

# REPORT TO COUNCIL



**Date:** February 24, 2012  
**To:** City Manager  
**From:** Land Use Management, Community Sustainability (LT)  
**Application:** DVP11-0191                      **Owner:** Joseph & Stephanie Fesik  
**Address:** 1407 Kendra Crt                      **Applicant:** Jules Kenwood  
**Subject:** Development Variance Permit Application  
**Existing OCP Designation:** Single/Two-Unit Residential  
**Existing Zone:** RU1h - Large Lot Housing (Hillside Area)

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## 1.0 Recommendation

THAT Council authorize the issuance of Development Variance Permit No. DVP11-0191 for Lot 7, Section 13, Township 26, ODYD, Plan KAP79323, located at 1407 Kendra Court, Kelowna, BC;

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

**Section 7.5.9 (Fencing & Retaining Walls):** To vary the minimum horizontal distance between retaining walls from 1.2m required to 0.6m proposed, as per Schedule "A".

AND THAT issuance of the Development Variance Permit be subject to an adequate landscaping plan being submitted, to the satisfaction of the Director of Land Use Management, in the interests of screening the existing and proposed retaining walls;

AND FURTHER THAT Development Variance Permit issuance be subject to a Building Permit application being made for the retaining wall.

## 2.0 Purpose

The applicant seeks a Development Variance Permit to vary the minimum horizontal separation requirement of as-built and proposed retaining walls at the rear of the subject property.

## 3.0 Land Use Management

The Land Use Management Department is concerned about the visual impact of retaining walls in hillside areas. Minimum horizontal separation distances help to mitigate this concern, breaking-up to the vertical height of walls while providing areas for vegetative planting to screen the wall face.

Above concerns aside, the Land Use Management Department is prepared to support the proposed variance. The existing site conditions and statutory ROW along two property boundaries create a unique hardship for the property which eliminates the ability to construct walls which conform to Zoning Bylaw standards.

Construction materials have been selected to blend into the existing landscape. The wall will also improve the existing slope conditions on-site, and serve to enhance access to a compromised sanitary sewer right-of-way. In addition, surrounding neighbours have offered written support for the retaining wall construction on the property.

Staff recognizes that some previously-approved subdivisions have created lots which encourage the construction of retaining walls by individual homeowners. Improved hillside development practices described within the City's Hillside Development Guidelines aim to create lots that respect existing terrain, preserve natural features, and reduce the need for individual retaining walls. Larger lot sizes and widths, reduced road standards, and creative lot layouts will help to limit the construction of retaining walls in hillside areas in the future.

#### 4.0 Proposal

Retaining walls were constructed without permits along the upper portion of the rear yard in 2011. A Stop Work Order was issued given that the walls did not comply with the Zoning Bylaw.

The property owners seek to maintain the upper walls, and construct additional walls at the lower portion of the rear yard in order to solve the existing condition of fill slope materials deteriorating and moving down-slope. In addition, the walls would help support the current concrete patio slab, and create more favorable drainage run-off. The walls would also create better access to the sanitary sewer manhole immediately to the east of the subject property.

The horizontal separation between the upper and lower pair of retaining walls is less than the minimum prescribed in the Zoning Bylaw (1.2m). The upper walls (already constructed) are separated 0.9m, while the lower walls have 0.6m of horizontal separation.

A statutory right-of-way (SROW) for sanitary sewer runs along both the east and south boundaries of the subject property. Any portions of the walls which encroach into the SROW would have to be removed to the satisfaction of Civic Operations.

Should the variance be approved by Council, a Building Permit will be required to review the wall construction.

