

Memo



Date: November 12/09
File: PR09-0001
To: City Manager
From: Community Sustainability Division
Subject: Okanagan Lake Marinas - Strata Corporation KAS2393 (Southbay Landing)

Report Prepared by: Greg Sauer

1.0 RECOMMENDATION:

THAT this report of the Community Sustainability Division dated November 12, 2009 be received by Council for information;

AND THAT staff be directed to notify the Integrated Land Management Bureau (Provincial authority) that Council does NOT support the Southbay Landing Strata Corporation's application for additional boatlifts.

AND THAT staff be directed to notify the Integrated Land Management Bureau that Council supports the Southbay Landing Strata Corporation's application for two additional berths without boat lifts.

2.0 BACKGROUND:

Southbay Landing is a lakefront development with a subdivision dating back to 2001 which resulted in the creation of 31 residential large lot housing (RU1) bareland strata lots. The site is located just north of the mouth of Bellevue Creek on Cascia Drive and is within the North Mission/Crawford Sector of the City (see Site Context below). The bare land strata development contains nine lakefront lots with the remaining having no direct water frontage (see Figure 1).

Figure 1: Site Context - 440 Cascia Drive



The existing license issued in 2001 by the Integrated Land Management Bureau (ILMB) permits nine (9) boat lifts (one (1) lift per lake front lot) and 28 berths. As a result of a neighbourhood complaint in 2008, the strata applied to the ILMB to legalize the 19 boatlifts that had been added to the existing dock illegally (see Figure 2 below). The City has received a referral from the ILMB for the amendment application (originating in June 2008) to the existing License of Occupation which would see the addition of two berths for a total of 30 berths and approval of 21 lifts (the 19 existing without approval plus 2 new lifts) for a total of 30 lifts.

Based on the direction provided by the City of Kelowna, the Integrated Land Management Bureau did not support the amendment and had directed the strata to remove the unauthorized boatlifts while extending the opportunity to add the two additional berths requested. Since the original notice and a modified offer letter (February 2009) from ILMB, the strata has not brought their non-conforming dock and improvements into compliance. The Province followed up on August 4, 2009 with a strongly worded letter demanding that the boatlifts be removed by October 5, 2009. The letter goes on to note that "If the unauthorized improvements are not removed by this date we will consider commencing termination proceeding on Licence No. 338679". The strata requested an extension which was granted by the Integrated Land Management Bureau in a letter dated September 29, 2009. The extension granted by the ILMB is until December 31, 2009 (see attached).

Figure 2: Southbay Dock and Illegal Boatlifts



Guidelines for Assessment of Shared Docks

On June 11, 2001 City Council endorsed a set of "Guidelines for Assessment of Shared Dock Applications" (see attached). The Guidelines provide staff with direction when reviewing shared dock applications which the Province refers to the City for comment. The regulatory authority for docks and moorage on Okanagan Lake resides with the ILMB (Province), and not the City of Kelowna. While the City has adopted guidelines for shared docks, the City is afforded an opportunity to comment on the application once referred by the Integrated Land Management Bureau.

In terms of the Guidelines endorsed by Council, relevant statements include:

- m. No structures other than those expressly permitted in these regulations shall be permanently affixed to dock structures.
- q. There shall, for single detached participating properties, be a maximum of one boatlift per property involved in sharing a dock, to an absolute maximum of six boat lifts per dock structure.

There shall, for bareland strata properties, be a maximum of one boatlift per residential waterfront lot in the development (with the possibility of up to one boatlift per moorage space if the additional boat lifts meet with approval from neighbours whose views could be impacted).

The number of boatlifts per multi-family shared dock, shall be limited to the number of waterfront lots that could have been accommodated had the multi-family property been developed as a single detached subdivision with RU2 zoning (with the possibility of up to one boatlift per moorage space if the additional boat lifts meet with approval from neighbours whose views could be impacted).

The concern that boatlifts will infringe on the use and enjoyment of adjacent and nearby lakefront neighbours is paramount in the case of shared docks. This is especially true in the case of Southbay Landing which is a manmade peninsula projecting into Okanagan Lake and has therefore resulted in an exaggerated visual impact. The Guidelines do however allow for an increased number of boatlifts with a caveat that approval of neighbours whose views are deemed to be affected is obtained.

Despite the latest efforts by the strata to reopen the discussion, it is staff's firm belief that nothing substantive has changed regarding Okanagan Lake sightlines and public acceptance of overwater structures which would warrant reconsideration at this time. Overturning the Guidelines would create a dangerous precedent for other strata developments and could affect the quality of Lake Okanagan and sightlines from the foreshore.

Submitted by:



S. Gambacort, Director, Land Use Management

Approved for inclusion:



Jim Paterson

General Manager, Community Sustainability

CC: Director, Policy & Planning
Manager, Environment & Land Use
City Clerk

Attachments:

City of Kelowna Guidelines for Assessment of Shared Docks
Integrated Land Management Bureau - Notice of Extension

CITY OF KELOWNA

GUIDELINES FOR ASSESSMENT OF SHARED DOCK APPLICATIONS

(Endorsed by Kelowna City Council on June 11, 2001 as the "criteria by which staff will assess all shared dock applications which the Province refers to the City for comment").

The following guidelines will be utilized by City staff to assess applications referred to them for comment by the Province of B.C.

