

City of Kelowna
Regular Council Meeting
AGENDA



Monday, August 26, 2013
1:30 pm
Council Chamber
City Hall, 1435 Water Street

Pages

1. Call to Order

This meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.
2. Confirmation of Minutes 4 - 9

Regular PM Meeting - August 12, 2013
3. Public in Attendance
 - 3.1 Peter Robinson, Community Energy Association on behalf of FortisBC, re: Okanagan Energy Diet 10 - 22

To inform Council regarding FortisBC's Okanagan Energy Diet Program.

 - 3.1.1 Okanagan Energy Diet 23 - 26

To inform Council of the upcoming Okanagan Energy Diet and request authorization for the municipal financial commitment.
4. Development Application Reports & Related Bylaws
 - 4.1 Agricultural Land Reserve Appeal Application No. A13-0009 - 984 & 1010 DeHart Road, Alexander Rezansoff & Sherwood Mission Developments Ltd. 27 - 54

Mayor to invite the Applicant, or Applicants' Representative, to come forward.
To consider a staff recommendation **NOT** to support an application to the Agricultural Land Commission for an Agricultural Land Reserve land swap. The applicant is proposing an ALR land swap (i.e. ALR exclusion in exchange for a partial ALR inclusion) using adjacent parcels to help facilitate a proposed residential development. Specifically, the applicant is requesting permission from the Agricultural Land Commission (ALC) to exclude all of the 2.19 ha subject property at 1010 DeHart Road from the Agricultural Land Reserve (ALR). In exchange for the proposed exclusion, the applicant is proposing the

inclusion of a 2.19 ha portion of 984 DeHart Road into the ALR. The owner is also proposing to consolidate the proposed inclusion parcel with an adjacent parcel.

- 4.2 **Rezoning Application No. Z13-0028 - 3935 Lakeshore Road & adjacent Bed of Mission Creek, Braniff Real Estate Services & Ministry of Forests, Land & Natural Resource Operations** 55 - 72
- To consider a proposal to rezone portions of subject properties from the C1 - Local Commercial zone to the C3 - Community Commercial, from the RU5 - Bareland Strata zone to the C3 - Community Commercial zone, and from the C1 - Local Commercial zone to the RU5 - Bareland Strata zone to permit the development of a 3 storey retail and office building.
- 4.2.1 **Bylaw No. 10885 (Z13-0028) - 3935 Lakeshore Road & adjacent Bed of Mission Creek, Braniff Real Estate Services & Ministry of Forests, Land & Natural Resource Operations** 73 - 74
- To give Bylaw No. 10885 first reading.
- 4.3 **Official Community Plan Bylaw Amendment Application No. OCP07-0022 and Rezoning Application No. Z07-0073, Extension Request - 2728 Pandosy Street, Al Stober Construction Ltd.** 75 - 77
- To extend the date for adoption of the Official Community Plan and Zone Amending Bylaws (BL10265/BL10266) from December 15, 2012 to December 15, 2013 in order to facilitate the rezoning of the subject property from the P2 - Education and Minor Institutional zone to the C4- Urban Centre Commercial zone to construct a seven storey mixed use development.
- 4.4 **Rezoning Application No. Z09-0035, Extension Request - 3130 Sexsmith Road, Matthew James Ewonus** 78 - 80
- To extend the date for adoption of the Zone Amending Bylaw (BL10436) from May 16, 2013 to November 16, 2013 in order to rezone the subject property from the A1 - Agriculture 1 zone to the new I6 - Low-Impact Transitional Industrial zone. This zone is intended to perform a transition role allowing for reasonable industrial land uses between the general industrial land use to the south, and residential land use to the north.
- 4.5 **Rezoning Application No. Z10-0092, Extension Request - 3150 Sexsmith Road, Kimberly & John Berg** 81 - 83
- To extend the date for adoption of the Zone Amending Bylaw (BL10443) from May 16, 2013 to November 16, 2013 in order to rezone the subject property from the A1 - Agriculture 1 to the I6 - Low Impact Transitional Industrial zone to construct a multipurpose recreational building to contain four ice surfaces, viewing gallery, pro shop, restaurant and operational offices.
- 4.6 **Rezoning Application No. Z10-0093, Extension Request - 3170 Sexsmith Road, Shanny & Marlin James Toews** 84 - 86

To extend the date for adoption of the Zone Amending Bylaw (BL10445) from May 16, 2013 to November 16, 2013 in order to rezone the subject property from the A1 - Agriculture 1 to the I6 - Low Impact Transitional Industrial zone to construct a multipurpose recreational building to contain four ice surfaces, viewing gallery, pro shop, restaurant and operational offices.

- 4.7 Rezoning Application No. Z12-0036, Extension Request - 354 Christleton Avenue, Dennis William Hector McGuire 87 - 89

To extend the date for adoption of the Zone Amending Bylaw (BL10731) from August 7, 2103 to August 7, 2014 in order to rezone the subject property from the RU1 - Large Lot Housing zone to the RU1c - Large Lot Housing with Carriage House zone to construct an accessory building with a secondary suite.

5. Non-Development Reports & Related Bylaws

- 5.1 Amendment to Airport Fees and Charges Bylaw No. 7982 90 - 92

To obtain Council's approval to amend the Kelowna International Airport's fees and charges by amending bylaw No. 7982.

- 5.1.1 Bylaw No. 10884 - Amendment No. 27 to Airport Fees Bylaw No. 7982 93 - 95

To give Bylaw No. 10884 first, second and third readings.

- 5.2 Senior Societies Service Delivery Agreement 96 - 145

To seek Council's endorsement for a new Service Delivery Agreement between the City of Kelowna and the Rutland Senior Centre Society and the Okanagan Mission Senior Centre Society.

- 5.3 Draft City Park Concept Plan 146 - 163

To provide Council with a summary of the feedback received in response to the recent draft of the City Park Concept Plan and to receive direction from Council regarding next steps.

- 5.4 Lease to Okanagan Symphony 164 - 198

To obtain Council endorsement of a five (5) year lease to Okanagan Symphony Orchestra Society for the use of the Knowles House.

- 5.5 Kelowna Youth and Family Services 2013 Lease 199 - 205

That Council approves the Lease Modification Agreement with Terra Landscaping and Bobcat Services Ltd. for the lease of Suite #301 at 260 Harvey Avenue.

6. Mayor and Councillor Items

7. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, August 12, 2013
Time: 1:30 pm

Members Present Mayor Walter Gray and Councillors Colin Basran, Andre Blanleil, Maxine DeHart, Gail Given, Mohini Singh, Luke Stack and Gerry Zimmermann.

Members Absent Councillor Robert Hobson

Staff Present City Manager, Ron Mattiussi; Deputy City Clerk, Karen Needham; Manager, Urban Planning, Danielle Noble*; Environment & Land Use Manager, Todd Cashin*; Property Officer, Tammy Abrahamson*; Sport & Event Development Manager, Don Backmeyer*; Revenue Manager, George King*; and Council Recording Secretary, Arlene McClelland.

(* denotes partial attendance)

1. Call to Order

Mayor Gray called the meeting to order at 1:31 p.m.

Mayor Gray advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

2. Confirmation of Minutes

Moved By: Councillor Stack/Seconded By: Councillor Singh

R540/13/08/12 THAT the Minutes of the Regular PM Meeting of July 29, 2013 be confirmed as circulated.

Carried

3. Development Application Reports & Related Bylaws

3.1. Rezoning Application No. Z13-0025 - 2253 Wilkinson Street, Sharon & Thomas Matthes and Caroline, Mary & Carl Maloney

Moved By: Councillor Zimmermann/Seconded By: Councillor Stack

R541/13/08/12 THAT Rezoning Application No. Z13-0025 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 5, District Lot 136, ODYD Plan KAP89721, located on 2253 Wilkinson Street, Kelowna, BC from the RU2- Medium Lot Housing zone to the RU2c- Medium Lot Housing with Carriage House zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered in conjunction with Council's consideration of a Development Variance Permit on the subject property;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering branch being completed to their satisfaction.