The requested variance is summarized below:

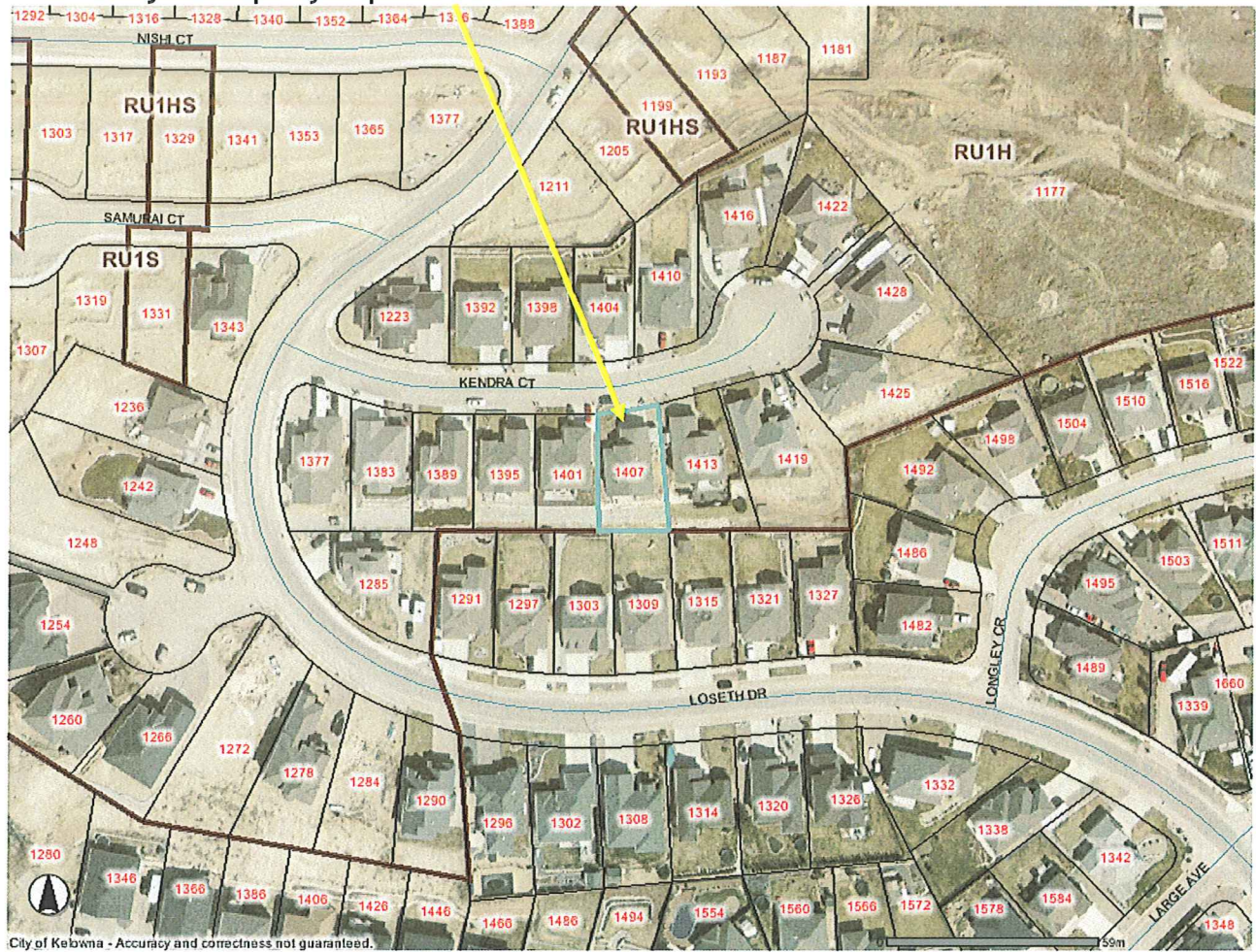
Criteria	Proposal	Bylaw Requirements
Minimum horizontal distance between retaining walls.	0.6m	1.2m

#### 4.1 Site Context

The subject properties are located in the Black Mountain area, off Loseth Drive. Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1h - Large Lot Housing (Hillside Area)	Single-Family Residential
East	RU1h - Large Lot Housing (Hillside Area)	Single-Family Residential
South	RU1 - Large Lot Housing	Single-Family Residential
West	RU1h - Large Lot Housing (Hillside Area)	Single-Family Residential

#### 4.2 Subject Property Map: 1407 Kendra Court



### 5.0 Technical Comments

#### 5.1 Building & Permitting Department

Building permit required. Geotechnical engineer is to provide drawings and schedules.

