acres (area of Handle Charge area not overlapping with Fraser River Frontage) less 0.44 acres (area Westerly Charge overlap with Fraser River Frontage)).

[75] As such, I am satisfied that the best evidence before me regarding the accuracy of the assessment of the areas impacted by the Fraser River Frontage Area and Handle Charge Area is that provided by PLG which sets that amount at 4.40 acres. This is also supported by the fact that the parties agreed to the calculation of the areas subject to these charges in the ASOF.

**iii. The Area of the Westerly Charge Area**

[76] In the ASOF, the parties agree that 0.84 acres of the Property are located in the Westerly Charge Area, 0.44 acres of which overlap with the Fraser River Frontage Area. As such, the area of the portion of the Westerly Charge that does not overlap with the Fraser River Frontage Area is 0.40 acres. (0.84 acres less 0.44 acres).

[77] I accept that the total area of the Westerly Charge Area is 0.84 acres and 0.40 acres of that area does not overlap with the Fraser River Frontage Area. More

specifically, this 0.40 acres is the area running from north to south along the westerly boundary of the Property.

**iv. Western Riparian Area (the Ditch)**

[78] As referenced above, a ditch-like feature is present on the westerly boundary of the Property. One of the greatest points of contention between the experts and the parties is the impact of the Ditch on the ability to use the Property. The Ditch or Western Riparian Area is identified on the Township OCP map as being part of a waterway considered a Streamside Protection and Enhancement Area (SPEA).

[79] The Township OCP indicates that there is a Class “B” watercourse running from south to north located on the Property along the western boundary. A Class “B” watercourse may require a 20 m setback, but there are exceptions to requiring that distance of setback. Further, there are varying setbacks based on how a watercourse is actually classified, for example if it is manmade or natural. This is illustrated by Schedule 3-1 of the SPEA Guidelines as they provide guideline widths for water courses identified by the Township:

- a) A roadside ditch with average setback of 6 m and minimum of 3.5;
- b) A constructed watercourse
  - i. If the channel is less than 0.5 m, an average setback of 10 and a minimum of 7.5 m;
  - ii. If the channel is more than or equal to 0.5 m, an average setback of 15 and a minimum of 10 m; and
- c) A natural channel which has an average of 20 m and a minimum of 15 m.

[80] In the Garnett Supplementary Report, Mr. Garnett considered the PLG Report and measurements of the charges on the Property. Mr. Garnett writes in the report that he “also deducted the estimated non-developable riparian areas.” He included a 20 m “riparian setback reserve” from the top of bank based on the watercourse classification. As a result of his assumption that there would be a restriction imposed because of the SPEA of 20 m from the top of bank, Mr. Garnett calculated that an additional 0.65 acres on the westerly boundary of the Property would be subject to

development restriction. Based on this conclusion, Mr. Garnett determined that it was appropriate to maintain his 1.20 acre estimate for the Westerly Charge Area and the Westerly Riparian Area. Mr. Garnett is candid in his report that all his figures “are subject to input from a Qualified Environmental Professional.” Further, Mr. Garnett opined, “I have taken this more conservative approach because although I know the watercourse is located on the Property, I am not qualified to determine the top of bank”.

[81] The primary basis of Mr. Garnett’s increase to a 20 m setback is because he had a call and exchanged correspondence with the Township’s Director of Planning, Mr. Chu, regarding how the Township treats Class “B” watercourses. In response to a question that identified the range of potential SPEA widths, the Director of Planning indicated that the watercourse in the Westerly Riparian Area “appears to be natural and would require a 20 m SPEA.” This was confirmation to Mr. Garnett that the market – in evaluating the setback for the Western Riparian Area – would impose a 20 m setback. During his testimony, Mr. Garnett stated that when he accepted the information from Mr. Chu, Mr. Garnett assumed that Mr. Chu had spoken to his environmental experts. There was no evidence that Mr. Chu did so. In the email correspondence between Mr. Chu and Mr. Garnett, Mr. Chu wrote:

Watercourse appears to be natural and would require a 20 m SPEA. A QEP would be required to assess the site and confirm.

[82] No QEP was ever engaged to provide an opinion in respect of what amount of setback would apply to the Western Riparian Area.

[83] Before continuing I note that I have difficulties in accepting Mr. Chu’s email for the purpose it is provided by the District. The first issue is that the evidence is hearsay. Mr. Chu was not called as a witness at trial. The second difficulty I have in accepting the evidence is that even if it is accepted as accurate, the email only supports a conclusion that a QEP would be required to determine what the SPEA setback would be from the Ditch.

[84] I acknowledge that a potential buyer of the Property might make the same inquires made by Mr. Garnett by calling the Township planning department. It is possible that the same answer would be provided. This could lead a potential buyer to seek to lower the price it would pay for the Property. However, I find that this chain of reasoning upon which Mr. Garnett's bases his assessment of a 20 m setback is too speculative to be of assistance in determining the proper setback for the Western Riparian Area.

[85] Moreover, the weight Mr. Garnett places on this email is inconsistent with the Watercourse Classification Map 11 itself, and the SPEA Development Permit Guidelines which expressly include disclaimers confirming that the Map itself is a Guide. Verification and environmental study are required to confirm its contents and the Guidelines which require a QEP to characterize and correctly identify any applicable setback, if a protected feature is identified at all.

[86] The Watercourse Classification Map is a guideline that must be proved out on the ground by a QEP who can correct the map, classify what is there and determine the required area of protection relative to any watercourses they identify.

[87] Further, SPEA Development Permit Guidelines allow for irregular areas to be identified that will engage the average setback identified in Column A of Schedule 3-1. As such, there is some flexibility in how these areas are calculated, subject to a more detailed analysis including evaluations by a QEP. Put simply, Mr. Garnett has taken the most restrictive classification of the Ditch based on assumptions built upon thin evidence. He may ultimately be correct in his assessment, but based on the evidence before me, I am not satisfied that I should accept a definitive determination as to the distance of the setback from the Ditch without information that needs to be determined by a QEP likely with input from the Township.