In addition to the requirements noted below, staff may require those applying for a shared dock to submit evidence that neighbouring property owners have been advised of the application. Staff may use neighbours' comments as a basis for considering more or less onerous requirements than those noted in sections a, c, d and q below.

- a. No portion of a dock shall extend more than 40 m from the natural boundary. Exemptions to this provision will be considered only where local shoreline conditions suggest extenuating consideration, where the Province has indicated that there would be no adverse impacts associated with extending a dock beyond the normally permitted distance and where adjacent property owners have no objection to the extension. Given the generally wider configuration of shared docks, such docks *may* be limited to less than 40 m extensions into the lake provided that water depths closer to shore are sufficient to allow for secure boat moorage and passage. The limitation on dock lengths will be given particular consideration where there would be greater than typical visual impact on neighbouring properties (for example, a shared dock located off of a peninsula or point).
- b. No portion of any dock runway shall exceed a width of 1.83 m. Decking at the lake-end of the dock may reach a width of 3.66 m over a maximum 10 m.
- c. The portion of the shared dock structure which runs roughly parallel to the shoreline shall not, in the case of single-detached housing properties sharing a dock, extend across more than 50% of the frontage of any given upland property and must in no case exceed 25 m. Input from adjoining property owners shall be considered in placing restrictions on the exact placement of the dock.

The portion of the shared dock structure which runs roughly parallel to the shoreline shall not, in the case of bareland strata developments, extend across more than 40% of the frontage of the bareland strata parent parcel, and must in no case exceed 90 m. Input from adjoining property owners shall be considered in placing restrictions on the exact placement of the dock.

The portion of the shared dock structure which runs roughly parallel to the shoreline shall not, in the case of multi-family developments, extend across more than 40% of the frontage of the upland development, and must in no case exceed 90 m. Input from adjoining property owners shall be considered in placing restrictions on the exact placement of the dock.

- d. The maximum permissible deck surface of a shared dock (including surfaces separating individual moorage slips) shall, in the case of single detached participating properties, be calculated using the following formula, to a maximum of 200 m².

$$\text{permissible deck surface (m}^2\text{)} = 112 \text{ m}^2 + (\text{Total lake frontage of participating abutting properties} - 20\text{m}) * 1.05 \text{ m}^2$$

The maximum permissible deck surface of a shared dock (including surfaces separating individual moorage slips) shall, in the case of bareland strata developments, be calculated using the following formula.

$$\text{permissible deck surface (m}^2\text{)} = 112 \text{ m}^2 + (\text{Total lake frontage of the bareland strata subdivision} - 20\text{m}) * 1.05 \text{ m}^2$$

A bareland strata development will not be permitted to apply for a shared dock if any of the properties within the development already have docks. Similarly, once a shared dock has been approved, none of the properties within the bareland strata development will be permitted to apply for individual docks.

The maximum permissible deck surface of a shared dock (including surfaces separating individual moorage slips) shall, in the case of multi-family developments, be calculated using the following formula.

$$\text{permissible deck surface (m}^2\text{)} = 112 \text{ m}^2 + (\text{Total lake frontage of participating abutting properties} - 20\text{m}) * 1.05 \text{ m}^2$$

- e. Docks shall not impede pedestrian access along the foreshore. In cases where the dock platform is raised by more than 0.3 m above any point on the public foreshore, steps must be provided for public access over the dock and this access must not be blocked by fences or other means. Where this solution is impractical, the owners may choose, as an alternative, to allow the public to cross the upland property above the natural boundary. If this alternative is chosen, a sign must be posted on the property to advise the public of the alternative crossing.
- f. No portion of a dock shall be elevated more than 1 m above 342.53 m (geodetic elevation).
- g. Where a dock is shared, and constructed in front of abutting properties sharing the dock, the dock can be constructed on or across the common property boundaries. In such an instance, the minimum sideyard setback between those two properties would be 0 m. Docks must be set back a minimum of 6.0 m from all other side property lines (as projected perpendicularly onto the foreshore from upland properties).
- h. Setback from the side property line of the upland parcel, projected perpendicularly onto the foreshore, shall be a minimum of 6.0 m where the property abuts a creek or where the adjacent property is a right-of-way beach access or is in a P3 zone.
- i. Siting of the dock shall be undertaken in a manner that is consistent with the orientation and site placement of neighbouring docks.
- j. Siting of the dock shall avoid impacts on access to existing docks and adjacent properties and shall preserve the ability of abutting property owners who are not sharing the dock to construct their own docks and gain access to their properties.

- k. Dock structures shall be supported by wooden or steel piles and be made of non-toxic materials (solid core supports will not be allowed).
- l. No roof or covered structures shall be used, constructed, or maintained on the dock or over boatlifts.
- m. No structures other than those expressly permitted in these regulations shall be permanently affixed to dock structures.
- n. Dock lighting may be installed for security and safety purposes but shall be on sensor detectors such that the lights are only on when there are people on or near the dock. Lights should be installed at not less than 10 m intervals. Bulbs should have a maximum wattage of 60 w. Lamp heads should be no more than 22" higher than the dock decking.
- o. No overhead lift systems will be permitted. Boatlifts shall be of single-post construction
- p. Boatlifts shall not suspend the underside of any boat more than one (1) m above the surface of the water.
- q. There shall, for single detached participating properties, be a maximum of one boatlift per property involved in sharing a dock, to an absolute maximum of six boat lifts per dock structure.

