

Memo



Date: December 9, 2009
File: 0920-20-018
To: City Manager
From: Director, Real Estate & Building Services
Subject: KELOWNA YACHT CLUB - CLUBHOUSE RELOCATION
Report Prepared by: Manager, Strategic Land Development

Recommendation:

THAT Council approve the attached memorandum of understanding ("MOU") for the general disposition of City land to the Kelowna Yacht Club ("KYC");

AND THAT Council direct Staff to complete all documents required for disposition, as described in the MOU;

AND THAT Council authorizes the Mayor and City Clerk to execute all documents necessary to complete this transaction.

Background:

Further to Council's previous direction, Staff has been working with the Kelowna Yacht Club Long Range Planning Committee and a consultant to finalize a MOU and associated disposition agreements that will facilitate the KYC clubhouse redevelopment. The parties have prudently worked through a five phase relocation process that addressed the needs of both the KYC and the City. Both parties agreed to the relocation process structure and have constructively worked towards this agreement. The MOU (attached as Schedule 'A') is now complete to the satisfaction of all parties and is presented here for Council's consideration.

Due to the future construction of Phase 2 of Stuart Park and the KYC's desire to reinvest in an improved facility, the City is working with the KYC to relocate the KYC clubhouse. The KYC relocation is an important part of a plan to redevelop the downtown waterfront for greater public use. The freeing up of waterfront land resulting from this transaction will allow the community to enjoy a contiguous waterfront park and will ensure more citizens have greater access to the parks, paths and amenities that will be created along the waterfront.

In addition, KYC has confirmed that this relocation will contribute to their ability to proceed with a planned expansion of their on-water facilities, which will alleviate some community pressure for additional moorage in and around our City.

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KYC currently has a lease on municipal land for their clubhouse and a separate water lot lease for their moorage facilities. On July 21, 2008, Council approved a 5 year, non-renewable lease for the clubhouse. Both the City and KYC acknowledge that on or before the end of the lease (April 2013), the KYC needs to move out of their current clubhouse into a new space.

On December 9th 2009, the KYC presented the general terms of the MOU to their membership for discussion and consideration. It is understood by the parties that the MOU and associated disposition agreements are subject to final Council approval. If Council approves the resolutions contained in this report, the KYC membership will meet to vote on approval of the MOU on December 16th, 2009.

The purpose of this report is to confirm that Council is satisfied that the terms of the MOU meet the objectives of the community and stakeholders.

The terms of the MOU are consistent with previous Council direction and can be summarized as follows:

- Disposition of land in fee simple, AT MARKET VALUE, with reversionary rights in favor of the City;
- A limited use covenant placed on the property that will dictate KYC clubhouse use only;
- A restrictive covenant placed on the property that will limit the height of the KYC clubhouse building to three stories;
- A requirement for portions of the KYC clubhouse to be available to the public, which includes a publicly accessible restaurant, banquet facilities and meeting spaces;
- A statutory right of way preserving public access to all areas surrounding the building;
- A contribution of \$675,000 to the Downtown Parking Reserve Fund; and,
- A requirement that the parties shall conduct a joint design process for the site, by way of an 8 person committee, to ensure both KYC and civic objectives are achieved. Those objectives include, but are not limited to:
 - protection of sight lines and view corridors
 - high quality design standards
 - integration with Stuart Park Phase I & II
 - pedestrian connectivity.

As noted above, both the KYC and the City agreed to the detailed process at the kickoff meeting in September 2008 where the following process was identified:

Phase
Phase 1 - Process design - COMPLETE
Phase 2 - Identification of relocation needs - COMPLETE

Phase 3 - Identification and evaluation of alternatives - COMPLETE
Phase 4 - Defining terms of relocation - COMPLETE
Phase 5 - Formal agreement - COMPLETE
<i>Council presentation</i> - COUNCIL APPROVAL

All five phases are complete and await Council's final approval, the terms of which are encapsulated in the attached MOU.