[88] In Mr. Carmichael's March 12, 2021 report, he accepted Mr. Garnett's initial estimate of the area on the western portion of the property that was encumbered by both the Westerly Charge Area and the Western Riparian Area as 0.80 acres.

Mr. Carmichael opined that this estimate appeared reasonable to him and so he adopted that area for his appraisal report.

[89] Mr. Carmichael provided a further report dated April 11, 2025, in which he reviewed Mr. Garnett's report of March 6, 2025.

[90] As just referenced, I do not accept that there is sufficient evidence before me to accept Mr. Garnett's opinion that the Western Riparian Area should be as he calculated by including an additional 0.65 acres for that area. While I accept that the Ditch is designated as a Class B watercourse on the Township OCP, there remains ambiguity about the nature of the watercourse and thus how it would be treated.

These include the following factors:

- a) No QEP has examined the watercourse to provide an opinion as to its specific nature;
- b) Mr. Verbenkov confirmed that the reference to top of bank (TOB) in his report was not an assessment of a riparian area (evaluation of site features, setbacks and where the TOB was according to applicable Guidelines). Instead PLG had measured the limit of geographic features, (site utility or usable area) and could not be used for the purpose of a riparian area; and
- c) The watercourse would be treated differently depending on whether the Township determined that the watercourse was manmade or natural. Mr. Pollon is certainly not a QEP and so I put little to no weight on his evidence but acknowledge that from his observations he believed that the Ditch was manmade and rarely had any water in it. To be clear, I do not accept this evidence as definitive evidence of how the Western Riparian Area would be classified, but note that this somewhat counters Mr. Garnett's argument that the market would factor in the most restrictive set back from speculative evidence from the Township given that a buyer might view the site, as does Mr. Pollon as not a natural watercourse.

[91] Further, I accept Mr. Carmichael's testimony that in his experience, a SPEA on a property results in a negotiation with the municipality which frequently results in unusual or irregular shaped protection areas and ultimately exceptions are made such that development features can be constructed (with the permission of the municipality) within a few meters of a protected feature.

[92] An additional factor supporting my view is that the legislative framework governing development in riparian areas that are determined to be ecologically sensitive is "protective and not prohibitive": *Cowichan Valley (Regional District) v. Wilson*, 2023 BCCA 25 at para. 1. As such, there should be some flexibility in approaching how the market will assess the ability of a purchaser to value this area of the Property.

[93] In summary, I am not satisfied on a balance that the information provided by the Township to Mr. Garnett is sufficient such that I can safely rely upon it to assess the area where development will be restricted. I am not persuaded that the assumptions upon which Mr. Garnett has based his calculation of an additional 0.65 acres of land from the top of bank estimate provided by PLG should be accepted in calculating the area of the Western Riparian Area.

[94] However, I accept that given that the Ditch is classified on the OCP as a Class B watercourse under the SPEA, some allowance should be made for potential restrictions. Indeed, both Mr. Carmichael and Mr. Garnett accept that some allowance should be made for the Western Riparian Area and the watercourse because it will not have the full ability to be utilized.

[95] I have examined the assessment of Mr. Carmichael and Mr. Garnett. I conclude that it is appropriate to accept Mr. Carmichael's assessment of the Western Riparian Area. While Mr. Carmichael did not conduct a measurement specifically related to that setback for the Western Riparian Area he concluded, based on Mr. Garnett's original calculation that the combination of the Westerly Charge Area and the Western Riparian Area totalled 0.80 acres.

[96] Given the recalculation of the areas subject to charges on the Property conducted by PLG, I am satisfied that the area attributed to the Western Riparian Area is 0.31 acres. I arrive at this conclusion by adjusting Mr. Carmichael's assessment of 4.75 acres for the Fraser River Frontage and Handle Charge (without overlap with the Westerly Charge Area) to 4.40 acres as provided for by PLG. As such, the additional 0.35 acres (4.75 acres less 4.40 acres) must be attributed to his assessment of the Westerly Charge Area (both overlapping and not overlapping) and the Western Riparian Area. After applying the assessment made by PLG for those amounts to Mr. Carmichael's assessments, the remaining amount is 0.31 acres.

[97] Given that in Mr. Carmichael's report there is an additional 0.31 acres that does not fall within the Westerly Charge Area, I conclude that by default it must be attributed to the Western Riparian Area, even if not specifically assessed in this way by Mr. Carmichael. Put another way, an additional 0.31 acres of the Property that does not overlap with the Westerly Charge Area would be subject to the riparian restrictions.

[98] As I understand Mr. Carmichael's methodology in respect of the restrictions, he accepted a 15 m setback from the western border of the Property. While that assessment is perhaps less precise than using a top of bank measurement in conjunction with input from a QEP, I find it satisfactory to approximate the area of restriction related to the Westerly Charge Area and Western Riparian Area. I note that these additional 0.31 acres is approximately half of the set back estimate by Mr. Garnett of 0.65 acres and so could also be seen to represent a set back from the watercourse of 10 m. I acknowledge that the assessments are somewhat imprecise as they related to the setback in respect of the Western Riparian Area. However, I am not satisfied that Mr. Garnett's report should be preferred over Mr. Carmichael's as it takes the most conservative approach, by imposing the greatest set back, and does so from a top of bank measurement that is acknowledged to be insufficient to

establish that measurement for the purposes of riparian setbacks because it was not measured by a QEP.

[99] It would have been of assistance to the Court if the parties had provided more detailed evidence regarding the portion of the Property impacted by the Western Riparian Area. While the experts refer to how the market would treat the area in valuing the Property, I was left with some uncertainty as to the specific area of the Western Riparian Area and to how the market would make that assessment. I understand that this is in part because there is ambiguity as to how the watercourse would be classified as well as ambiguity as to locations from which to take measurements from the Ditch, which requires a QEP. Indeed, the lack of a QEP was acknowledged as a frailty in Mr. Garnett's report regarding his assessment of an appropriate set back for the riparian restrictions under the OCP.