There shall, for bareland strata properties, be a maximum of one boatlift per residential waterfront lot in the development (with the possibility of up to one boatlift per moorage space if the additional boat lifts meet with approval from neighbours whose views could be impacted).

The number of boatlifts per multi-family shared dock, shall be limited to the number of waterfront lots that could have been accommodated had the multi-family property been developed as a single detached subdivision with RU2 zoning (with the possibility of up to one boatlift per moorage space if the additional boat lifts meet with approval from neighbours whose views could be impacted).

- r. Boat lifts should be designed and placed so as to have minimal impact on neighbours' views (both when the boat lifts are in use and when they are not).
- s. Deck surfaces must be supported by at least two parallel rows of piles.
- t. No overhead electrical wiring will be permitted.
- u. Those participating in a single-detached shared dock must submit written acknowledgement that they will refrain from seeking permission to build a private dock off of their individual properties until the tenure on the shared dock expires.
- v. In the case of single-detached shared docks, the owner of the property off of which the shared dock is constructed must acknowledge, in writing, that the tenure on that dock lasts only for 10 years. At the end of the ten years, the applicant (or subsequent owner) must reapply for a shared dock. If the dock can no longer comply with the established guidelines because sufficient participating property owners are no longer

interested, then the dock will, at that time, be required to conform to the regulations in place for private (non-shared) moorage facilities.

- w. Shared docks that were licensed and built in conformance with an approved shared dock license prior to the date of adoption of these guidelines will be allowed to be replaced as per the terms of the original agreement, provided that public access along the foreshore is not impeded.

Note: Where there are a combination of development types (single detached, bareland strata, multi-family) present among waterfront properties proposing to share a dock, and where it is thereby unclear which conditions apply to the shared structure, the conditions that are most stringent, shall apply.



Integrated Land Management Bureau

CERTIFIED MAIL

File: 3404809

September 29, 2009

Strata Corporation KAS2393, THE OWNERS
#200 – 440 Casia Drive
Kelowna, BC V1W 4Y4

Dear Tyler Bollhorn:

Re: Licence No. 338679 – Strata Moorage Facility

Further to our letter dated, August 4, 2009, we are extending the deadline for compliance to December 31, 2009 from October 5, 2009, subject to the following:

- All non compliant boat lifts and the two non compliant boat slips (as outlined on the attached photograph) are not to be used after October 5th, 2009.

Note - Licence of Occupation No. 338679 authorizes 28 boat slips and 9 boat lifts.

If the unauthorized improvements are not removed by December 31, 2009, we will commence termination proceeding on Licence No. 338679.

Further upon confirmation that Licence No. 338679 is in compliance we will be assessing the trespass use and you will be notified of the rent.

If you wish to discuss the removal of the unauthorized improvements further please call Peter Falsetta, Land Officer at (250) 377-7034.

Yours truly,

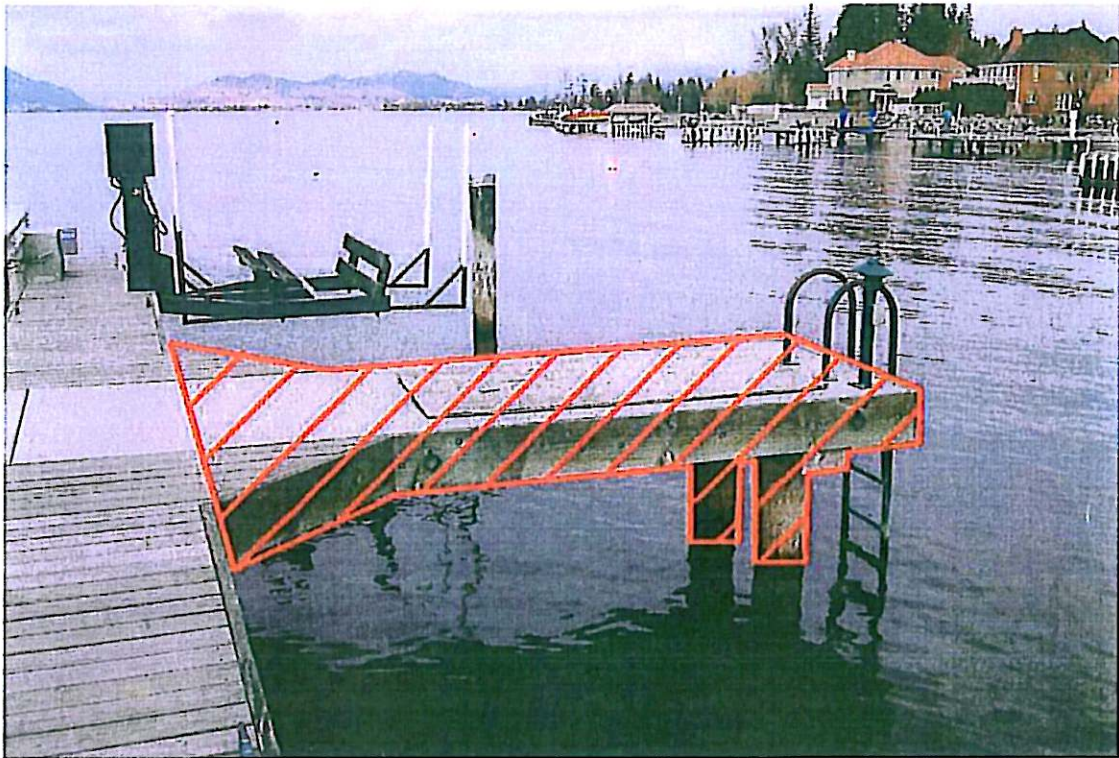
A handwritten signature in black ink, appearing to read "Susan Fitton".