Carried

3.1.1. Bylaw No. 10874 (Z13-0025) - 2253 Wilkinson Street, Sharon & Thomas Matthes and Caroline, Mary & Carl Maloney

Moved By: Councillor Given/Seconded By: Councillor Stack

R542/13/08/12 THAT Bylaw No. 10874 be read a first time

Carried

3.2. Rezoning Application No. Z13-0026 - 330 Taylor Road, Comfort Crafted Homes Inc. (Brad Farrell)

Moved By: Councillor Stack/Seconded By: Councillor DeHart

R543/13/08/12 THAT Rezoning Application No. Z13-0026 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 2, Section 22, Township 26, ODYD, Plan 18558, located on 330 Taylor Road, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch, and the Rutland Waterworks District being completed to their satisfaction.

Carried

3.2.1. Bylaw No. 10881 (Z13-0026) - 330 Taylor Road, Comfort Crafted Homes Inc.

Moved By: Councillor Given/Seconded By: Councillor Stack

R544/13/08/12 THAT Bylaw No. 10881 be read a first time.

Carried

3.3. Rezoning Application No. Z13-0029 - 4770 Crighton Road, Worman Homes

Moved By: Councillor Given/Seconded By: Councillor Zimmermann

R545/13/08/12 THAT Rezoning Application No. Z13-0029 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 2, Section 25, Township 28, ODYD Plan 8026, located at 4770 Crighton Road, Kelowna, BC from the A1 - Agriculture 1 zone to the A1c - Agriculture 1 with Carriage House zone be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to the September 10 Public Hearing for further consideration.

Carried

3.3.1. Bylaw No. 10882 - 4770 Crighton Road, Donald Cowie & Varina Russell

Moved By: Councillor Stack/Seconded By: Councillor Given

R546/13/08/12 THAT Bylaw No. 10882 be read a first time.

Carried

3.4. Rezoning Application No. Z12-0007 - 483 Poplar Point Drive, Hardie and Karen DeForest

Moved By: Councillor Basran/Seconded By: Councillor Blanleil

R547/13/08/12 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Amending Bylaw No. 10738, Lot 1, District Lot 219, ODYD, Plan 8711, located on 483 Poplar Point Drive, Kelowna, BC be extended from August 7, 2013 to August 7, 2014.

Carried

4. Bylaws for Adoption (Development Related)

- 4.1. Bylaw No. 10325 (Z10-0013) - 546 McWilliams Road, Terry Oxley & Maria Borsato

Moved By: Councillor DeHart/Seconded By: Councillor Zimmermann

R548/13/08/12 THAT Bylaw No. 10325 be adopted.

Carried

- 4.2. Bylaw No. 10806 (OCP12-0009) - 2980 Gallagher Road, Allan, Donald, Heidi-Sabine; Amy, Angelica and Gordon Kirschner

Moved By: Councillor Zimmermann/Seconded By: Councillor DeHart

R549/13/08/12 THAT Bylaw No. 10806 be adopted

Carried

- 4.3. Bylaw No. 10807 (Z12-0055) - 2980 Gallagher Road, Allan, Donald, Heidi-Sabine; Amy, Angelica and Gordon Kirschner

Moved By: Councillor DeHart/Seconded By: Councillor Zimmermann

R550/13/08/12 THAT Bylaw No. 10807 be adopted.

Carried

5. Non-Development Reports & Related Bylaws

- 5.1. Bareland Lease - 1175 and 1185 St. Paul Street

Moved By: Councillor Singh/Seconded By: Councillor Basran

R551/13/08/12 THAT Council approves the City entering into a one (1) year Lease Agreement, with Cota Top Coat Sealing Ltd., for the purpose of storage on City-owned property, being 1175 & 1185 St. Paul Street (Lots A and B, Plan KAP63401), with no further option to renew, in the form attached to the Report of the Manager, Property Management, dated August 1, 2013; AND THAT the Mayor and City Clerk be authorized to execute all documents associated with the Lease Agreement.

Carried

5.2. Site Licensing and Minors Pilot for Festivals

Moved By: Councillor Blanleil/Seconded By: Councillor Singh

R552/13/08/12 THAT Council receives the report from the Sport & Event Development Manager dated August 7, 2013;

AND THAT Council directs staff to forward the following recommendation to the Provincial Liquor Control and Licensing Branch (LCLB): In accordance with Section 53 of the Liquor Control and Licensing Regulation and Council Policy No. 359,

BE IT RESOLVED THAT: Council supports the application from Pacific Sport for the Destination Races Wine Country Half Marathon to be held in Waterfront Park on September 7, 2013 to be included in the Site Licensing and Minors Pilot for Festivals

Carried

5.3. Downtown Kelowna Business Improvement

DKA Executive Director, Peggy Athans and Treasurer, Rob Collins

- Provided a power point presentation and answered questions of Council.

Moved By: Councillor Stack/Seconded By: Councillor Zimmermann

R553/13/08/12 THAT Council approve the renewal of a specified area for the purpose of annually funding, over a 5 year period, the Kelowna Downtown Business Improvement Area pursuant to Sections 215 of the Community Charter, for the properties included within the boundary as outlined on Schedule "A" to the Report of the Revenue Manager dated August 12, 2013;

AND THAT Bylaw 10880 being the Kelowna Downtown Business Improvement Area Bylaw be advanced for reading consideration;

AND FURTHER THAT 4:00 p.m., Monday, September 23, 2013 be set as the deadline for receipt of petitions against the proposed Kelowna Downtown Business Improvement Area renewal bylaw.

Carried

5.3.1. Bylaw No. 10880 - Kelowna Downtown Business Improvement Area

Moved By: Councillor Blanleil/Seconded By: Councillor Basran

R554/13/08/12 THAT Bylaw No. 10880 be read a first, second and third time.

Carried

6. Bylaws for Adoption (Non-Development Related)

6.1. Bylaw No. 10845 - Road Closure Bylaw - Portion of Royal Avenue

Moved By: Councillor Basran/Seconded By: Councillor Blanleil

R555/13/08/12 THAT Bylaw No. 10845 be adopted.

Carried

6.2. Bylaw No. 10866 - Road Closure Bylaw - Portion of 459 Groves Avenue and 437/442 Newson Avenue

Moved By: Councillor Blanleil/Seconded By: Councillor Basran

R556/13/08/12 THAT Bylaw No. 10866 be adopted.