Internal Circulation:

Infrastructure Planning Department
Policy & Planning Department
Land Use Management Department
Financial Services Department
Recreation & Cultural Services Department
Community & Media Relations

Communications Considerations:

A joint communication with the KYC has been released. Staff will continue to work with the KYC in disseminating information.

Technical Requirements:

KYC will be responsible for all geotechnical investigations and site preparation as a land owner/developer in fee simple.

The proposed subject property will be surveyed and subdivided by the City prior to disposition and will not be rezoned. The existing zoning (P1) allows for the proposed use.

All typical permit, application and development requirements will apply to KYC clubhouse development.

Financial/Budgetary Considerations:

Staff recommends the proceeds for the sale of the subject lands, \$1 million dollars, be reallocated from the Land Sales Reserve as follows:

- \$270,000 - demolition of the existing Seniors Centre & KYC buildings
- \$230,000 - contingency & servicing
- \$500,000 - Water Street Seniors Center Society relocation contribution

The relocation of the Water Street Seniors Center Society is detailed in a subsequent report and meets with the timelines and conditions contemplated in this transaction.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/statutory Procedural Requirements:

Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Alternate Recommendation:

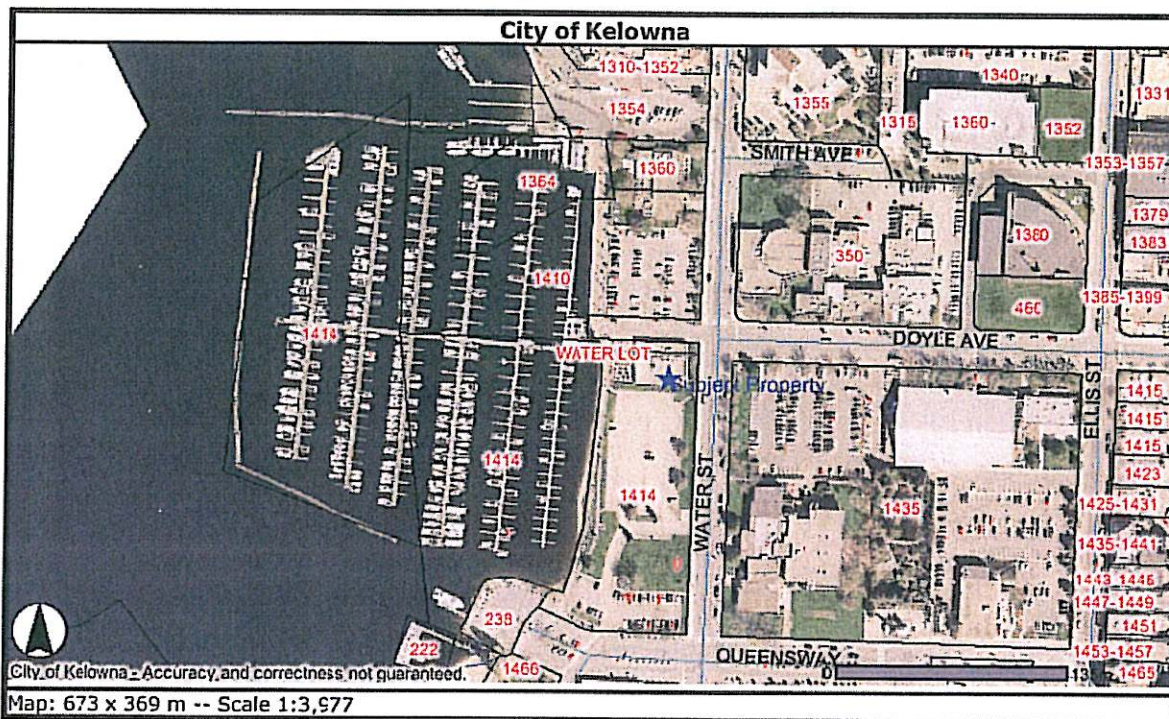
Submitted by:



Doug Gilchrist, PMP, RI(BC)
Director, Real Estate & Building Services

Approved for inclusion:  John Vos, General Manager, Community Services

- cc:
- B. Berry, Director, Design & Construction Service Department
 - R. Cleveland, Director, Infrastructure Planning Department
 - S. Bagh, Director, Policy & Planning Department
 - S. Gambacort, Director, Land Use Management Department
 - K. Grayston, Director, Financial Services
 - J. Gabriel, Director, Recreation & Cultural Services
 - C. Stephens, Director, Community & Media Relations



This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

SCHEDULE A

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE KELOWNA YACHT CLUB AND THE CITY OF KELOWNA
REGARDING THE DEVELOPMENT OF A KELOWNA YACHT CLUB FACILITY**

1. INTRODUCTION

This Memorandum of Understanding ("MOU") sets out the proposed terms of agreement between the Kelowna Yacht Club ("KYC") and the City of Kelowna ("City") for the land disposition, design, and approvals required for the development of a new KYC Clubhouse.

Due to the construction of Stuart Park and the KYC's desire to reinvest in an improved facility, the City has been working with the KYC to secure a suitable, Council endorsed, location for their new clubhouse. The KYC clubhouse has to be relocated before the second phase of park construction. The proposed timeline for completion of the relocation is 2013.

KYC currently has a lease on municipal land for their clubhouse. On July 21, 2008 City Council approved a 5 year, non-renewable lease for the clubhouse. Both the City and KYC acknowledge that on or before the end of the lease, the KYC needs to move out of their current clubhouse into a new facility.

In September of 2008, the KYC and the City began a comprehensive clubhouse relocation process that was endorsed by the respective Planning Committee and Council. The process was conducted with the assistance of a facilitator with the City represented by its Real Estate & Building Services department and the KYC represented by its Long Range Planning Committee. The parties, including Council, agreed to the terms outlined in the MOU through their participation in following process:

- Phase 1 - Process design
- Phase 2 - Identification of relocation needs
- Phase 3 - Identification and evaluation of alternatives
- Phase 4 - Defining terms of relocation
- Phase 5 - Formal agreement

This MOU establishes a framework for the completion of Phase 5 sets out the good faith intentions of the parties regarding the formal agreement. The following terms have purposely been written in a concise format and have been agreed upon by both parties through the relocation process. For clarity, this MOU does not give rise to binding, contractual obligations and the City and the KYC will not have any binding obligations to each other in relation to the matters contemplated under this MOU until they have enter into the formal, written purchase and sale agreement contemplated under this MOU.

All items contemplated in this MOU are subject to approval by the Council of the City and the KYC membership.

2. PURCHASE AND SALE AGREEMENT

The terms of this MOU will be used as a base for the creation of a purchase and sale agreement ("PSA"). The City will be responsible for drafting of the purchase and sale agreement and other relevant land tenures or restrictions registered on title, which will be undertaken by Young

Anderson. The KYC will be responsible to engage their legal counsel and cover its own costs for review of these documents. The City and the KYC anticipate that to a large extent, the creation of a purchase and sale agreement should be a straightforward exercise, as both parties have agreed in principle to the significant terms of the PSA. Both parties agree to work in good faith towards an agreement.

The purchase and sale agreement will also contain, as schedules, the appropriate form of legal instruments required to secure the land tenures and restrictions associated with this project that have been agreed to in this MOU (i.e. right of first refusal, right of way, building use, building height, and building size as described in item 6).

3. DISPOSITION

The City agrees to sell a property to KYC in fee simple that will allow for the construction of the KYC Clubhouse. The intent is to sell only the land required for a 12,000 square foot building footprint. The shape and configuration of the parcel to be sold will reflect setbacks required to protect important view corridors. Hence, the minimum lot size will be sold that allows for a 12,000 square foot footprint based on setbacks or supported setback variances. All area outside the building footprint will be protected for unrestricted public access by a statutory right of way subject to and as is consistent with the provisions in item 7 herein. The property will be approximately located as described in Schedule 'A'.