[100] I am required to decide based on the evidence put before me by the parties. Based on a review of the totality of evidence in respect of the Western Riparian Area, I accept Mr. Carmichael's assessment of the area impacted by the Westerly Charge Area and Western Riparian Area as the most accurate. I reject Mr. Garnett's assessment of that area in his Supplementary Report. I conclude that the information upon which he relied, being a generic call to the Township office which he assumed provided him with an informed position as well as the lack of certainty how this watercourse would ultimately be classified, leads me to reject his opinion on a calculation of the Western Riparian Area. While I am free to accept some, all or none of the expert evidence presented at trial, I am satisfied that Mr. Carmichael's assessment of this area provides an appropriate measure of that area for the purposes of valuing the Property.

[101] Again, Mr. Carmichael grouped all of the restrictions applying to the western boundary of the Property together and scaled them as amounting to 0.80 acres. Using that area as a starting point, I have taken the additional area calculations of the charges to determine that the appropriate assessment of the area that would fall within the restrictions applying to the Western Riparian Area or Ditch is 0.31 acres.

**v. The Total Unencumbered Area of the Property**

[102] Given the foregoing, I conclude that the total unencumbered area of the Property to which the full market value should be applied is 9.50 acres. I calculate the areas subject to some form or restriction at 5.55 acres calculated as follows:

- a) Fraser River Frontage Area and Handle Charge Area (without overlap with Westerly Charge Area) – 4.40 acres;
- b) Overlap between Westerly Charge Area and Fraser River Frontage Area – 0.44 acres;
- c) Non-overlap Westerly Charge Area – 0.40 acres; and
- d) Western Riparian Area (the Ditch) – (not including overlap with Westerly Charge Area) – 0.31 acres.

**E. The Correct Functional Utility Percentages to Be Applied to Restricted Use Areas Or Market Impact of the Limited Use Areas**

[103] Having determined the specific areas of the Property that are subject to some form of restriction, I must now assess what is the appropriate discount to be applied to those areas. This requires me to conclude how the market would view the restrictions when determining the purchase price for the Property.

[104] While the experts have provided their reports as to how the market would treat the encumbrances, I am acutely aware that this assessment is not a mathematical calculation that can be assessed with exactitude. Appraisals of how the market will assess a limitation on a property must be based on rigour and the experts' knowledge of how markets address such limitations. Generally, each parcel of real estate is unique as is each buyer's wants and needs. Although I accept that while an attribute might have a unique value to a particular buyer, I am aware that the generally accepted appraisal methodology is to consider the value of a property for its HABU. Utilizing the HABU to determine the market value is also the method to be used under s. 31(1)(b) of the *Act*.

[105] While the experts have attempted to provide comparables as to how the market would react to the encumbrances, I recognize that the endeavour is more art than science. In other words, the exercise of parsing out a particular area of the Property and assessing the correct percentage discount the market would apply to that area appears to place a patina of accuracy and predictability on a process that has unknown and unique variables as to make it impossible to calculate with absolute precision.

[106] The methodology applied by both experts to discount the value of encumbered areas of the Property is to decrease the utility or value of the encumbered area in proportion to its level of restriction. In simple terms, the more restrictive and the less an owner could make use of a certain area of the Property, the lower the market value of that land as compared to the value of the unencumbered area of that land. As I will discuss below, under the Canadian Uniform Standards of Professional Appraisal Practice (“CUSAP”) the consideration of how the market would value a property must be in respect of its HABU. In other words, an appraisal must ask what the HABU of that property is and then determine how the market would view any restrictions.

[107] As discussed above, there are four areas of the Property that have some form of development restrictions upon them: (i) the Westerly Charge Area; (ii) the Western Riparian Area; and (iii) the Fraser River Frontage Area and Handle Charge Area; (iv) the Overlap Area. I will address each below.

***i. The Westerly Charge Area and the Western Riparian Area***

[108] Mr. Garnett and Mr. Carmichael agree that the portions of the Property located in the Westerly Charge Area and the Western Riparian Area have a value equal to 35% of the unencumbered value. They agree that the Westerly Charge Area is restricted in utility due to the drainage SRW and riparian constraints, making it non-buildable and only suitable for limited passive uses and residual rights.

[109] Accordingly, I accept that the Westerly Charge Area has a value equal to 35% of the unencumbered value of the Property or put another way that area is to be discounted by 65%. As such, a total of 0.71 acres (0.40 Westerly Charge Area + 0.31 acres of the Western Riparian Area (the Ditch) of the Property is discounted by 65% to 35% of the per acre value of the Property.

**ii. The Fraser River Frontage and Handle Charge Area**

[110] The parties disagree as to the reduction the market would impose in respect of the value for the northern part of the property that is under the Fraser River Frontage Charge and the Handle Charge. Mr. Garnett values this area at 15% of the unencumbered price per acre. Mr. Carmichael values this area at 20% of the unencumbered price per acre.

[111] Mr. Garnett opines that the Fraser River Frontage should be discounted to 15% of the unencumbered value per acre of the Property in part because that area is subject to the following limitations:

- a) the area is already constrained by shape;
- b) the entire north-east portion is subject to dual encumbrances for dyking and drainage with no-build restrictions;
- c) there is a watercourse running through that area;
- d) there is an additional SRW at the western boundary; and
- e) some of the area is riparian and subject to federal regulations.

[112] Mr. Garnett's conclusions regarding the limitations on the Fraser River Frontage and Handle Charge Area appear supported by the nature of the restrictive covenant T124056 registered on that portion of the Property. The covenant provides the following restrictions:

- a) The 30 m setback required from the natural boundary of the Fraser River, in which no building, mobile home, modular home, or structure is permitted, except for dykes or loading or unloading facilities associated with water-oriented industry; and
- b) The minimum elevation requirement, which restricts any building or structure from being built in the areas with an elevation lower than 4.1 m, unless the required elevation is achieved by landfill or structural elevation. While landfill or structural elevation may be used to meet the elevation requirement, no portion of the landfill slope may be within the 30 m setback from the natural boundary of the Fraser River, and the landfill face must be protected against erosion. A narrow exception also exists such that if a dyke is constructed to government standards, authorities may relax the elevation requirements for areas behind the dyke.