Carried

7. Mayor and Councillor Items - Nil.

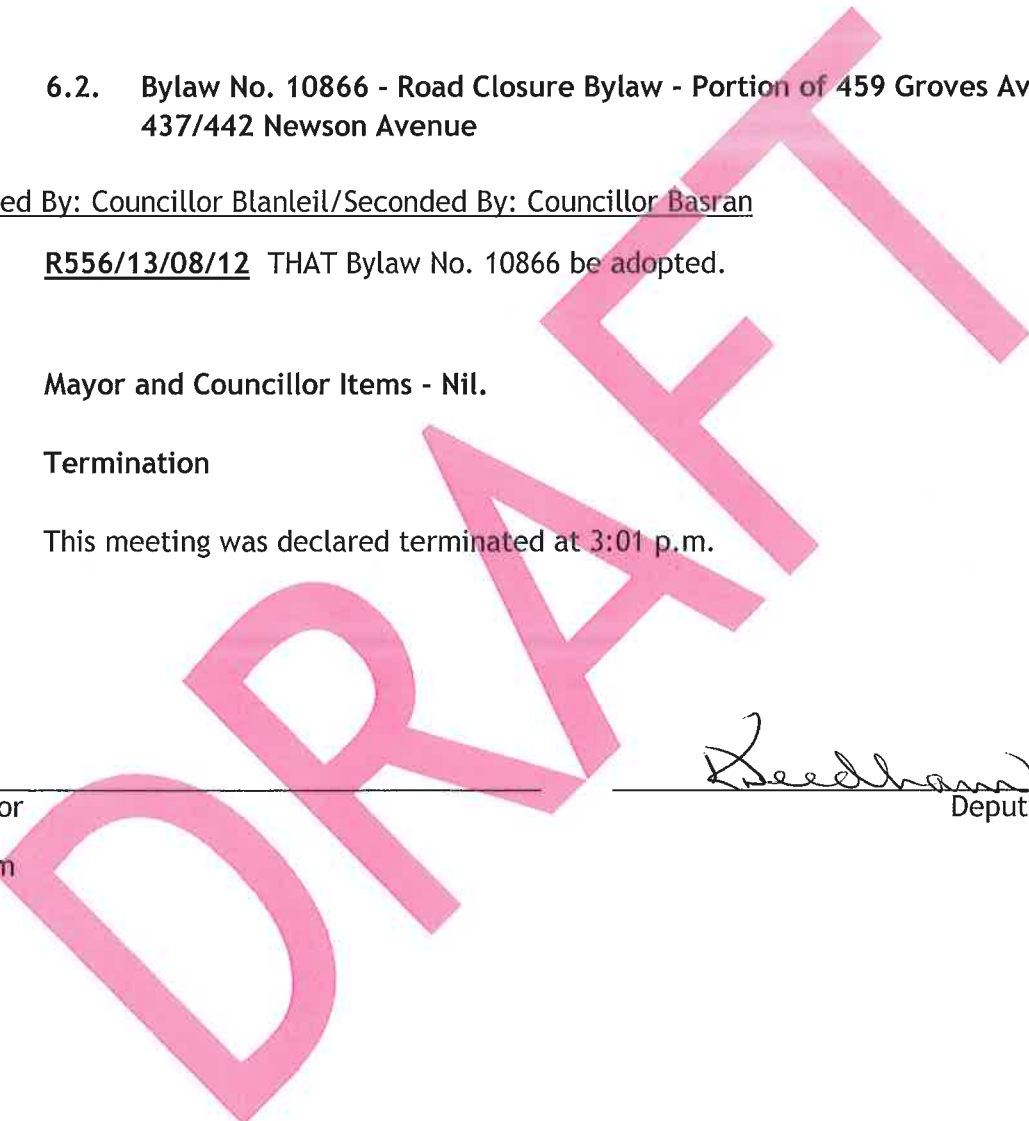
8. Termination

This meeting was declared terminated at 3:01 p.m.

Mayor
/acm



Deputy City Clerk



Okanagan Energy Diet

Peter Robinson

Community Energy Association

August 2013



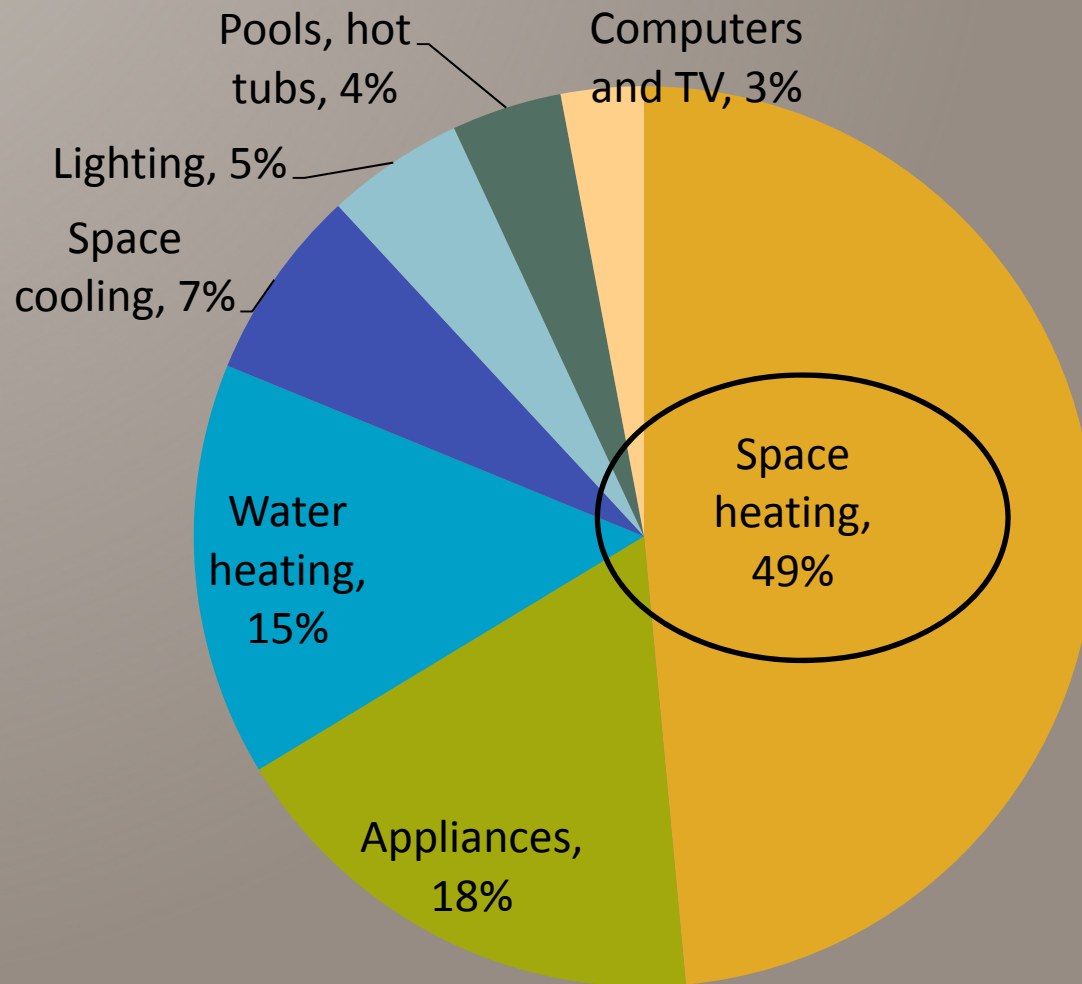
Okanagan Energy Diet



Princeton energy assessment participant

- Impact of Energy Diets
- Benefits
- How your community can get involved

Home energy use in the Okanagan



Sources: 2008 Fortis BC and 2009 Terasen Gas Residential Energy Use Surveys, 2008 BC Hydro Conservation Potential Review

It started in Rossland



Rossland Energy Diet participant

- Rossland Pilot Project
- High average energy usage
- Overcome barriers
- Personalized
- Partnerships

Positive results

- 22% participation
- 80% made improvements
- \$1,600,000 spent in local economy



Rossland customers register to participate

Recognition

THE ROSSLAND TELEGRAPH

HOME ARCHIVES OP/ED SPORTS BLOGS EVENTS CLASSIFIEDS OBITS

Home >

We're celebrating our **7 year anniversary** **Better Life Fitness**
www.betterlifefitness.net [CLICK HERE](#)

ROSSLAND ENERGY DIET: I Am Energy Curious
Yellow, or our old house isn't that efficient but it IS the same colour as the sun...

by Adrian Barnes on 21 Nov 2011

And that has to count for something, right? The Fortis Energy Diet assessments are starting to