The property will be purchased from the City by KYC for a sum of one million dollars, which has been supported by a letter of opinion from a real estate appraisal firm, Kent Macpherson. This amount is representative of market value given the restrictions to be placed on the subject property.

4. ZONING

The current zoning for the property is P1 -Major Institutional and will remain P1 - Major Institutional. The City confirms that the proposed use by KYC conforms to this zone.

5. PUBLIC ACCESS TO THE FACILITY

In recognition of its prominent park location, the KYC will provide, in perpetuity, public access to certain facilities located within its clubhouse as further defined herein. The KYC will have the unfettered right to manage the facilities and will allow public use of their meeting rooms and allow bookings to their banquet facilities, on a rental basis, when the space is available. The KYC will also maintain a ground floor public restaurant (exact location to be determined during the integrated design process, as described in item 16). The intent is for the public restaurant to be open year round; however, there will be provisions in the PSA that will provide some flexibility to the KYC to determine the times that the public restaurant will be open for business based on financial viability. KYC will provide restrooms for their restaurant patrons as required by health standards.

6. LAND CHARGES

The following charges will be registered against the title of land to be sold:

- a) A covenant under section 219 of the Land Title Act will restrict the use and development of the land as follows:
 - i) The Gross Floor Area of the clubhouse will be limited to 24,000 square feet, which will include all amenities (private access and public access), excluding public patio areas which shall be addressed by way of a Licence of Occupation between the City and KYC as described in item 7.
 - ii) The height of the building will be restricted to 3 stories.
 - iii) The use of the building is for yacht club purposes only. Yacht club purposes are defined in the City bylaws as 'Marinas' and 'Private Club', respectively. Yacht club purposes allow for the public access to the KYC facility, as described in item 5. The Clubhouse building or portions of the building are not to be beneficially disposed of in any such way without written consent of the City with exception of the public restaurant area acknowledged in item 5.
- b) A right of first refusal and option to purchase will be placed on title. The option to purchase will give the City the right to repurchase the KYC Clubhouse land and building if KYC no longer occupies the property or if the building is not used for yacht club purposes as described in item 6c(iii). The option price will be at market value as determined by the average of two appraisals conducted by professional appraisers engaged by the Parties, taking into account the restrictions placed on the property at time of sale to KYC. Should the two appraisals differ by greater than 10% a third appraisal shall be completed by an independent third party appraiser agreed to by the parties and that value will set the option price. If at any time the KYC wishes to sell the property to a third party, the right of first refusal will permit the City to purchase the property from the KYC within a 60 day period of providing notice to the City on the terms offered by that third party.
- c) A second option to purchase the site will be placed on title allowing the City to repurchase the property if construction of the building has not commenced within 18 months of disposition. The purchase price shall be determined in the same manner and under the same conditions as was established for the purchase of the land by KYC from the City. Such option can only be exercised if KYC has not proceeded or has ceased to proceed in a commercially diligent manner.

7. LICENCE OF OCCUPATION

The City agrees to provide a licence of occupation over a reasonable ground level area for the public restaurant patio to be agreed to between the City and the KYC following the completion of the design of the KYC clubhouse. The patio will be connected to the building, will be a reasonable size for a restaurant of its nature, and is for the sole use of the public restaurant. This is in recognition of the confined building footprint of 12,000 square feet.

8. BUILDING REMOVAL

The City agrees to take responsibility for the removal of both the current KYC clubhouse and the Seniors Centre at the City's expense. The estimated cost to remove both buildings is \$270,000.

9. ENVIRONMENTAL

The City has born the costs of a Phase 1 and Phase 2 environmental investigation which has demonstrated the site complies with environmental standards for its proposed use and is not contaminated. The property will be transferred to the KYC as an environmentally clean site. Any contamination of the site that is identified during the KYC's possession will be the responsibility of the KYC to remediate. If remediation is not undertaken by the KYC, the estimated costs of completing such remediation can be deducted from the option purchase price at the City's discretion.