[113] A second restriction applies to the SRW BB1697265 which applies to a 2.10 acre area that is in the Handle Area. The restrictions on this SRW include:

- a) The SRW restricts any building, structure or other permanent obstruction from being erected, placed, or maintained on, under, or above any portion of the SRW area;
- b) No works that would interfere with or injure the purpose of the SRW (i.e., drainage and dyking services) or damage the drainage and dyking works are permitted within the SRW absent the Township's consent; and
- c) The Township and its agents have the right to enter the SRW area at any time for the purpose of constructing, maintaining, or operating the drainage and dyking works.

[114] These restrictions are significant and I accept that the market would view these restrictions as seriously impeding a purchaser's ability to make use of that portion of the Property.

[115] In his report, Mr. Carmichael provides the following explanation for assessing the value of the Fraser River Frontage Area as having a value of 20% of the unencumbered value. His reasons are set out as follows:

The Garnett Report appraisal estimates that the “Handle” portion of the subject site has a value equivalent to 15% of fee simple price per acre on the Fraser River. Due to the imperfect nature of the real estate market, the judgment and experience of the appraiser is always a key factor in determining the correct judgment to adopt, but I consider this estimate of only 15% to be conservative. I concluded the waterfront area, also with limited utility, to have a value equivalent to 20% of the fee simple price per acre area.

[116] Mr. Carmichael further opines:

In a recent similar appraisal of industrial land on the Fraser River, after much consideration, I concluded the waterfront area, also with limited utility, to have a value equivalent to 20% of the fee simple price per acre. Given the similar circumstances in the subject case, I have concluded that with the same adjustment of 20%...”

[117] Mr. Carmichael’s general description of a similar case is not particularly helpful without more details of the comparator to assess the basis of his claim. However, in his testimony, Mr. Carmichael stated that there are benefits and thus value to the market for having property with water access even if that area of the property is restricted. He opined that these benefits include:

- a) Despite the restrictions, the area provides access to the water which allows a purchaser to build infrastructure to load and unload barges; and
- b) The area is not a “no-build” zone but instead designated a “fill and build”.

[118] S&R asserts that this area of the Property should have a 20% value because there is a beneficial location of the pipes that Mainland used to dredge sand and discharge water as part of its operations. During closing submissions, S&R placed emphasis on potential uses that it says justifies affording the Fraser River Frontage Area and Handle Charge Area more value. These uses included the permitted

marine industry uses, the use of the area for driving and parking, and even the use of the area for a wharf, or a park.

[119] While common sense may suggest that waterfront property would have an increased value that might more support Mr. Carmichael's valuation of 5% greater than Mr. Garnett's for the river front portion, I am persuaded that it runs contrary to the principles of CUSAP that require an appraiser to assess property based on its HABU.

[120] The principle that a property should have only one HABU was expressed by the Ontario Land Tribunal in the expropriation context in *Nemeth v. Toronto (City)*, 2023 CanLII 64038 (Ont. L.T.) at paras. 66–67 and 97:

[97] The Tribunal accordingly agrees with Mr. Penney who indicated that moving from Highest and Best Use to optionality and the flexibility of alternative development scenarios contradicts the concept of Highest and Best Use. He said: "There is only one highest and best use. There can't be two highest and best uses."

[121] In my view, while there is some attractiveness in relying on commonly held beliefs that waterfront property would garner higher values than non-waterfront property, that argument is inapplicable in the circumstances of this assessment. I conclude that the emphasis S&R places on the aesthetic value of having waterfront access ignores the appraisal principles of CUSPAP that there cannot be more than one HABU. Mr. Carmicheal, in fact, accepts in his report that these other uses for that area of the Property are not viewed in accordance with the traditional appraisal principle of valuing land for its HABU. In his trial report, Mr. Carmichael makes that admission by noting this area may "offer little utility in a conventional development sense".

[122] Further, despite Mr. Carmichael's opinion that there could be a positive use for the foreshore area through access of the Property, Mr. Pollon's testimony was that S&R never accessed the foreshore leases through the Property, and rather only did so by water. I find this an important fact given S&R did not even access the

foreshore leases through the Fraser River Frontage Area despite owning a business adjacent to the Property. As such, it seems unlikely that a buyer in the market would place any value on this possibility of accessing the foreshore leases. There is insufficient evidence to support that the market would value that portion of the Property more than the amount concluded by Mr. Garnett.

[123] I conclude that the arguments that the access to the Fraser River by the pipes used by Mainland to dredge and return water to the Fraser should not be considered as a benefit for another purchaser because the HABU for the Property is for industrial development. Put another way, while the pipes that cross the Fraser River Frontage had a unique value for Mainland, it should not be considered as a general feature enhancing the value of the Fraser River Frontage because it would be irrelevant to a purchaser for industrial development.

[124] On a similar basis, I reject Mr. Carmichael's testimony that having river front property might increase the value because of its aesthetic features. He hypothesized that there could be some value if, for example, a buyer wished to build a car showroom on the edge of the river or develop a park for recreational purposes. He opined that the proximity to the river would in those cases increase the value to that purchaser. In my view, those examples run counter to the principles that a property should be valued based on its HABU.

[125] Given the foregoing, I conclude that given the significant restrictions upon the Fraser River Frontage, I prefer Mr. Garnett's assessment of the value of that area as 15% of the useable per acre value. In short, I find the more rigorous assessment of the valuation based on the HABU and the restrictions in place on that area as opposed to Mr. Carmichael's assessment that I found based more upon his general conclusions that the water access was beneficial and that Mainland demonstrated a use for the water access, which I conclude was unlikely to be replicated by a purchaser in the market at the Expropriation Date.