Susan Fitton
Senior Portfolio Administrator
Regional Client Services Division

pc: Clint Zimmerman, Compliance and Enforcement Officer
Signe K. Bagh, City of Kelowna, 1435 Water St, Kelowna, BC V1Y 1J4

Existing Dock Infrastructure:

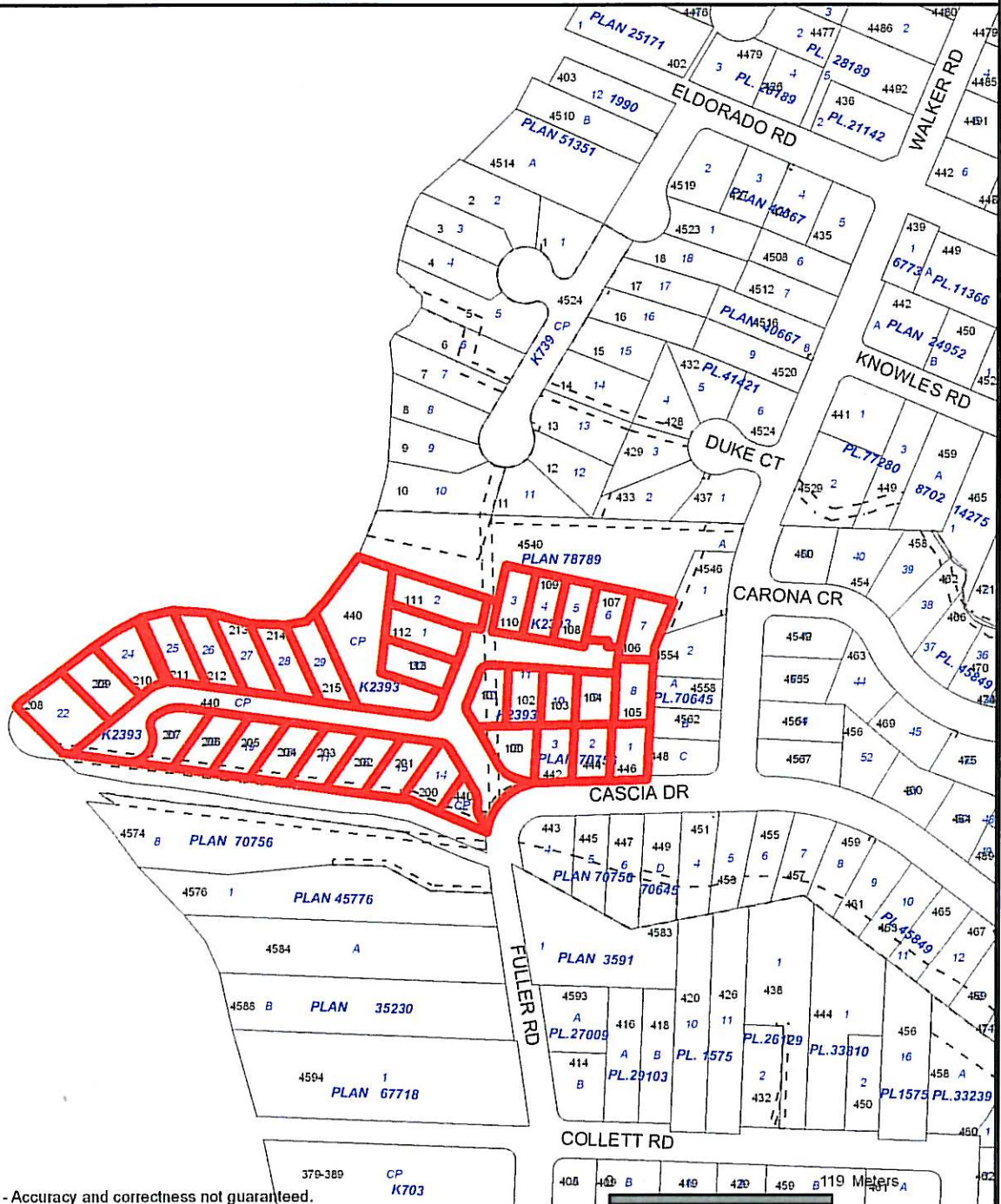
The two images below show the existing dock infrastructure with the area that the developer overbuilt in red. The area is approximately 8 square meters of dock.




PR09-0001



Subject Property



 City of Kelowna - Accuracy and correctness not guaranteed.

Map: 593 x 639 m -- Scale 1:3,500

2009-11-12

*Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.*

Memo



Date: October 16, 2009
File: 6410-10
To: City Manager
From: Director, Corporate Services
Subject: Policy 351 - Senior Government Referrals

Recommendation:

THAT Council adopt Policy 351 - Senior Government Referrals for the purpose of receiving public input on Senior Government referrals;

AND THAT the Council direct staff to proceed with a public input session for the South Bay Dock and Lift referral from the Provincial Integrated Land Management Branch;

Background:

Kelowna City Council, on Monday September 21st, 2009, adopted the following resolution with respect to the South Bay Landing dock installations that ILMB had required the unapproved docks be removed by October 5, 2009:

THAT Council directs staff to request an extension from the Province to December 31, 2009 in order to allow staff to develop a public process where Council can receive input on applications that Council provides referral comments on.