10. PARKING

The KYC will not meet the parking bylaw requirements for its new clubhouse or its on water facilities and will require a variance.

If the parking bylaw was strictly enforced, the KYC would have to provide approximately 275 parking stalls for its clubhouse facilities. However, in recognition of its downtown facilities, historical tenure, and public benefit, the PSA will be conditional upon the issuance of a development variance permit by the City to vary the clubhouse parking requirements to only 40 parking stalls. The 40 stalls will be met by the following:

- At a minimum, KYC will construct 10 stalls, or more if determined feasible during the site design process, adjacent to the Clubhouse building. The parking stalls will be designated as either short term parking or handicap parking to meet the needs of the KYC. It is the parties' desire that the parking be managed by the City and the land remains in the City's tenure. Should more than 10 stalls be achieved on site it will not affect the contribution noted below.
- The remaining 30 stalls will be provided through a cash-in-lieu payment to the City's parking reserve fund. The amount for a cash-in-lieu payment is \$22,500 per parking stall for a total reserve fund payment of \$675,000 (30 stalls x 22,500).

11. BYLAWS

All applicable bylaws for the development that are not otherwise addressed in this MOU will have to be met, which includes such items as loading requirements and development cost charges.

12. OFF-SITE SERVICING COSTS

The City will provide off-site City servicing up to the property line in the current location of the servicing provided to the Seniors Centre.

13. MUSTER STATION REMOVAL

The parties agree that various facilities associated with the current muster station such as offices, classrooms and some storage will be moved to the new facility once it is constructed. Facilities required for boat maintenance and moorage of the City's fire department boat will be retained to the extent allowable by other governing agencies. The existing platform and maintenance facilities may be reduced to accommodate requirements of the Ministry of Environment for the reclamation of the waterfront and the provision of public access. However, the parties agree to prepare a

detailed plan for the associated redesign of the muster station area which will, among other things, take into account general KYC operational requirements, possible changes to access to the marine facilities and public access.

14. PERMIT PROCESS

The City will bear the legal and survey costs required for subdivision. All other permit, application, and investigation requirements and costs are the responsibility of the KYC.

15. PROPERTY TAXES

Property taxes will be payable by the KYC. The City acknowledges that the KYC may be able to apply for the permissive tax exemption on a portion of their clubhouse, subject to the KYC meeting the requirements of the Community Charter and Council Policy 327 - Permissive Tax Exemption Policy.

16. INTEGRATED DESIGN PROCESS

Paramount to this disposition is that both the clubhouse and the site in general will reflect a high quality integrated design that is agreed to by the parties acting reasonably. Both parties agree to establish a committee to direct the preparation of a concept design for the site. The parties also agree to engage an architect to provide a concept design for the site and both parties will put forward representatives for a site design committee. Mechanisms will be put in place to ensure the design standards are met. The integrated design will encapsulate the constructed form, the landscape area and building orientation to public areas. The concept design architect will be hired by the KYC and will be funded on a 50/50 cost sharing basis with the City. Any specific building design will be at the expense of each party.

The KYC will also be required to obtain a development permit from the City under section 920 of the *Local Government Act*. The PSA will include conditions precedent for the benefit of both parties, such that the sale will be subject to the issuance of such a permit and completion of the concept design to the satisfaction of both parties.

17. ON-WATER FACILITIES

The parties' agreement to this MOU is subject to a long-term sublease being in place which will allow for on-water construction and operation of additional marina facilities in a location generally identified in schedule 'B' attached.

18. OTHER LEGISLATION

The parties acknowledge that the provisions of this agreement are subject to the applicable bylaws of the City as well as any applicable Provincial and Federal legislation including any licenses or permits issued pursuant to such by-laws and laws.