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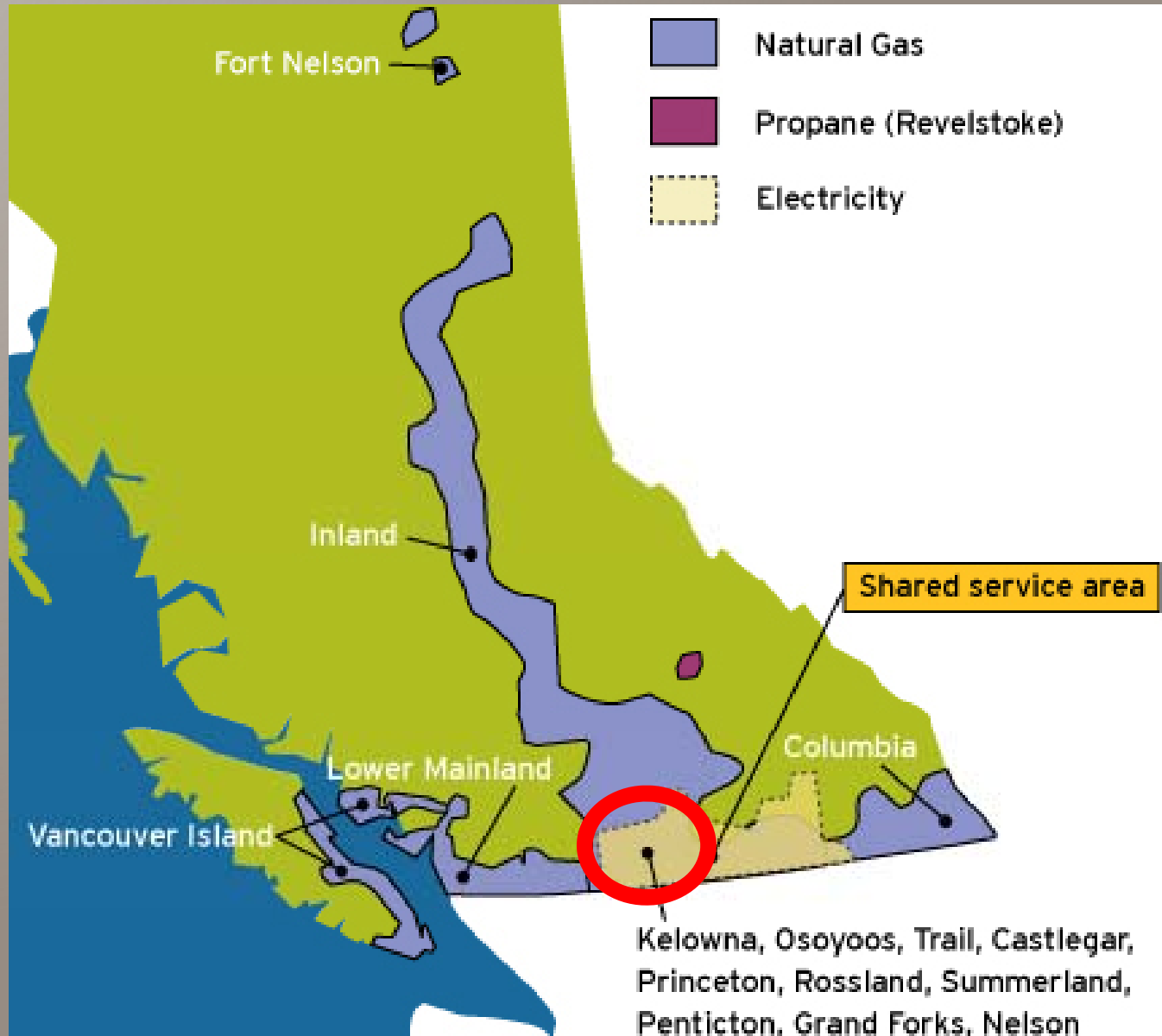
Navigation

- Rossland Energy Diet
- Election Coverage
- Megaphone
- Image Galleries
- About Rossland
- Polls
- Comics
- Crossword
- Sudoku
- Gas Prices

Customer Blog

- International/local attention
- Award winning
- Replicate to Kootenay-wide

Okanagan Energy Diet



Participant benefits

- Reduced cost energy assessments (value of \$350+)
- Energy efficiency products installed directly in the home
- Home energy efficiency rating (Energuide)
- Livesmart BC/FortisBC rebates
- On-bill financing available through FortisBC



Blower door test

15 to 50+% energy savings



Rossland participant – 60% savings
Previously their electricity bills were
greater than mortgage payment

- Homeowners have saved 50% and more on their electricity and natural gas use*
- Average savings of 15 – 28%
- More savings if install insulation and/or improve heating systems

Program timeline

- Launches in September
- ‘Ener-ventions’ (info sessions) in every community
- Complete upgrades and post-assessment March 31, 2014

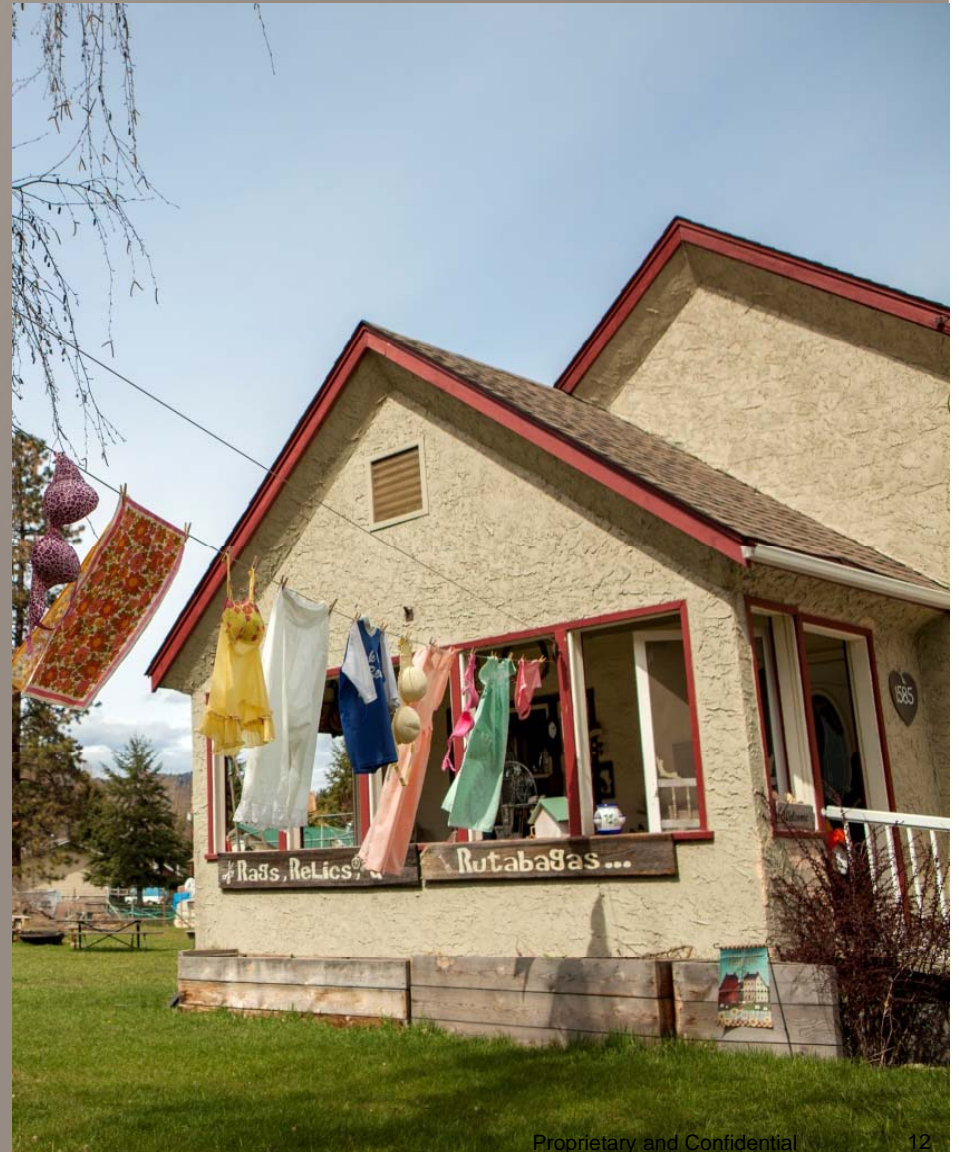


Ener-vention schedule

| Date | Community Ener-vention | | Time |
|--------------------|------------------------|---------------------------|-------------------|
| September 9 | Kelowna | Mission Creek Park | 4 – 7 p.m. |
| September 11 | Princeton | Community Skills Centre | 6 – 8 p.m. |
| September 12 | Penticton | Lakeside Resort | 6 – 8 p.m. |
| September 18 | Keremeos | Elks Lodge | 5.30 – 7.30 p.m. |
| September 23 | Summerland | Senior Drop-in Centre | 5.30 – 7.30 p.m. |
| September 25 | Oliver | Elks Lodge | 6 – 8 p.m. |
| September 30 | Osoyoos | Holiday Inn & Suites | 6 – 8 p.m. |
| October 1 | Hedley | Heritage Museum | 6 – 8 p.m. |
| October 2 | Naramata | The Centre at Naramata | 6 – 8 p.m. |
| October 8 | Okanagan Falls | Royal Canadian Legion | 5 – 7 p.m. |