The City of Kelowna on occasion is requested to provide comments on Senior Level Government applications. The attached Council Policy - Senior Government Referrals - #351, recommends that referrals that have significant public interest be provided the opportunity to be considered at a public meeting. As many referrals have a 10-14 day turnaround, timely feedback is necessary to ensure the City of Kelowna comments are included in the decision making process. In order to receive input from effective property owners and residents; a public meeting on such matters will be held during evening meetings when Public Hearings are held or during regular meetings of Council as time permits.

Financial/Budgetary Considerations:

Staff are not aware of any mechanism to recover the cost of advertising, notices and staff time. Staff are currently reviewing what options are available.

Internal Circulation:

City Clerk
Director, Land Use Planning
Director, Policy and Planning

A handwritten signature in black ink, located at the bottom right of the page.

Legal/statutory Procedural Requirements:

Council Policy 351 attached.

Alternate Recommendation:

Senior Government applications do not require local government consent, but often impact residents and property owners. An alternative would be to encourage the senior level of government to establish their own public input process and limit the referral comments to issues that pertain directly to City of Kelowna operations.

Existing Policy:

There is no existing policy on this matter.

Existing practice is that staff currently forward to Council for comment referrals that are anticipated to have public interest or are inconsistent with established policies or guidelines.

Personnel Implications:

Additional staff time would be necessary by the department required to coordinate public input. The department responsible would be dependent on the nature of the referral forwarded.

Considerations not applicable to this report:

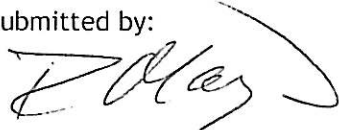
External Agency/Public Comments:

Legal/Statutory Authority:

Technical Requirements:

Communications Considerations:

Submitted by:



R. Mayne, Director, Corporate Services

Approved for inclusion:



Paul Macklem, General Manager, Corporate Sustainability

CC: City Clerk
Director, Land Use Manager
Director, Policy and Planning



CITY OF KELOWNA

POLICY: 351
PAGE: 1 of 1

COUNCIL POLICY MANUAL

APPROVAL DATE:
RESOLUTION #:
REPLACING #:
DATE OF LAST REVIEW: October 16, 2008

SUBJECT: Senior Government Referral Policy

Policy

1. Where referrals are inconsistent with established policies and guidelines, the City of Kelowna Municipal Council will hear from the public prior to Council's decision on referrals to senior levels of government in order to facilitate public input.
2. Public Input sessions will be held, where possible, following scheduled Public Hearing/Meeting dates or during regular Council Meetings.

REASON FOR POLICY: To establish procedures for processing Senior Government referrals.

LEGISLATIVE AUTHORITY: none

PROCEDURE FOR IMPLEMENTATION: As outlined in policy.



Please send referral responses to:
 Integrated Land Management Bureau
 145 Third Avenue, 3rd Floor, Kamloops, V2C 3M1
 Fax: 250-377-7036

Referral Request

TO:
 City of Kelowna
 Attention: Signe K. Bagh
 1435 Water St
 Kelowna, BC V1Y 1J4

You are invited to comment on the following Crown land application - details are provided:

FILE/PROJECT NOS. 3404809

Please reply to the contact person named below within 30 calendar days from the date sent. If no response is received by the deadline, the application and adjudication process will move ahead.

CONTACT:
 Peter Falsetta

CONTACT PHONE NO:
 250-377-7034

DATE SENT:
 June 17, 2008

APPLICANT NAME and ADDRESS:
 Strata Corporation KAS2393, The Owners

BCGS MAP No.(s):
 82E.083

LOCATION OF CROWN LAND: Crown foreshore fronting the applicant's private property known locally as Southbay Landing, Kelowna.

PARCEL SIZE
 8 square ± ha
 meters

LEGAL DESCRIPTION: All that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on Strata Lots 24, 25, 26 and 27, District Lots 167, 5284 and 5285, Osoyoos Division Yale District, Strata Plan KAS2393

INTENDED LAND USE: This is an Amendment application to an existing License of Occupation for a Strata Moorage dock facility. This application is for the addition of two berths and 21 new boat lifts. City of Kelowna Council originally approved nine boat lifts, one lift per lake front lot and 28 berths in 2001 and this is the currently approved License of Occupation. City of Kelowna Guidelines for assessment of shared dock applications were originally developed because of this Strata Moorage facility on June 11, 2001.

PROPOSED TENURE TYPE: License of Occupation

PURPOSE: Strata Moorage

PROPOSED TERM: initial term of ten years

PLEASE NOTE:

Within the next few months we will be shifting from delivery of 'paper' to 'electronic' referrals. Please forward the email addresses of the main and alternate contacts who will be receiving the referral information to my attention at Maureen.Layland@gov.bc.ca.

FIRST NATIONS: If you wish to receive referrals electronically, please reply with contact email information.

If you have already responded to this note, please disregard.