This MOU is dated Nov 20/2009 and signed by:



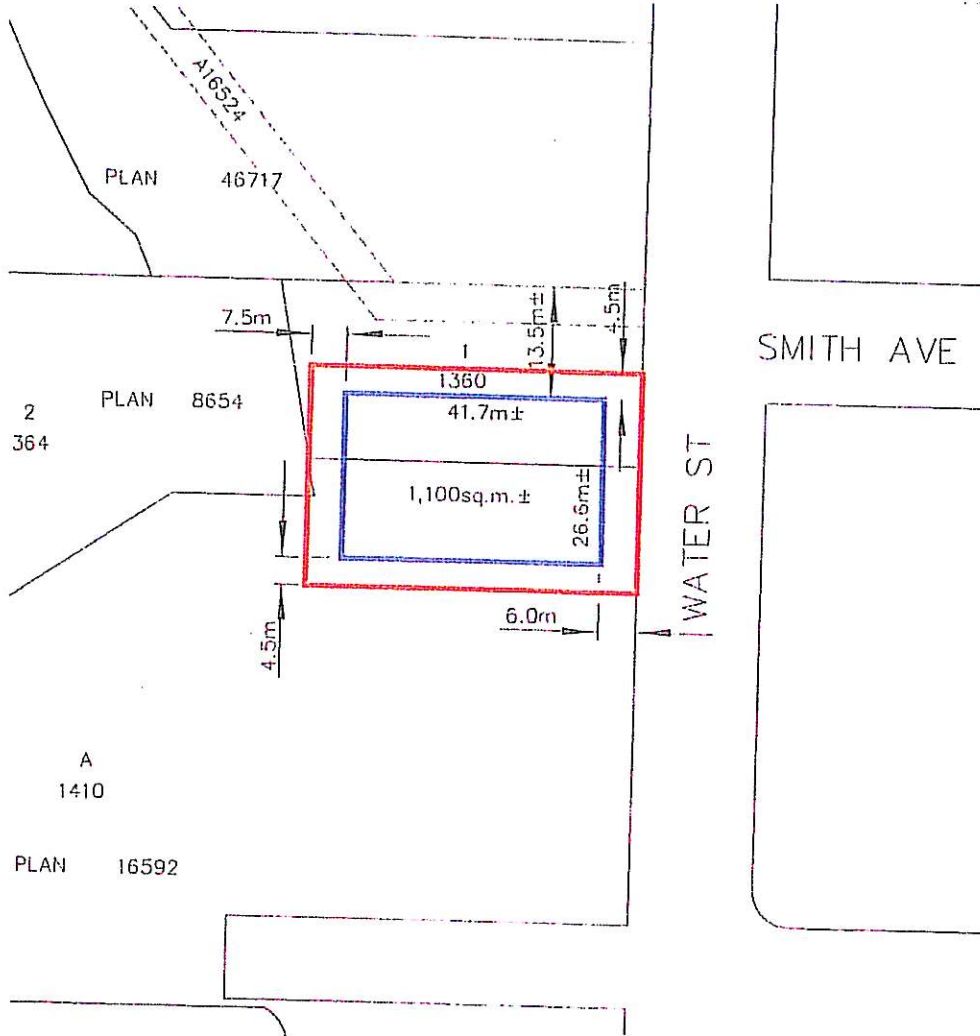
KELOWNA YACHT CLUB
SIGNATORY:

Commodore KYC

CITY OF KELOWNA
SIGNATORY

SCHEDULE 'A'

PAGE _____



SCALE N.T.S.

MAILING ADDRESS 1360 & 1410 WATER ST.