#### 5.2 Development Engineering Department

See attached.

### 6.0 Application Chronology

Date of Application Received: November 9, 2011

*Application delayed at applicant's request (applicant out-of-country).*

**Report prepared by:**



Luke Turri, Land Use Planner

**Reviewed by:**



Danielle Noble, Manager, Urban Land Use

**Approved for inclusion:**



Shelley Gambacort, Director, Land Use Management

**Attachments:**

Subject Property Map

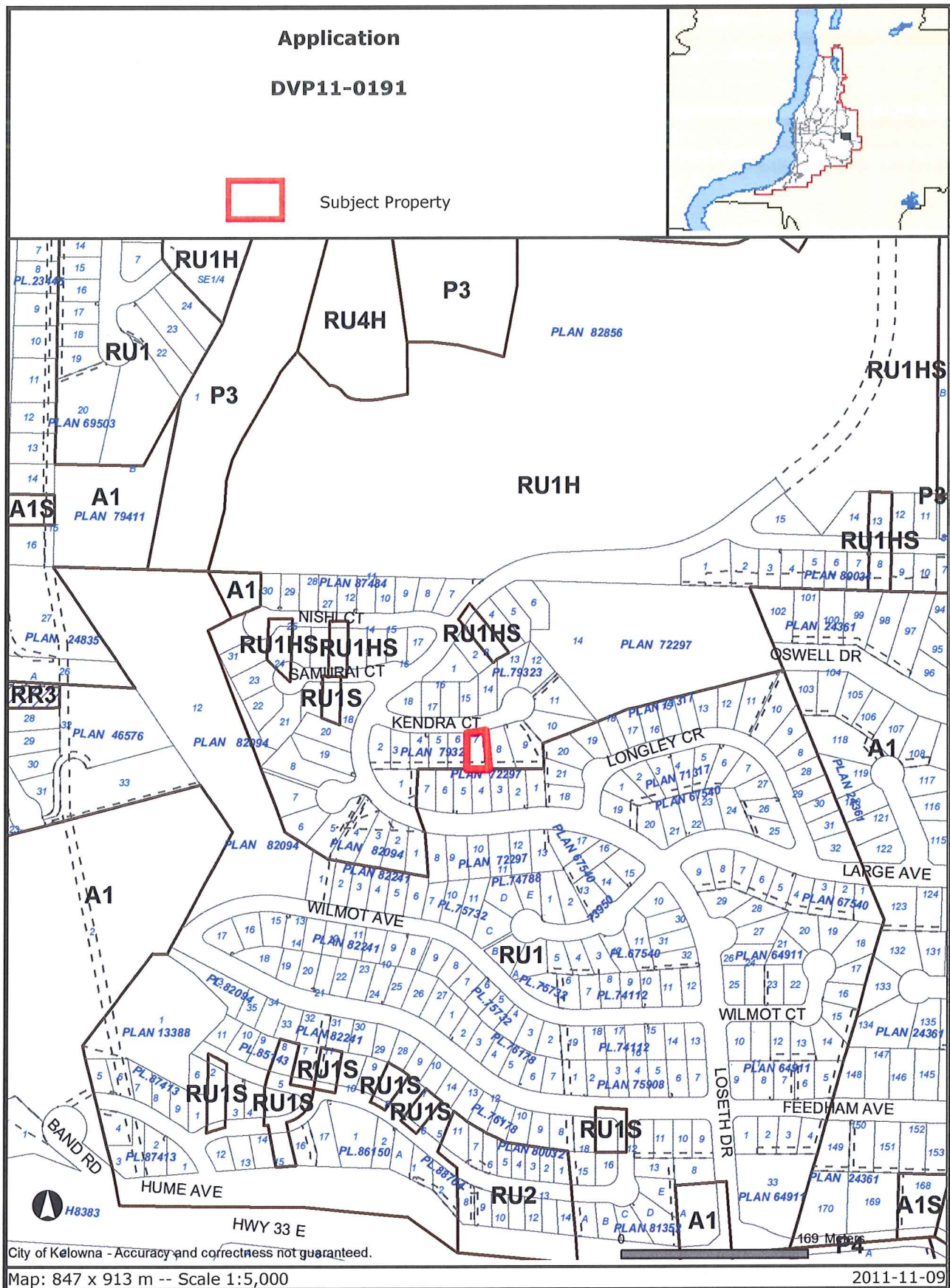
Surveyor's Site plan

Cross-section of retaining walls

Existing site photos

Development Engineering Branch Memorandum





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.