Show your support:

- Participate in a challenge with other local governments
- Spread the word
- Participate personally





**For further information,
please contact:**

Peter Robinson

probinson@communityenergy.bc.ca

778-755-1778

Find FortisBC at:

Fortisbc.com



604-676-7000

Report to Council



Date: August 6, 2013
Rim No. 1200-90
To: City Manager
From: Michelle Kam, Sustainability Coordinator
Subject: Okanagan Energy Diet

Recommendation:

THAT Council receives, for information, the report from the Sustainability Coordinator, dated August 6, 2013, with respect to the Okanagan Energy Diet hosted by FortisBC.

AND THAT Council support the City of Kelowna's involvement in FortisBC's Okanagan Energy Diet Program.

AND FURTHER THAT the 2013 Financial Plan be amended to provide for the \$25,000 City contribution from the Energy Management Reserve.

Purpose:

To inform Council of the upcoming Okanagan Energy Diet and request authorization for the municipal financial commitment.

Background:

In 2012, FortisBC hosted Rossland and Kootenay Energy Diet pilot projects with the aim of increasing household energy efficiency and conservation. Due to the success of these pilots, FortisBC recently received approval to host an Okanagan Energy Diet, starting this September. This program will be offered to 1000 Kelowna households and 1000 Similkameen households (Summerland, Penticton, Naramata, Osoyoos, Oliver, Princeton, Hedley, Keremeos and Kaleden).

The Okanagan Energy Diet includes the following steps for registered participants:

- A home energy assessment is performed by a Natural Resources Canada Certified Energy Assessor and includes installation of energy efficiency products (outlet insulation, low flow shower heads, and kitchen tap aerators).
- Each homeowner receives a LiveSmart BC Energy Efficiency Evaluation Report, an EnerGuide Home Energy Rating, recommendations for retrofits and behaviour changes

to achieve energy savings, as well as information about LiveSmart BC and FortisBC rebates and the low-interest, long-amortization on-bill financing option.

- A local energy coach will follow up with homeowners to answer any of the homeowner’s questions, and to offer assistance and general encouragement. The homeowner will be encouraged to undertake energy retrofits within the next 3 month period.
- Once the energy retrofits are completed, the homeowner schedules a post energy assessment. The certified energy assessor will verify that the retrofit measures were safely and correctly installed and will provide a new EnerGuide rating for the home, thus making the homeowner eligible for rebates. The assessor will also complete all paperwork required.
- The homeowner will receive the rebates in the mail within 8 to 12 weeks.
- The homeowner will benefit from reduced energy bills.

Of the 1000 homes, it would be expected that approximately 750 would make improvements and conduct the final assessment to obtain the rebates and have their savings validated. Results of similar programs have demonstrated that those that make improvements can, on average, save 15% - 28% on energy bills.

In addition, a significant co-benefit to the project will be the employment opportunities created with the household upgrades.

This program offers Fortis and LiveSmart BC subsidies to homeowners. To further reduce homeowner costs, FortisBC is requesting in-kind and financial contributions from the City of Kelowna and other participating Okanagan municipalities. With Council’s approval, the City of Kelowna would contribute \$25 per Kelowna participant (up to 1,000 participants) from the Energy Management Reserve to help reduce participant costs through contributing towards the pre-assessment fees. The City would also help promote the program through social media. In the successful Kootenay Energy Diet program each municipality that participated contributed \$10 -\$200 per participant.

The costs and funding for the program include the following:

| Program | Cost | Funding |
|--|-------------|---|
| Pre-retrofit assessment and minor energy efficiency measures installed | \$400 | \$150 LiveSmart BC |
| | | \$190 FortisBC |
| | | \$25 City of Kelowna |
| | | \$35 Participant |
| Energy efficiencies for home | Varies | Participant, minus rebates from FortisBC and LiveSmart BC |
| Post-retrofit assessment | \$150 | Participant |

The Okanagan Energy Diet will be implemented regardless of the amount of municipal contributions. However, by contributing financially and in-kind, the City would demonstrate leadership and commitment towards meeting the Community Climate Action Plan’s energy goal to improve energy efficiency in existing buildings by reducing natural gas and electrical energy consumption in existing buildings by 3% below 2007 levels (a 6,635 tonne greenhouse gas reduction).

Internal Circulation:

Divisional Director, Community Planning and Real Estate

Director, Financial Services
Manager, Capital Assets and Investment
Senior Communications Specialist

Existing Policy:

Official Community Plan Policy 6.2.1 GHG Reduction Target and Actions:

The City of Kelowna, will, in partnership with: senior governments; local residents and businesses; NGOs; external agencies; and utility providers, work towards reducing community greenhouse gas emissions by 33% (from 2007 levels) by 2020.

Financial/Budgetary Considerations:

In September, 2007 the City of Kelowna signed the BC Climate Action Charter (CAC). By doing so, the City committed to voluntarily undertake actions to reduce both community and corporate GHG emissions. As an incentive to achieving the CAC goals, the province reimburses signatory city corporations 100% of the carbon taxes paid on energy each year under the Climate Action Revenue Incentive Program (CARIP). The reimbursement is placed into the Energy Management Reserve and used towards energy efficiency projects. Funding has previously been used for corporate and community greenhouse gas reduction projects including Climate Smart Business Training, District Energy and Rutland Arena chiller replacements.

The City's \$25,000 contribution would be funded through this Energy Management Reserve.

Communications Comments:

The City of Kelowna and FortisBC will send out a joint media release upon Council's approval of the City's involvement in the program. Further, Kelowna's logo will be included in localized advertising and/or on FortisBC's website. FortisBC also encourages the City to provide a flyer to be included in participant's packages. Finally, FortisBC is requesting the Mayor speak at their September 9 kick-off event, an "Ener-vention" where residents can find out more about the Okanagan Energy Diet program.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Personnel Implications:

External Agency/Public Comments:

Alternate Recommendation:

Submitted by:

M. Kam, Sustainability Coordinator

Approved for inclusion:



Signe Bagh, Policy and Planning Director

cc:

Divisional Director, Community Planning and Real Estate

Director, Financial Services

Manager, Capital Assets and Investment

Senior Communications Specialist

REPORT TO COUNCIL



Date: August 13, 2013
RIM No. 1210-21
To: City Manager
From: Greg Sauer, Land Use Planner

Application: A13-0009
Owner: Alexander Rezanoff
Sherwood Mission Developments Ltd., Inc. No. BC0795928

Address: 984 DeHart Road
1010 DeHart Road
Applicant: Keith Funk, New Town Planning

Subject: [Title]

Existing OCP Designation: Resource Protection Area
Single/Two Unit Residential
Multiple Unit Residential, Low Density
Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve appeal A13-0009 for an exclusion of land from the Agricultural Land Reserve for Lot 2, Section 31, Township 29, Osoyoos Division Yale District Plan KAP62654, located at 1010 DeHart Road pursuant to Section 30(1) of the Agricultural Land Commission Act; and for the inclusion into the Agricultural Land Reserve of part of Lot 1, Section 31, Township 29, Osoyoos Division Yale District Plan KAP62654, located at 984 DeHart Road, Kelowna, B.C., pursuant to Section 17(3) of the Agricultural Land Commission Act, NOT be supported by Municipal Council;

AND THAT Municipal Council forward the subject application to the Agricultural Land Commission.