[126] Given the foregoing, while recognizing the difficulty of predicting with precision whether the market would value the river front area of the Property at 15% or 20%, based on the evidence before me I accept that Mr. Garnett's estimate is better supported and so I find that the value of the Fraser River Frontage should be 15% of the usable per acre value of the Property.

**iii. The Overlap Area**

[127] The parties disagree what discount to apply to an area that overlaps two of the encumbered areas of the Property. Specifically, the dispute relates to the appropriate discount for an 0.44 acre portion of the Property located both within the Westerly Charge Area and the Fraser River Frontage (the "Overlap Area").

[128] Mr. Carmichael included the Overlap Area in his Westerly Charge Area calculation, rather than the Fraser River Frontage, for the purpose of attributing value. As such, Mr. Carmichael testified that the Overlap Area should be valued at a higher utility of 35% as part of the Westerly Charge Area on the basis that due to Mainland's use of the area (i.e., the pipes which enter the Fraser River), it was "one of the highest utility areas in the whole property".

[129] In my view, it is illogical to consider that an overlapping area could have greater utility than the most restrictive covenant on that area of the Property. As such, I accept that the overlap area between the Fraser River Frontage Area and the Westerly Charge Area determined to be 0.44 acres by PLG should be subject to the same discounted utility as the Fraser River Charge Frontage Area. As such, this area should be valued at 15%.

**iv. The Western Riparian Area**

[130] As set out above, I accept that the Westerly Charge Area and the Western Riparian Area stand on the same footing and I have accepted Mr. Carmichael's conclusions regarding the calculation of that area. Accordingly, I conclude that the 0.31 acres that I have determined to be attributed to the Western Riparian Area (the

Ditch) should be discounted the same amount as the Westerly Charge Area and valued at 35% of the usable area.

**F. The Impact of the Mainland Lease**

[131] As referenced above, the parties disagree on the issue of the amount, if any, that should be deducted from the District's payment to S&R in relation to Mainland's interest in the Property through the Mainland Lease it had with S&R at the Expropriation Date. On March 1, 2021, the District provided Mainland with a Notice of Advance payment. On March 11, 2021, the District compensated Mainland for its leasehold interest in the Property in the amount of \$490,000. The District arrived at the amount of \$490,000 based upon a leasehold appraisal report of Mr. Garnett having an effective date of December 7, 2020.

[132] The District has, since that time, calculated Mainland's interest in the Property at \$450,000 and so has deducted that amount from its payment to S&R for the Property. It is the \$450,000 deduction from the payment price for the Property that is an issue at trial.

***i. The Parties' Positions***

[133] The parties accept that the fee simple interest must be valued with all its attributes at the Expropriation Date. One of the considerations in valuing the fee simple at the time of the taking is the Mainland Lease and whether Mainland's leasehold interest in the Property must be apportioned, that is deducted, from the amount the market would pay S&R for the Property. Differently stated, the Court must assess whether the Mainland Lease results in a market value reduction because the market would view the presence of the Mainland Lease as a detriment to the Property's value.

[134] The parties disagree as to the impact the Mainland Lease has upon the value of the fee simple to S&R. In simplest terms, S&R asserts that the Mainland Lease would either increase the value of the Property for a potential buyer or would be a neutral factor to a buyer. The District contends that the Mainland Lease had a value

to Mainland as an “owner” of the Property and was a liability to S&R and so the District properly deducted the amount of \$450,000 from the payment for the Property.

[135] S&R argues that there is no evidence of damage to the market value of the fee simple interest because of the Mainland Lease. As set out above, S&R contends that the Mainland Lease had attributes that result in it either being a positive factor for a buyer or a neutral factor for a buyer at the Expropriation Date. For convenience I will set out these attributes again:

- a) the lease is not assignable;
- b) Mainland had no right of renewal under the lease;
- c) the lease had 9.5 months remaining on its term as of the date of the taking; and
- d) the lease provided cash flow to S&R of over \$700,000 per year, plus triple net cost recovery.

[136] S&R argues that there is no evidence that the Mainland Lease is a detriment to the fee simple value of the Property. Mr. Carmichael opines that the Mainland Lease is a benefit to the value of the Property. However, he confirmed that in valuing the Property, it is the acreage comparable that is the most accurate indicator of the Property’s value, not the fact that the Property generates some form of income. In other words, as I understood his evidence, even if the Mainland Lease was a positive factor, what drives the accuracy of appraisals is the market value of comparable properties on a per acre basis not whether the property is generating income. I also accept that unless a lease was a significant detriment to the sale of a property it would not significantly change the market value because the valuation is a function of comparable properties on a per acre value.

[137] The District calculates that Mainland was paying below market rent and thus enjoyed “profit rent”. As I will describe below, profit rent is the difference between the

market rent (also known as economic rent) and the contract rent. Mr. Garnett calculates the value of Mainland's leasehold interest in the Property resulting from holding the Mainland Lease at \$450,000. Mr. Garnett came to his assessment of the market rent at the Expropriation Date in using a combination of: (1) the yield rate method; and (2) the direct comparison approach.

[138] In applying the yield rate method, Mr. Garnett arrived at an annual rate of return, or 'yield', of approximately 4.50%, which provided for a market rental rate of \$3.87/sq ft/annum. He explained the yield rate method of calculation as follows:

The Yield Rate Method is a valuation approach whereby a market yield for land is applied to the fee simple land value to estimate its "market rental value". This approach reflects the fact that a landowner will expect a market return for their land during the lease term.

[139] Mr. Garnett then undertook a direct comparison analysis to arrive at the market rental rate. That analysis resulted in a market rental rate after adjustments of \$3.00/sq ft/annum. Mr. Garnett then assessed the Lease and utilized the contract rent applicable in 2021 of \$1.55/sq ft/annum to find that a profit rent situation existed, creating a positive leasehold interest. Mr. Garnett discounted the profit rent per square foot of the leasehold area for the remainder of the existing Lease term, which yielded a profit rent of \$1.14 per square foot. Applied to the area covered by the Mainland Lease, Mr. Garnett estimated a positive leasehold interest market value of approximately \$450,000.