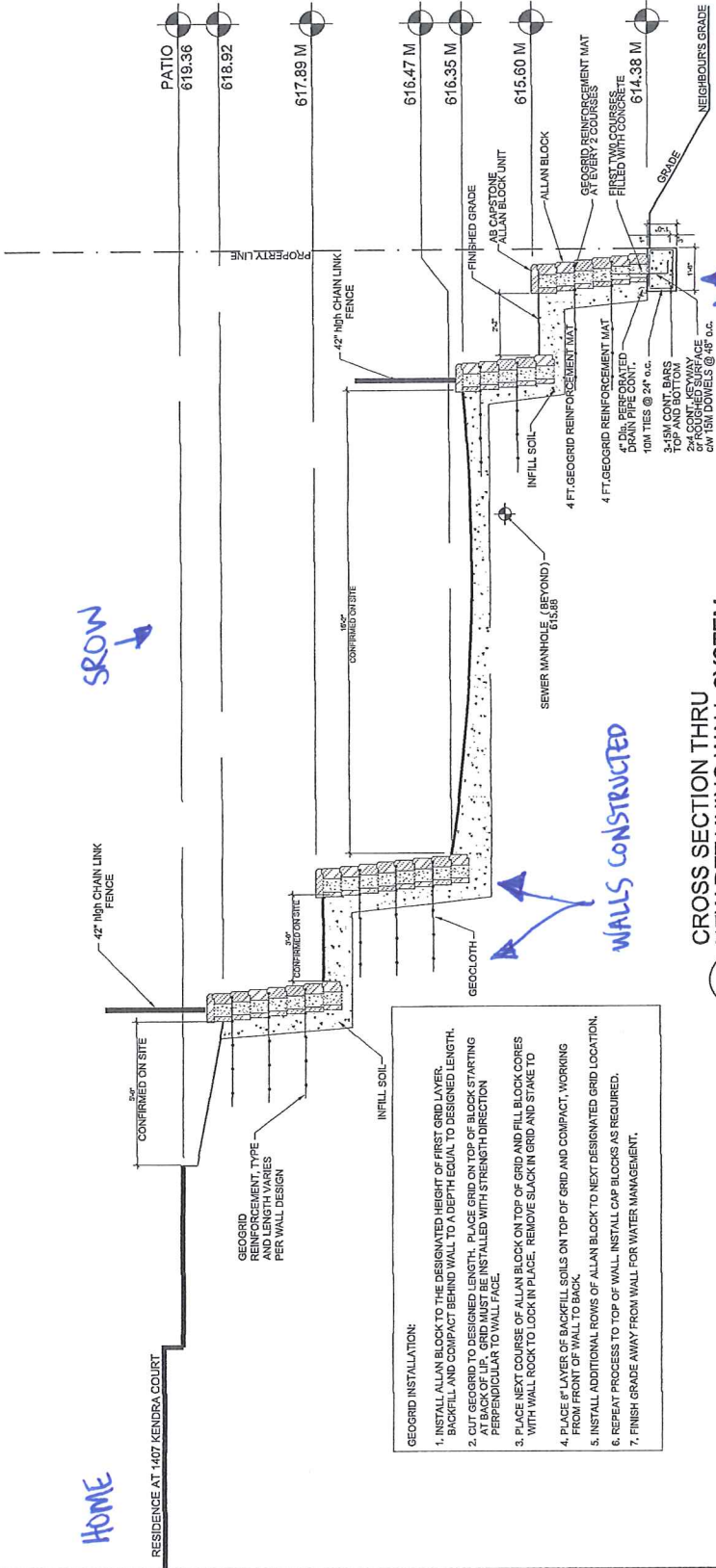
**SCHEDULE A (1 of 2)**  
 This forms part of development  
 Permit # **DV011-0191**