Response Comments

Yes No

- Does the proposal relate to your agency's legislated responsibilities?
- If the proposal proceeds, will the proponent require approval or a permit from your agency?
- Will compliance monitoring be required by your agency if this proposal goes ahead?
- If the proposal is implemented, in your opinion, would public use of the area be impacted? Explain. (Attach additional pages if necessary)

For Municipal/Regional Government use only:

- Is the application area zoned for the proposed purpose? If no, what is the current zoning? _____
- What is the estimated time required for a decision on an application to re-zone the area, should the applicant wish to pursue this option? _____

Please check one:

- Approval of application is supported
- Approval of application is supported subject to the conditions outlined below (attach additional pages if necessary)
- Approval of application is not supported for reasons outlined below (attach additional pages if necessary)
- Agency interests unaffected



FrontCounterBC

Please send referral responses to:
Integrated Land Management Bureau
145 Third Avenue, 3rd Floor, Kamloops, V2C 3M1
Fax: 250-377-7036

Referral Request

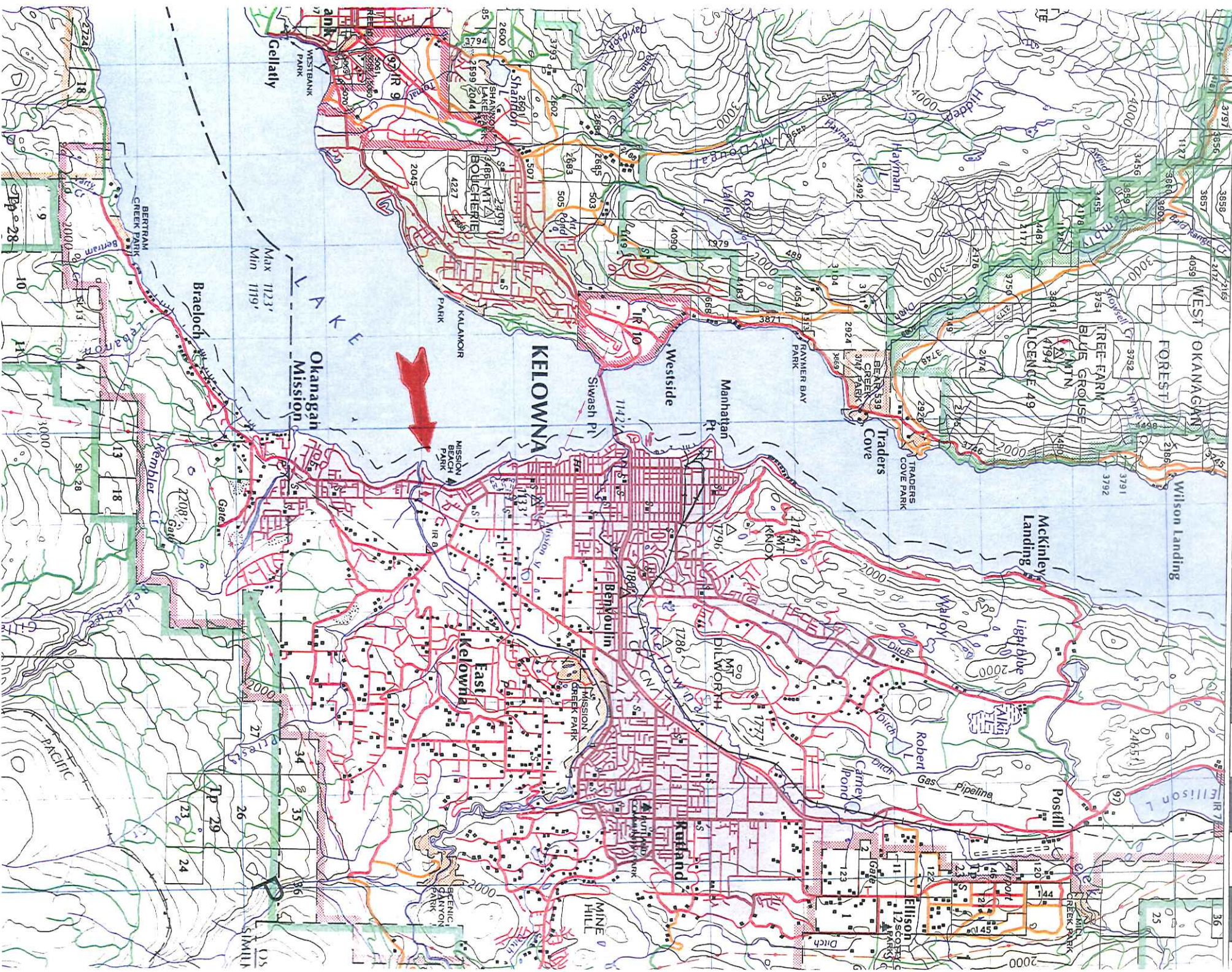
Signed By: _____

Title: _____

Please Print: _____

Phone Number: _____

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14
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30'
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Scale 1:500000
R2E11W381
13404809