[140] On January 17, 2022, Mainland brought an action against the District in this Court seeking, among other things, compensation for market value, disturbance damages, and business loss disturbance damages. Jeff Davis, the vice president of Mainland, testified that Mainland's claim for damages in the action against the District was \$1,000,000, but Mainland ultimately settled the litigation. I infer that part of the rationale for Mainland to settle the litigation was because the District had paid Mainland the \$490,000 for its interest in the Property. I infer this based on Mr. Davis's testimony that although he was "frustrated" by the process of resolving

the litigation, he did not believe it was worth proceeding with a claim for only about \$500,000 which, he said after costs would only be worth approximately \$250,000.

***ii. Assessing Mainland's Leasehold Interest in the Property***

[141] In assessing how to value Mainland's leasehold interest in the Property, it is crucial to keep front of mind the fundamental principles in expropriation articulated in the *Act*. Section 32 provides:

32 The market value of an estate or interest in land is the amount that would have been paid for it if it had been sold at the date of expropriation in the open market by a willing seller to a willing buyer.

[142] Further, s. 31(3) of the *Act* provides:

31 (3) If there is more than one separate interest in the land expropriated, the value of each interest must, if practical, be established separately.

[143] As set out in s. 31(3) of the *Act*, the value, if any, of Mainland's leasehold interest in the Property must be established separately from the value of S&R's leased fee interest in the Property. As referenced above, the parties disagree as to how Mainland's interest should be assessed and its impact on S&R's leased fee interest.

[144] Mainland falls under the definition of "owner" under the *Act*. Accordingly, when an expropriation occurs, a tenant, such as Mainland, can claim compensation for both the value of their leasehold interest in the land, as well as for disturbance damages. However, the distinction is that a claim for disturbance damages does not impact the fee simple value of the property because it is claimed as a separate head of compensation. In other words, it does not impact the assessment of the value of the Property in the market that is subject to the expropriation.

[145] As referenced above, Mainland brought an action against the District for damages related to the expropriation. While the payment made by the District was ostensibly for Mainland's leasehold interest in the Property, I find it interesting that Mainland's claim against the District that included a claim for disturbance damages

ultimately resolved. I reference this fact because it strikes me that there is some inference that the District's payment to Mainland, which was ultimately deducted from the District's payment to S&R went in part towards resolving Mainland's claim against the District. The rationale for the District paying Mainland the \$490,000 was based on its assessment that Mainland's interest in the Property was valued at that amount because it was paying less than market rent from the Property.

[146] I do not accept the rationale of Mr. Garnett in calculating that Mainland was in a profit rent situation. To reiterate, profit rent has been described as follows:

The difference between the economic rent and the contract rent is known as the "profit rent." In the absence of a profit rent the leasehold interest has no market value and the lessee will not be entitled to compensation for it, although, in appropriate circumstances, the lessee will be entitled to disturbance damages.

In valuing a leasehold interest, the rent reserved, the unexpired portion of the lease and its terms, and any right to renew must be taken into account. Market value only takes into account the rights conferred by the lease. This is of particular importance in considering whether the term of the lease could have been extended or renewed at the option of the lessee because, compensation to a lessee must be based on a tenancy which he could enforce at law ... he (is) not entitled to be compensated in respect of a mere possibility of renewal as contrasted with an enforceable right of renewal.

See: Eric Todd, *The Law of Expropriation and Compensation in Canada*, 2nd ed (Scarborough, ON: Carswell, 1992).

[147] The Mainland Lease is not assignable. As such, Mainland could not assign the value of the Mainland Lease to another party thus enjoying profit rent. At the time of the taking, there was only 9.5 months left of the term of the Mainland Lease. In my view, the fact that the lease was not assignable negates its assessment as having a profit rent nature. Further, the minimal time left on the Mainland Lease at the time of the expropriation diminishes any profit rent attributable to Mainland especially so given that the Mainland Lease was non-renewable. Put another way, Mainland's leasehold interest needs to be valued in the market. I am not satisfied that Mr. Garnett provided any comparables to the terms of the Mainland Lease that demonstrate it had value in the Market that could be assessed.

[148] I accept the evidence of John Henrey at trial who provided an opinion as to the correct approach and methodology in valuing a leased fee interest. In his report, Mr. Henrey opines:

a) In approaching a Leased Fee appraisal (and the presence or absence of a profit rent) begins with the Lease and the actual rights the Lease provides. A lease that is not assignable cannot be sold. It is without market value. The analysis ends here.

b) A Leased Fee/Leasehold interest may be less than, equal to, or greater than the value of all interests in the property, according to Canadian Uniform Standards of Professional Appraisal (CUSPAP). Even if a notional profit rent is identified, it is still necessary to determine if it has an impact on the market value of the Lands.

[149] I am also persuaded by the opinion of Mr. Henrey in his critique of Mr. Garnett's valuation of the leased fee interest on the Fee Simple interest where he opines:

The Fee Simple Appraisal and the Lease Fee Apportionment do not analyze possible differences between the ability of the Property and those of the comparable sales to generate rental income. These differences affect the market value of both the fee simple and leased fee interest and should have been considered.

The Lease contains a clause prohibiting assignment or subletting. Despite this the Leasehold Appraisal is based on the incorrect assumption that the Leasehold interest can be sold (i.e. assigned). Although a copy of the Lease is appended to the Appraisal, the Appraisal neither refers to nor takes into account the prohibition.

Appraisal texts refer to the importance of considering lease clauses limiting the ability of a Tenant to assign or sublease. They caution an appraiser to be alert to the fact that such clauses may not create marketable interests, a requirement of the definition of market value. In this case, the prohibition on assigning means that the leasehold interest is not marketable. It cannot therefore be concluded that the Leasehold interest has as a market value as defined in the Garnett report and letter. While there may be disturbance damages these are not equivalent to a reduction to the fee simple interest value to arrive at lease fee value.