**HOME**

**SLOW**

**WALLS CONSTRUCTED**

**PROPOSED WALLS**



- GEOGRID INSTALLATION:**
1. INSTALL ALLAN BLOCK TO THE DESIGNATED HEIGHT OF FIRST GRID LAYER. BACKFILL AND COMPACT BEHIND WALL TO A DEPTH EQUAL TO DESIGNED LENGTH.
  2. CUT GEOGRID TO DESIGNED LENGTH. PLACE GRID ON TOP OF BLOCK STARTING FROM FRONT OF WALL. STAKE AND TIE TO BE INSTALLED WITH STRENGTH DIRECTION PERPENDICULAR TO WALL FACE.
  3. PLACE NEXT COURSE OF ALLAN BLOCK ON TOP OF GRID AND FILL BLOCK CORES WITH WALL ROCK TO LOCK IN PLACE. REMOVE SLACK IN GRID AND STAKE TO WALL.
  4. PLACE 8\"/>

**CROSS SECTION THRU NEW RETAINING WALL SYSTEM**  
 1/4" = 1'-0"

1 S2

DATE: 11/11/11	DESIGNED FOR CONSTRUCTION
DATE: 11/11/11	REQUIRED FOR BUILDING PERMIT
<b>JMS ENGINEERING LTD.</b>	
1407 KENDRA COURT KELOWNA, B.C.	
PROJECT: 1407 KENDRA COURT	
CONTRACTOR: J.A. BENDISSEN	
SHEET TITLE: CROSS SECTION THRU NEW RETAINING WALL SYSTEM	
DATE: 11/11/11	SCALE: 1/4" = 1'-0"
PROJECT: 1407 KENDRA COURT	SHEET NO: 52
CONTRACTOR: J.A. BENDISSEN	DATE: 11/11/11
DESIGNED BY: J.A. BENDISSEN	CHECKED BY: J.A. BENDISSEN
DRAWN BY: J.A. BENDISSEN	DATE: 11/11/11

# British Columbia Land Surveyors Site Plan

1407 – Kendra Court Lot 7, Sec. 13, Tp. 26, ODYD, Plan KAP79323

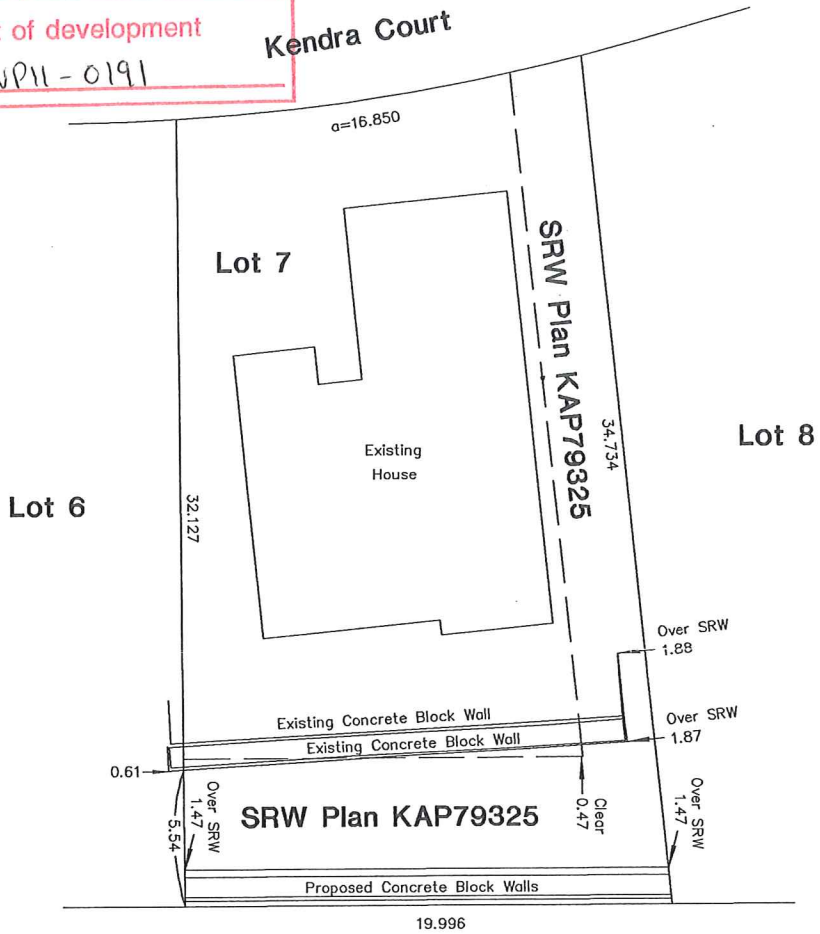
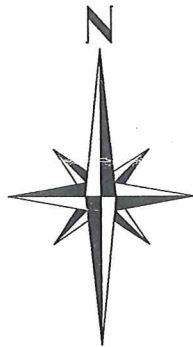
Scale 1:200 Metric.