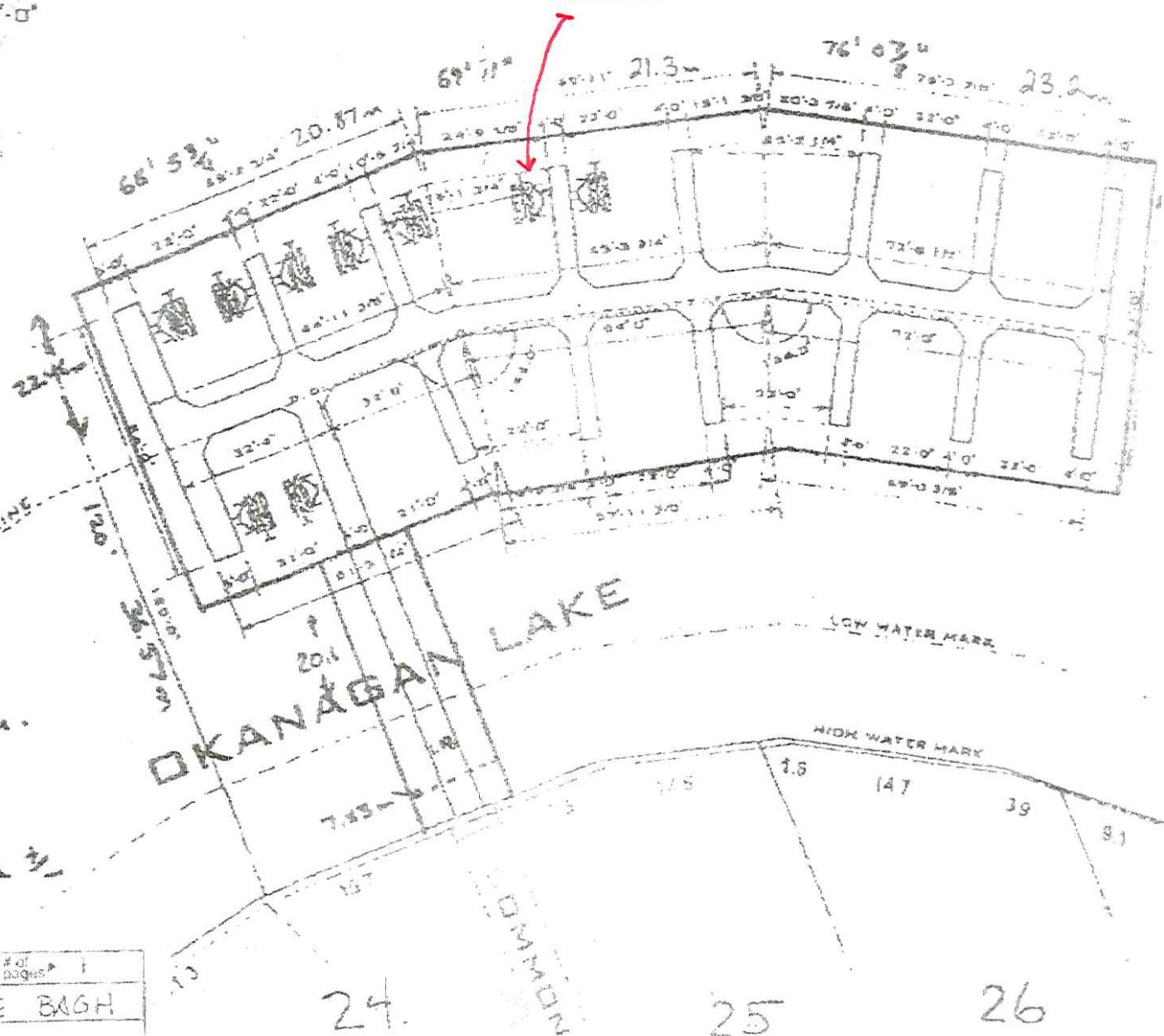
SHORELINE PILE DRIVING

SCALE: 1/32" = 1'-0"

GENERAL LEGEND



AS BUILT SHOWING
9 LIFTS



width of garden
width of shore = 65.37 m
total surface area: 296 m²
total allowable surface
area in accordance with
City of Kelowna shore
development guidelines: 313.5 m.

total area: 0.16 ha ±

#	1871E	Date	JUL 27	# of pages	1
From	PIPER	From	SIANE BAGH		
On		On			
Phone #	862-3339	Phone #	862-3339		
File #	8706	File #			