2.0 Purpose

The applicant is proposing an ALR land swap (i.e. ALR exclusion in exchange for a partial ALR inclusion) using adjacent parcels to help facilitate a proposed residential development. Specifically, the applicant is requesting permission from the Agricultural Land Commission (ALC) to exclude all of the 2.19 ha subject property at 1010 DeHart Road from the Agricultural Land Reserve (ALR). In exchange for the proposed exclusion, the applicant is proposing the inclusion of a 2.19 ha portion of 984 DeHart Road into the ALR. The owner is also proposing to consolidate the proposed inclusion parcel with an adjacent parcel.

Land Use Management

An application to rezone the majority of 984 DeHart Road to the RU1 zone consistent with the City's Future Land Use designation was submitted in April of this year. Despite proposing development of 984 DeHart Road consistent with the Official Community Plan (OCP) and Sector Plan, the development is somewhat challenging for a couple of reasons.

First, while the land was excluded from the ALR in 1989 and designated residential in the City's OCP, the land remains rural/undeveloped. Although two roads end on the eastern edge of the neighbourhood, the adjacent community has enjoyed local traffic only (i.e. no thru traffic) conditions since it was developed. The result is that residents have come to expect that current conditions would persist.

Further, the subject property (i.e. 984 DeHart Road) is in a rural/urban interface area with extensive ALR exposure to the north and east. Topography and geology, including a number of natural springs also factor into site development.

City staff met with the applicant group in the spring of 2012 to provide preliminary feedback on a development proposal. Among other suggestions, City staff asked the applicant group to investigate the merits of an ALR swap with an adjacent property in hopes of arriving at a win-win solution. A win for the City in that the ALR exposure could be reduced significantly and that an access/egress point could be established at an existing problematic intersection (i.e. Swamp and DeHart Road) and that intersection upgraded as part of this development¹. In terms of possible benefits to the owner, it was expected that 1010 DeHart Road would provide for improved access to DeHart Road and the opportunity to provide view lots may be of greater economic value.

The agricultural capability of the two properties was unknown at the time of this meeting, but it was assumed that the two properties would be of similar capability. While staff recommended the applicant/owner investigate the swap, support was conditional on a proposal which demonstrated no net loss to agricultural capability and ideally a net benefit.

A rezoning application was received for 984 DeHart Road earlier this year, but the land swap was not contemplated. The proposed development was poorly received by the local community who primarily noted distaste for a proposed transportation scheme which proposed to route all of the traffic through the existing community with no access/egress proposed for DeHart Road. The applicant's Transportation Impact Assessment concluded that the DeHart Road intersection at Bartholomew Court required improvements, while the Turner Road option met their needs.

The applicant team reconsidered transportation options following initial public consultation. Included was a reconsideration of the ALR swap suggested by staff in 2012. Staff remained conditionally supportive of the ALR swap for the reasons noted earlier.

Given that the proposed swap required ALC approval, staff provided professional advice based on experience dealing with the Commission and what would be necessary to satisfy City objectives. Staff identified that an Agricultural Capability Assessment was necessary to determine the agricultural value of both the proposed inclusion and exclusion parcels. Staff also advised that parcel consolidation is among the most desirable forms of compensation. During this meeting the owner and agent agreed to consolidating two of his lots and adding the proposed inclusion land (~2.19 ha) to these lots. The result was a single ~31.7 hectare parcel. A concurrent benefit was the creation of a much more normal shaped parcel compared with the oddly shaped parcels which exist today.

¹ Despite a difference in opinion with the owner, City staff have never committed to funding the infrastructure upgrades in exchange for land dedication.

An application for ALR Inclusion/Exclusion was received on June 21. The application proposed a 1:1 land swap and included the lot consolidation as discussed, but the Agricultural Capability Assessment was not yet complete. Staff received the Assessment on July 8 which was not consistent with expectations (see Section 4.1 below and attached). The Assessment concluded that the proposed exclusion parcel is high quality agricultural soil and highly suitable for agriculture, while the proposed inclusion parcel is substantially lower quality and requires significant management to support basic crops.

The applicant submitted a revised application on July 10 prior to the July 11 AAC meeting. The revised proposal included a consolidation of the proposed inclusion with just one parcel (i.e. $10.19 + 2.19 = 12.38$ ha) versus a consolidation of two parcels with the proposed inclusion (i.e. $19.33 + 10.19 + 2.19 = 31.7$ ha).

AAC members considered the proposal on July 11 following a site visit on July 10. The agrologist discussed the highly variable soil conditions, the impediments to improving the inclusion land (e.g. presence of salts and fluctuating water table) and the climate conditions (i.e. excellent air drainage vs. frost pocket). The agrologist observed that soil and groundwater conditions make soil improvements on the proposed inclusion parcel challenging.

The AAC struggled to identify how the revised proposal reflected “no net loss” to agricultural capability given the Assessment. While the AAC recognized the benefit from an urban development perspective (e.g. improved transportation network), they were not convinced the agricultural impacts were neutral. After considerable deliberation the AAC recommended that Council support the proposed swap, with the condition that they were supporting the initial proposal which included the three parcel consolidation (see Section 7 below) and not the two parcel configuration currently being proposed by the applicant.

Staff have carefully assessed the merits of the proposal in coming to a position of non-support. The results of the Agricultural Assessment and the change to the consolidation from three to two lots are game changing. While staff were hopeful that the swap could result in wins for the City, adjacent community and applicant, staff are no longer convinced that this objective can be achieved. As proposed, a 2.19 hectare (~5.4 acre) “high quality²” agricultural parcel would be developed in exchange for a much less capable parcel of the same size. While the parcel would be appended to an existing ~10.2 hectare parcel, the result would be a larger parcel, but one with limited agricultural capability in terms of soils, climate and ease of farming (i.e. the parcel configuration is/would be inefficient).

As proposed, the primary benefit is the reduction in ALR interface which is expected to drop by ~45% (from ~895 metres to ~500 metres). Although this benefit is considerable, staff do not believe that the reduction in ALR interface sufficiently offsets the permanent loss of Prime agricultural land. While less ideal, the ALR interface can be managed by way of a vegetated landscape buffer on the urban development lands.

In terms of the transportation network, the City hopes to make intersection improvements at DeHart & Swamp Road in the future. Doing so was not, however, ranked as a high priority capital project for Transportation Planning staff. The alternative to all vehicular traffic entering and exiting the proposed development via Turner Road would be the provision of access to DeHart Road from 984 DeHart Road as per the conceptual planning. Doing so may require transportation improvements (e.g. intersection at Bartholomew Court) as a condition of rezoning and which would be funded by the developer.

In sum, the consideration of the land swap was worthwhile and has merit from a community planning perspective. Staff would be in a position to support this given an improved approach to

² James Calissi (2013). Agricultural Soils Classification Assessment for 984 DeHart Road and Adjoining Property.

mitigation and compensation. However, the owner advises that he will no longer agree to the original consolidation citing estate planning.

3.0 Background

The approximately 9.4 hectare property at 984 DeHart Road was formerly located within the Agricultural Land Reserve (ALR), but excluded from the Reserve in 1989 (see Map 1). Following exclusion of the land, City policy documents³ were revised to reflect the non-ALR status, and designated the property for future urban development. The current Official Community Plan (OCP) shows the subject property at 984 DeHart Road as having residential development potential with a mix of "Single/Two Unit Residential" and "Multiple Unit Residential, Low Density" (see Map 2).

A rezoning application proposing to rezone the majority of the property to the RU1 zone consistent with the City's Future Land Use designation was submitted for 984 DeHart Road in April. The northern (~4.3 hectare) portion of the property which is designated for multi-family residential was not proposed for development at this time⁴. Rather, it was proposed that this portion would remain zoned for agriculture.

The applicant and owner met with the City's Development Review Team on May 17, 2012 prior to submitting for rezoning. Among other considerations, City staff suggested that the applicant team consider an opportunity to achieve concurrent benefits to the design of the community and the improvement of agriculture through an ALR land swap⁵.