- Distances and elevations are indicated in metres and decimals thereof.
- Elevations are Geodetic derived from City of Kelowna Drawing No. A-3816-5

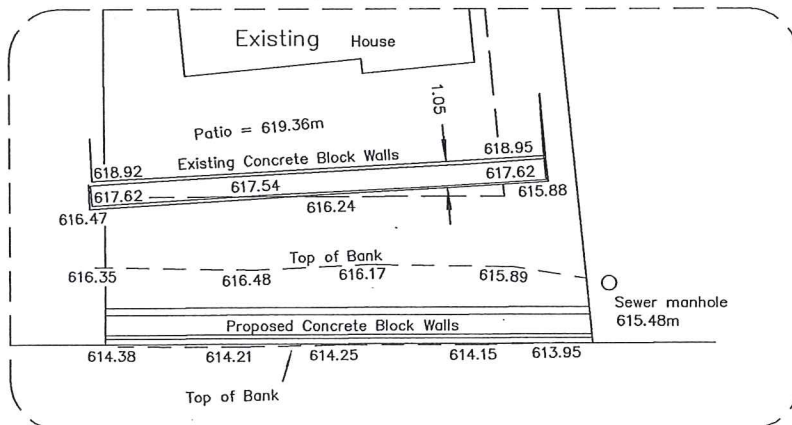
SCHEDULE A (2 of 2)

This forms part of development

Permit # DVP11-0191



Elevation Detail



LOOKING WEST  
ALONG SEWER ROW



DVP11-0191

PATIO  
RAILING



WALLS UNDER CONSTRUCTION  
LOOKING EAST



EXISTING WALL



DOWNSLOPE PROPERTIES (LOSETH DR.)

LOOKING EAST



TOP OF EXISTING WALL

REAR PATIO SLAB, LOOKING EAST

# CITY OF KELOWNA

## APPROVED ISSUANCE OF A:

Development Variance Permit No.: DVP11-0191

EXISTING ZONING DESIGNATION: RU1h - Large Lot Housing (Hillside Area)  
DEVELOPMENT VARIANCE: To vary maximum of a retaining wall.

ISSUED TO: Joseph & Stephanie Fesik (c/o Jules Kenwood)  
LOCATION OF SUBJECT SITE: 1407 Kendra Court

	LOT	SECTION	DIV & DIST	PLAN
LEGAL DESCRIPTION:	7	13	ODYD	KAP79323

### SCOPE OF APPROVAL

- This Permit applies to and only to those lands within the Municipality as described above, and any and all buildings, structures and other development thereon.
- This Permit is issued subject to compliance with all of the Bylaws of the Municipality applicable thereto, except as specifically varied or supplemented by this Permit, noted in the Terms and Conditions below.
- Applicants for Development and Development Variance Permit should be aware that the issuance of a Permit limits the applicant to be in strict compliance with regulations of the Zoning Bylaw or Subdivision Control Bylaw unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations which are inconsistent with bylaw provisions and which may not have been identified as required Variances by the applicant or City staff.