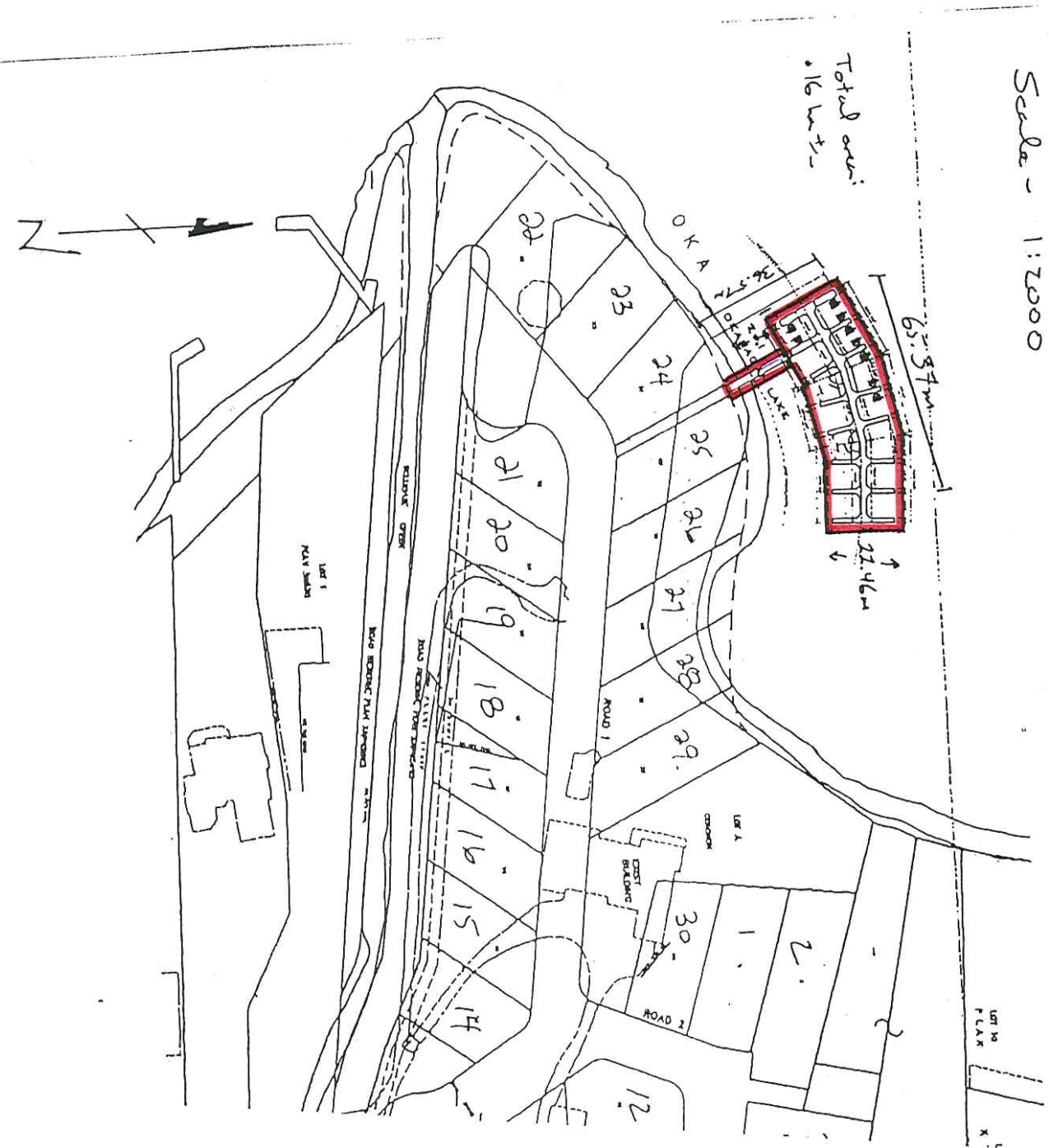
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3404809

LEGAL DESCRIPTION SCHEDULE

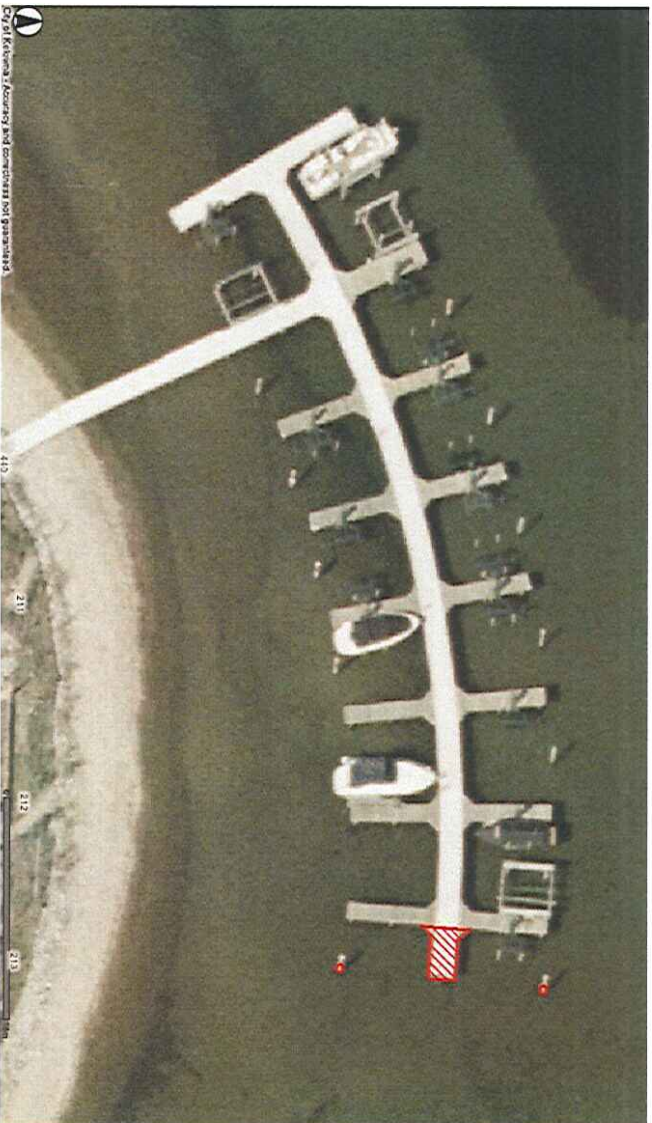
All that foreshore or land covered by water being part of the bed of Okangan Lake and fronting Lot A of District Lot 167, Osoyoos Division of Yale District, Plan KAP51249 as shown outlined in red on sketch attached and containing 0.16 hectares more or less.

Scale - 1:2000



Existing Dock Infrastructure:

The two images below show the existing dock infrastructure with the area that the developer overbuilt in red. The area is approximately 8 square meters of dock.



Subject Dock Photographs:

The following two images show the current dock for Strata Corporation KAS2393.