[150] I accept Mr. Henrey's critique of Mr. Garnett's valuation of the leasehold interest. Indeed, as I will describe below, in my view, in some ways, Mr. Garnett has attempted to describe what might be disturbance damages as a leasehold interest. I

reject his analysis that Mainland had a market value interest in the Property at the Extradition Date largely for the reasons articulated by Mr. Henrey.

[151] I accept that when a party alleges that a profit rent circumstance arises, two questions must be answered in the affirmative for the claim of profit rent to succeed. First, does the tenant have any ability to sell or market its interest? Second, is the owner's market interest in the land damaged by the economic rent differential? I find that, in this case, both questions are answered in the negative. Mainland did not have the ability to sell or assign the Mainland Lease. Further, I find that S&R's market interest in the Property is not damaged by any economic versus contract rent differential because I conclude that the market would not factor the existence of the Mainland Lease as a detriment to the Property that would negatively impact a potential purchaser's valuation of the Property.

[152] Further, I accept Mr. Carmichael's conclusion that if there is any impact, there would be either neutral or positive value for a purchaser of the Property, to have an income of approximately \$700,000 per year for the remaining 9.5 months left on the Mainland Lease. In other words, the fact that the Mainland Lease generates income would increase, not decrease, the value of the Property, or at least be a neutral factor that would not impact the price. I accept that Mr. Carmichael put no definitive evidence to support this conclusion before the Court. However, two factors support his opinion. First, it accords with common sense in that the Property generates income for the purchaser, for a relatively short time being only 9.5 months. More importantly, while Mr. Carmichael testified that in his opinion the fact that the Mainland Lease generated income would increase the value of the Property, he was clear that the ultimate appraisal of a property such as the Property, which has a HABU of industrial, is the land value, not its income generation. As such, Mr. Carmichael did not rely upon the fact that the Mainland Lease generated income to increase his valuation of the Property. Instead, Mr. Carmichael found the presence of the Mainland Lease a neutral factor.

[153] In my view, the District's calculation of profit-rent does not equate to an assessment of market value because it is a residual calculation that is purely mathematical. Mr. Garnett acknowledges that he has made the calculation without regard to whether his assessment actually impacts the market value of the owner's interest or the ability of Mainland to recover it in the market. I am unpersuaded that Mr. Garnett's calculations translate to a realizable market value. Put another way, the calculations provided by Mr. Garnett appear to be a tortuous effort to determine that Mainland's interest in the Property had a market value using a profit-rent analysis. I reject Mr. Garnett's assessment that Mainland enjoyed a profit rent that needs to be deducted from the amounts paid to S&R.

[154] In making these comments, I acknowledge that there is no doubt that Mainland's business was impacted by the expropriation. However, while it may be that Mainland could have a legitimate claim for disturbance damages I find that the District attempts to characterize Mainland's loss as a profit-rent loss could be viewed in a certain light as a way to legitimize the District paying Mainland for its profit-rent loss but deducting that same amount from the payment it made to S&R. In this regard, as referenced above, Mainland brought an action against the District that included a claim for disturbance damages. The claim was settled, but I suspect that the District is dressing up what might be a manner to recoup a potential disturbance damage claim from Mainland as profit-rent to recover amounts it paid to Mainland from what it is required to pay S&R. In *M.C.A. Land Development Corp. v. British Columbia (Transportation and Infrastructure)*, 2014 BCCA 435, our Court of Appeal was clear that a court must value different interest in the expropriated land separately: at paras. 57 and 58.

[155] I need not pursue my concern further because I am not persuaded that the District has established that the existence of the Mainland Lease had any independent value that would diminish the market value of the Property or that the value of the fee simple for the Property was decreased by the existence of the Mainland Lease.

[156] Given the foregoing, I am satisfied that the \$450,000 that the District seeks to deduct from the payment to S&R in respect of Mainland's leasehold interest should not have been deducted.

**G. The Shadow of Expropriation**

[157] Before concluding, I wish to address my concern that the District's expropriation cast a shadow over the operations of S&R, especially in respect of S&R's lease negotiations with Mainland in 2017. The evidence before the Court on this issue is that upon learning of the District's intention to buy or expropriate the Property in January 2022, S&R sacrificed its negotiating power with Mainland by negotiating a four-year non-renewable lease as opposed to their customary five-year renewable leases the parties had previously agreed upon.

[158] More specifically, on or about July 8, 2020, the District advised S&R that it wished to purchase the Property by January 2021. This was a surprise to S&R who had organized its affairs on the District's representations that the District intended to purchase the Property in January 2022.

[159] Mr. Davis testified that Mainland used the fact that they were not getting a five year lease and did not have a right or renewal as leverage in negotiating the Mainland Lease with S&R. His testimony on this point was as follows:

Well, we obviously tried, as with any negotiation, to leverage whatever we weren't getting to reduce the rate we were going to be paying.

[160] S&R asserts that the shortened lease term and the inability to renew the lease led to S&R making the following concessions in the negotiations for the Mainland Lease:

- a) The base rent payable under the Lease was lower than S&R proposed. S&R having originally proposed \$1.45 (Y1), \$1.55 (Y2-Y3) and \$1.65 (Y4), all net of property taxes. Instead, Mainland's proposed rates of \$1.25 (Y1), \$1.35 (Y2), \$1.45 (Y3) and \$1.55 (Y4) were accepted;

- b) The rental for the barge ramp was reduced from \$300,000 minimum to \$200,000. This had the effect of reducing the monthly payments from \$13,750 to \$9,166.66; and
- c) The lease area was reduced to represent the sand pile which resulted in a lease area of 8.994 acres which further reduced the area over which the rent was paid.