#### 1. TERMS AND CONDITIONS:

- a) THAT variances to the following section of Zoning Bylaw No. 8000 are granted as per Schedule "A":

**Section 7.5.9 (Fencing & Retaining Walls):** To vary the minimum horizontal distance between retaining walls from 1.2m required to 0.6m proposed, as per Schedule "A".

#### 2. PERFORMANCE SECURITY:

As a condition of the issuance of this Permit, Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Permittee and be paid to the Permittee if the security is returned. The condition of the posting of the security is that should the Permittee fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the Municipality may use the security to carry out the work by its servants, agents or contractors, and any surplus shall be paid over to the Permittee, or should the Permittee carry out the development Permitted by

this Permit within the time set out above, the security shall be returned to the Permittee. There is filed accordingly:

- (a) Cash in the amount of \$           N/A          .
- (b) A Certified Cheque in the amount of \$           N/A          .
- (c) An Irrevocable Letter of Credit in the amount of \$           N/A          .

Before any bond or security required under this Permit is reduced or released, the Developer will provide the City with a statutory declaration certifying that all labour, material, workers' compensation and other taxes and costs have been paid.

3. DEVELOPMENT:

The land described herein shall be developed strictly in accordance with the terms and conditions and provisions of this Permit and any plans and specifications attached to this Permit which shall form a part hereof.

If the Permittee does not commence the development Permitted by this Permit within one year of the date of this Permit, this Permit shall lapse.

This Permit is not transferrable unless specifically Permitted by the Municipality. The authorization to transfer the Permit shall, if deemed acceptable, be granted by Council resolution.

**THIS Permit IS NOT A BUILDING Permit.**

4. APPLICANT'S AGREEMENT:

I hereby declare that all the above statements and the information contained in the material submitted in support of this Permit are to the best of my belief, true and correct in all respects. Upon issuance of the Permit for me by the Municipality, then in such case, I covenant and agree to save harmless and effectually indemnify the Municipality against:

- (a) All actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and by whomsoever brought, by reason of the Municipality granting to me the said Permit.
- (b) All costs, expenses, claims that may be incurred by the Municipality if the construction by me of engineering or other types of works as called for by the Permit results in damages to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly in any way or to any degree, to construct, repair, or maintain.

I further covenant and agree that should I be granted a Development Permit or Development Variance Permit, the Municipality may withhold the granting of any occupancy Permit for the occupancy and/or use of any building or part thereof constructed upon the hereinbefore referred to land until all of the engineering works or other works called for by the Permit have been completed to the satisfaction of the Municipal Engineer and the Director of Land Use Management.

Should there be any change in ownership or legal description of the property, I undertake to notify the Land Use Management Department immediately to avoid any unnecessary delay in processing the application.

I HEREBY UNDERSTAND AND AGREE TO ALL THE TERMS AND CONDITIONS SPECIFIED IN THIS PERMIT.

\_\_\_\_\_  
Signature of Owner/Authorized Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name in Bold Letters