LEGAL DESCRIPTION: LOT NO 1 & A PLAN NO. 8654 & 16592

SEC. 25 TWP. 25

PROP'D BUILDING AREA= 1,100sq.m.±

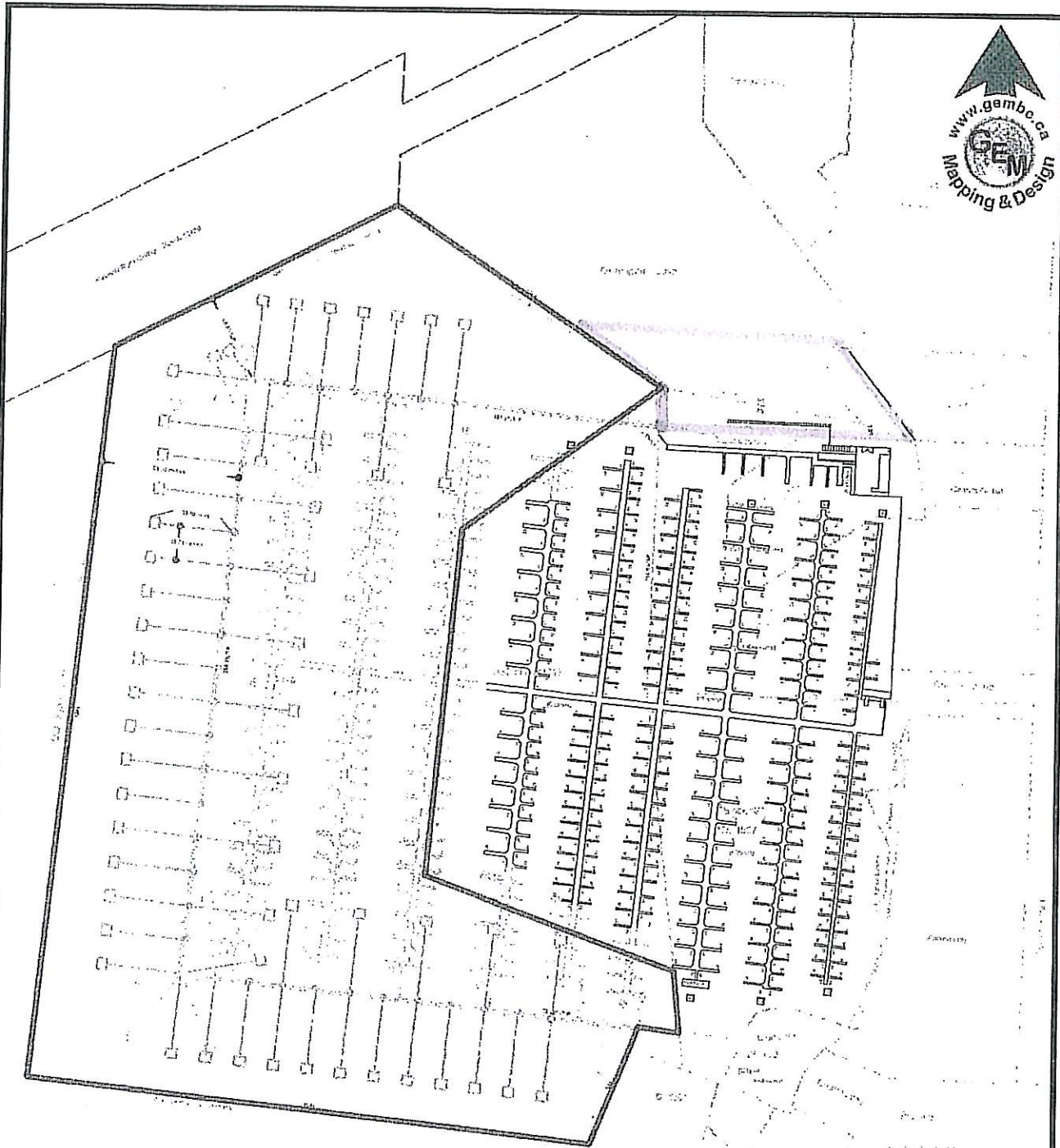
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DATE: AUG. 17/09

DRAWING NO. _____

END OF DOCUMENT

SCHEDULE 'B'



— = proposed addition to sublicence area (i.e. expansion).