The rezoning application presented to the City in April 2013 did not reflect the potential land swap. Largely as a result of early public engagement conducted as part of the 984 DeHart Road rezoning application, the applicant team reconsidered development options including the swap. The proposed rezoning met significant neighbourhood resistance as vehicular access was proposed through an existing, well established community to the west via Turner Road. At a conceptual level, the North Mission/Crawford Sector Plan showed vehicular access to DeHart Road in addition to Turner and Torrs Roads (see attached).

The rezoning application has been placed on hold subject to the ALC decision which is expected later this year.

3.1 Site Context

The subject properties are located in the North Mission-Crawford Sector on the north side of DeHart Road and east of Gordon Drive. The western property is severed by an 18 metre FortisGas right-of-way running SW to NE (see Map 3). The two adjacent properties have a total combined area of approximately 11.6 hectares with elevations in the range of 345 and 373 metres. Slopes on the properties range between relatively flat and quite steep, but overall, 984 DeHart Road is much flatter than is 1010 DeHart Road.

The subject properties are located within the planning area established by the North Mission & Crawford Sector Plan (1997). The Sector Plan states *"the natural environment defines the physical character of the North Mission & Crawford Sector, and shapes the community's sense of place. The elements which form that natural environment include environmentally sensitive areas, hazardous lands, watercourses, steep slopes, significant vegetation and other natural*

³ Examples include the North Mission & Crawford Sector Plan (1997) and the past couple of Official Community Plan's (OCP) including the current OCP 2030.

⁴ The multi-family residential use allows for up to three storeys of housing in an array of forms including row housing, townhouse or apartment.

⁵ The opportunity exists as a result of the co-owner of the 984 DeHart Road property owning the adjacent 1010 DeHart Road parcel.

areas". The Sector Plan language is consistent with the subject parcels as the parcel does contain environmentally sensitive areas (pockets of ESA1 - High Value), hazardous lands, watercourses, hillside conditions and significant vegetation.

984 DeHart Road is currently zoned A1 - Agriculture, is not in the ALR and represents an agricultural interface abutting an existing large lot residential development (RU1 zone) to the west and ALR exposure on a number of edges. ALR edge/exposure is estimated at 890 metres. As per the Sector Plan, existing residential development appears to have anticipated future residential development at 984 DeHart with two road endings (Turner and Torrs Roads) terminating at the western property line. To the south is a residential neighbourhood consisting of large lot housing separated from the subject properties by DeHart Road.

1010 DeHart Road is also zoned A1, but is in the ALR. 1010 DeHart Road borders the proposed development property at 984 DeHart Road and accounts for approximately 266 metres of the ALR exposure along the western edge.

An environmental assessment (EA) was prepared in support of the 984 DeHart Road rezoning⁶. The EA notes that the subject property is in a "drainage receiving position. As a result of this slope position six springs are known in the immediate area of 700 meters distance". Six known springs are in close proximity to the subject property including two springs of note, Ahern and Cowan, which are currently licensed by the Province with access across the subject property dating back to 1944⁷. Access to these springs by licensees has been impeded by the landowner as a result of ditching on the subject property. The water licence owners (Thomson Farm) are expressing a desire to regain access and usage to the spring water.

Natural vegetation is restricted to the subject properties edge along modified drainage channels - ditching⁸. Most of the ditching was established between 1992 and 2000. Prior to this the subject property was partially vegetated naturally with the remaining agricultural (orchard). The subject property appeared to be cleared of all vegetation and drainage channels established in 2000 and subsequently modified several times with earth movement/filling, drainage ditching and detainment. Re-vegetation was toward cultivated field for grazing purposes (sheep) which has been the recent agricultural activity on this site. The applicant states that both properties are currently being farmed for hay.

Parcel Summary

984 DeHart Road (Proposed Inclusion)

Parcel Size: 9.37 Ha (23.1 ac)
Elevation: 345 - 369 masl

1010 DeHart Road (Proposed Exclusion)

Parcel Size: 2.19 Ha (5.43 ac)
Elevation: 351 - 373 masl

Agricultural Capability

The two subject properties are comprised of a number of soil capability units (see Land Inventory maps attached). The majority of 1010 DeHart (proposed exclusion) was identified as 100% Class 4 with soil moisture deficiency as a limiting factor improved to 60% Class 2 and 40% Class 1. The remainder is thought to be improvable to Class 3 with soil moisture deficiency, stoniness and topography as limiting factors.

⁶ Makonis Consulting Ltd. (2013). DeHart Road Environmental Assessment.

⁷ Ibid.

⁸ Ibid.

The portion of 984 DeHart Road proposed for inclusion was mapped mostly as 80% Class 4 and 20% Class 5 with excess water improved to 80% Class 2 and 20% Class 3 with inundation and excess water as limiting factors. The remainder was thought to be 70% Class 6 with excess water and soil salinity, 30% Class 4 with soil moisture deficiency improved to 70% Class 4 with excess water and 30% Class 1.

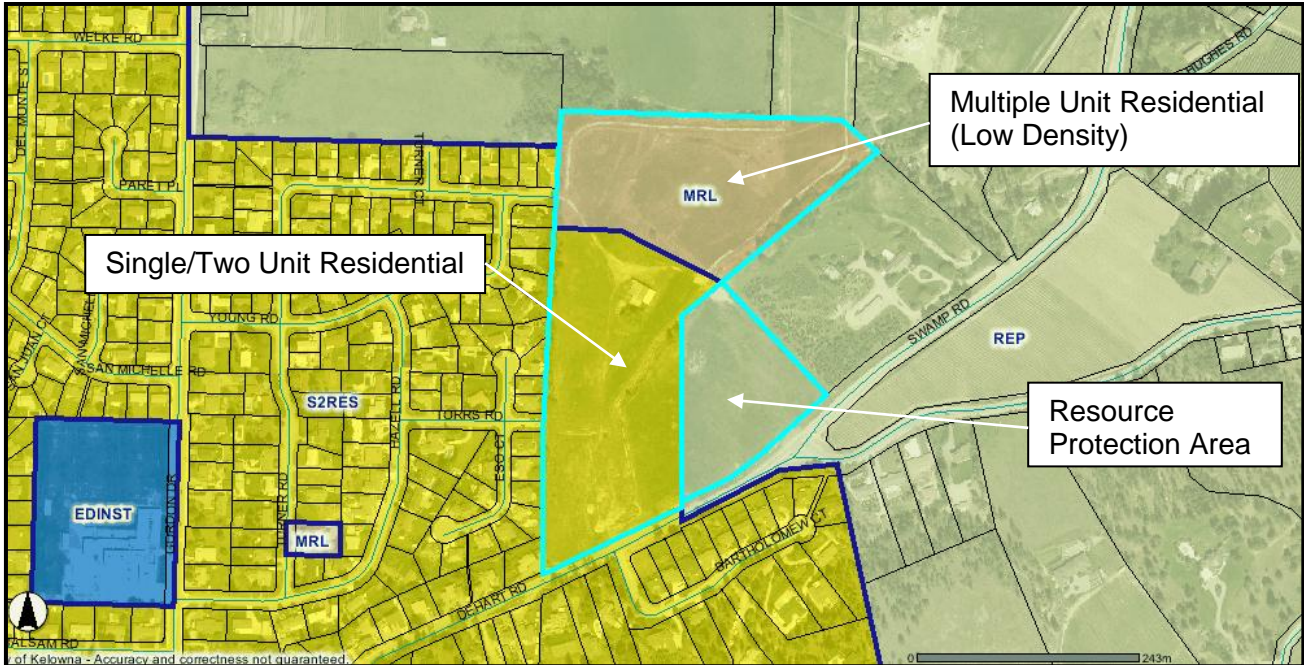
An agricultural assessment was prepared by a qualified professional (i.e. Professional Agrologist) and submitted just prior to the AAC meeting in July. A comparative analysis of the properties for inclusion and exclusion concluded that:

- The two parcels are substantially different in soils and climate capability.
- The proposed exclusion parcel is high quality agricultural soil, suitable for growing a range of crops. In previous times the land supported an orchard and is highly suitable for such agricultural activities, including vineyard.
- The proposed inclusion parcel is substantially lower quality from an agricultural perspective and will require significant management to support basic crops such as oats.
- Cattle-grazing on the proposed inclusion parcel is limited due to poor growth of grasses and equestrian activities may be limited due to the wet nature of the soil and the risk of injury to the animals.
- The climate of the proposed inclusion parcel is a lower grade than the exclusion property due to its low lying nature and precludes the use of winter sensitive perennial crops, such as fruit crops and grapes.
- In its unimproved state the proposed inclusion parcel has the potential to support high valued non-soil type agriculture such as greenhouses and ornamental container production.
- The inclusion land has the potential for agricultural improvements to the soils, which would significantly increase its value from an agricultural perspective, however the calcareous-nature of the soil will continue to present cropping challenges, even with improvements.