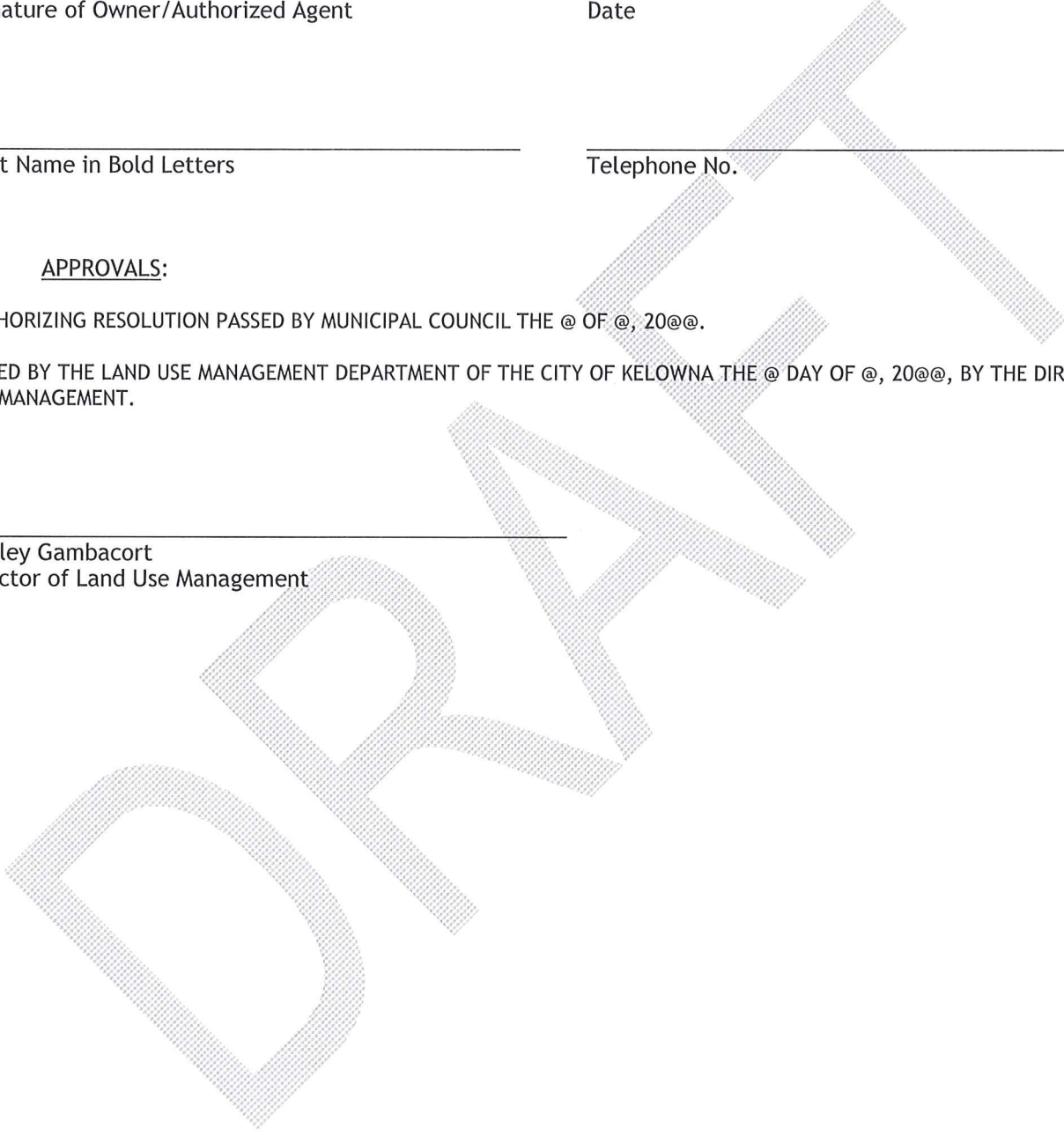
\_\_\_\_\_  
Telephone No.

5. APPROVALS:

AUTHORIZING RESOLUTION PASSED BY MUNICIPAL COUNCIL THE @ OF @, 20@@.

ISSUED BY THE LAND USE MANAGEMENT DEPARTMENT OF THE CITY OF KELOWNA THE @ DAY OF @, 20@@, BY THE DIRECTOR OF LAND USE MANAGEMENT.

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Shelley Gambacort  
Director of Land Use Management



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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** December 1, 2011  
**File No.:** DVP11-0191  
**To:** Land Use Management (LT)  
**From:** Development Engineer Manager (SM)  
**Subject:** 1407 Kendra Court – Lot 7, Plan KAP79323 Section 13, Township 26, ODYD

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The Development Engineering comments and requirements regarding this Development Variance application are as follows:

1. The applicant proposes to construct a series of Allan Block retaining wall partially within the existing Utilities Right of Way. According to the record drawings, the existing sanitary sewer invert at the manhole is 613.58. Potential future excavation of the sanitary sewer in compliance with WCB regulations would require the removal and replacement of one tier of the retaining wall as demonstrated in red on the attached sketch.
  
2. The proposed retaining walls improve access to the sanitary manholes in the front of the subject property and does not compromise the existing sanitary sewer main located within the Utility Right of Way as long the proposed soil retaining structure is built in accordance with the drawings submitted in support of this application.

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Steve Muenz, P.Eng.  
Development Engineering Manager

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