[161] I cannot know with certainty what drove S&R and Mainland to arrive at the final agreement for the Mainland Lease. However, given Mr. Davis's evidence and a common sense approach to negotiations that if something is taken away, often something must be given in exchange, it strikes me that at least some of the elements of the lease that favour Mainland to the detriment of S&R are caused by the shortened lease term and the fact that no renewal was offered. I find that there is evidence to support the inference that the shortened lease term and absence of a renewal is a result of the expropriation.

[162] Expropriation of a property is an ongoing process. This may include the "shadow" of the taking where steps that precede the formal acquisition causes damage to an owner: *Dell* at paras. 37–39, 42 and 45. However, a property's acquisition planning, timing or similar matters are not factors which can depress the value of the lands: *Lulu Island Holdings Ltd v. GVSDD*, 2007 BCSC 938 at paras. 47–48. It strikes me that the shadow of expropriation at least has some causal link to Mainland having additional leverage to negotiate the terms of the Mainland Lease. It seems unfair to now accept the District's position in attempting to deduct the \$450,000 from S&R because of what the District asserts was Mainland's profit rent situation, given that the spectre of the expropriation had some impact on the terms negotiated by S&R and Mainland to the detriment of S&R.

[163] While not specifically relevant to my determination, I find that there is some evidence that allows me to conclude that the expropriation cast a shadow over the lease negotiation between S&R and Mainland. I find the circumstances unfair to

S&R and it provides a further reason to not accept the District's position that Mainland enjoyed a profit-rent situation for which S&R would be paid a lower amount for the Property.

**V. Determination**

[164] Given the foregoing, my conclusions may be summarized as follows:

- a) The price per usable acre of the Property is \$3,775,000;
- b) The constituent areas of the Property with their value expressed as a percentage of the price per usable acre are as follows:
  - i. Unencumbered area – 9.50 acres at 100%;
  - ii. Fraser River Frontage and Panhandle Area (without overlap with the Westerly Charge Area): 4.40 acres at 15%;
  - iii. Overlap between Westerly Charge Area and Fraser River Frontage: 0.44 acres at 15%;
  - iv. Non-overlapping Westerly Charge Area – 0.40 acres at 35%; and
  - v. Western Riparian Area – 0.31 acres at 35%.

[165] Accordingly, I conclude that the value of the Property at the Expropriation Date should be calculated as follows:

- a) Value of the unencumbered area is \$35,862,500 ( $\$3,775,000 \times 9.50$  acres);
- b) Fraser River Frontage and Handle Area (without overlap with the Westerly Charge Area) is \$2,491,500 ( $\$3,775,000 \times 4.40$  acres  $\times 15\%$ );
- c) Value of Overlap between Westerly Charge Area and Fraser River Frontage is \$249,150 ( $\$3,775,000 \times 0.44$  acres  $\times 15\%$ );

- d) Value of Non-overlapping Westerly Charge Area is \$528,500 ( $\$3,775,000 \times 0.40 \text{ acres} \times 35\%$ );
- e) Value of Western Riparian Area is \$409,587.50 ( $\$3,775,000 \times 0.31 \text{ acres} \times 35\%$ ); and
- f) Total Value of the Property is \$39,541,237.50.

[166] Further, as set out above, I have concluded that the \$450,000 deducted from S&R's leased fee interest in the Property for the amount apportioned to Mainland's leasehold interest in the Property should not be deducted from the market value of the Property.

[167] In summary I find that the District undervalued S&R's leased fee interest in the Property by \$1,891,237.50 ( $\$39,541,237.50 - \$37,650,000$ ). If there are issues in respect of my calculations that require correction or clarification by the parties, and the parties are unable to agree to the clarifications or corrections, they have leave to appear before me to address those issues.

## **VI. Costs and Interest**

[168] S&R has been substantially successful at trial. The general rule as set out in 14-7 of the *Supreme Court Civil Rules* is that costs are awarded to the party who is substantially successful in a proceeding. Accordingly, I find that S&R is entitled to its costs of this trial at Scale B.

[169] However, s. 45 of the *Act* provides special rules regarding costs in expropriation matters. For example, s. 45(5) of the *Act* gives courts discretion to award costs where the compensation awarded to the plaintiff is 115% or less of the amount advanced under s. 20 of the *Act*: *Nguyen v. British Columbia (Transportation and Infrastructure)*, 2018 BCSC 1143. Further, there may be other legislation that is engaged in determining costs in this matter, including the *Compensation Action Procedure Rule*, B.C. Reg. 100/2005 and the *Expropriation Proceeding Costs Regulation*, B.C. Reg. 98/2005.

[170] Given there may be further issues that arise depending on the parties' final calculation of amounts owing by the District to S&R under my order, I will grant leave to the parties to appear before me to make submissions on costs if they are unable to reach agreement on costs themselves. If a further appearance is required, the parties may arrange to appear before me through Supreme Court Scheduling.

[171] Further, the parties will need to determine the interest owing and paid on the amounts owing by the District to S&R. I note that the ultimate calculation of interest payable under the *Act* requires the determination of compensation to be made in order for the parties to apply the subsequent advance payment first to interest owing, then to principle: *Rockcliffe Estates Ltd. v. Langley (City)*, 2014 BCSC 77 at para. 148.

[172] The jurisprudence confirms that this additional interest is only payable in circumstances where the expropriating authority has failed to pay 90% of the compensation ultimately found due to the party whose property has been expropriated: *Reon Management Services Inc v. British Columbia*, 2001 BCCA 679 at para. 3.

[173] As with the issue of costs, I will leave it to the parties to determine the calculation of interest on the award I have made. If they are unable to reach agreement, they have leave to appear before me for the purpose of making submissions on this issue. For clarity, the issues of costs and interest calculations should be set to be heard at the same time.

[174] While I will grant the parties leave to appear before me, it is my sincere hope that they will be able to make these calculations without the need for further Court involvement.

**VII. Conclusion**

[175] During this trial I had the benefit of experienced counsel. I wish to express my gratitude for the quality of counsel work in this proceeding as it was of great assistance to the Court.

“Gibb-Carsley J.”