Map 1 - ALR Map



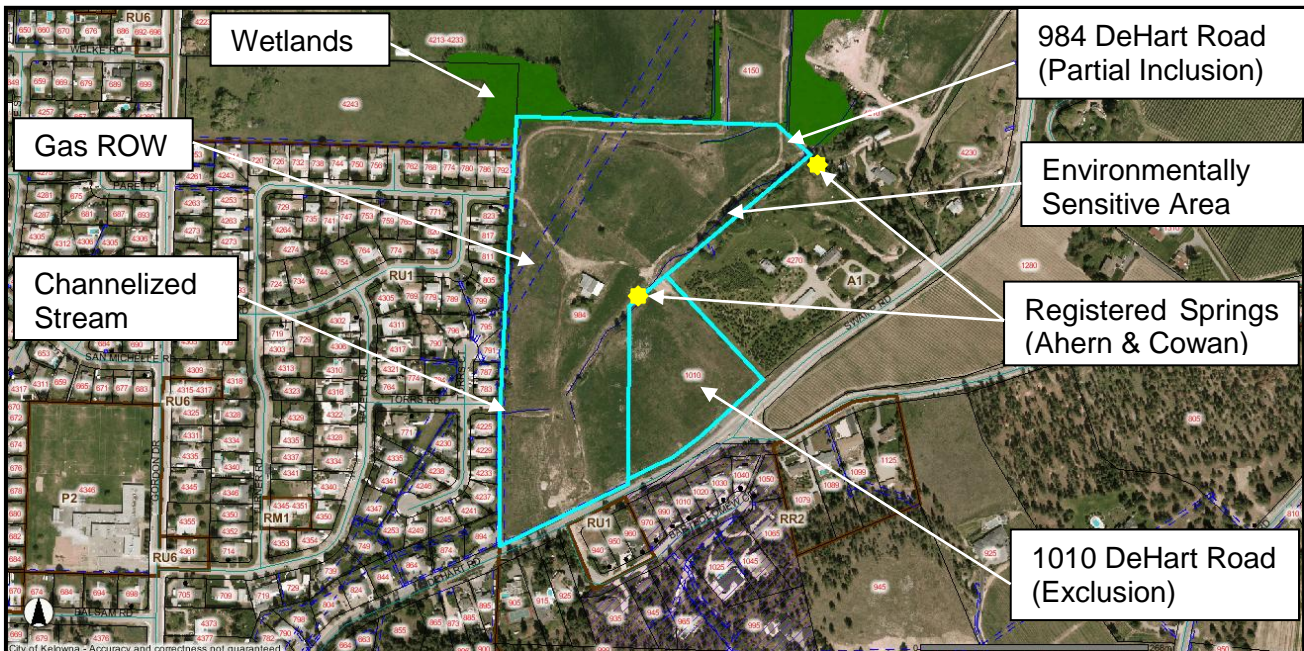
Map 2 - Future Land Use Map - 984 & 1010 DeHart Road



Zoning and land uses adjacent to the property are as follows:

| Direction | Zoning | ALR | Land Use |
|-----------|-------------------------|-----|---------------------|
| North | A1 - Agriculture 1 | Yes | Rural/ agricultural |
| East | A1 - Agriculture 1 | Yes | Rural/ agricultural |
| South | RU1 - Large Lot Housing | No | Residential |
| West | RU1 - Large Lot Housing | No | Residential |

Map 3 - Subject Properties Map - 984 & 1010 DeHart Road



3.2 Proposal

The purpose of this file is to consider a land swap. Proposed is the exclusion of all of 1010 DeHart Road (~2.19 ha) from the ALR. In exchange, the applicants are proposing to include 2.19 ha in the NE portion of 984 DeHart Road into the ALR. That is the swap would be at a 1:1 ratio.

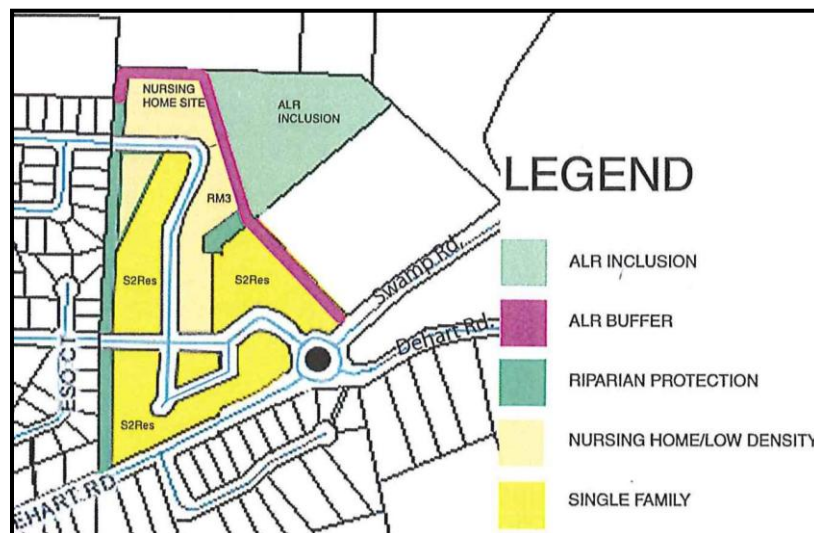
In addition to the swap, the owner of 1010 and co-owner of 984 DeHart proposes to consolidate the 984 DeHart Road inclusion land with one adjacent parcel (4210 Swamp Road) to the north (see Map 5 below). If consolidated, the new parcel would be a single ~12.4 hectare parcel.

Map 5 - Proposed Consolidation



The swap and consolidation are in support of a proposed residential development at 984 DeHart Road. If permitted by the ALC, the rezoning proposal will be revised to include 1010 DeHart Road. Figure 1 shows a conceptual land use plan including road network. A traffic circle is being shown at Swamp and DeHart Roads with additional access via Turner and Torrs Roads.

Figure 1 - Conceptual Land Use Plan



The concept plan includes multi-family (low density) on a portion, with the remainder lower density, single family housing. The applicant has shown the multi-family site to include a “Nursing Home Site”, though the proposed land use does not require this.

The proposal also shows a riparian area on the western portion of 984 Dehart Road and water from the above-noted springs will be conveyed through the proposed inclusion area. An ALR buffer is shown along the ALR interface area, though the width and details have not been proposed at this time.

4.0 Current Development Policies

4.1 Kelowna Official Community Plan (OCP)

Objective 5.33 Protect and enhance local agriculture⁹.

Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

ALR Exclusions. The City of Kelowna will not forward ALR exclusion applications to the ALC except in extraordinary circumstances where such exclusion is otherwise consistent with the goals, objectives and other policies of this OCP. Soil capability alone should not be used as justification for exclusion.

Farm Protection DP Guidelines¹⁰

1.3 On agricultural and non-agricultural lands, establish and maintain a landscape buffer along the agricultural and/or property boundary, except where development is for a permitted farm use that will not encourage public attendance and does not concern additional residences (including secondary suites), in accordance with the following criteria:

1.3.1 Consistent with guidelines provided by Ministry of Agriculture “Guide to Edge Planning” and the ALC report “Landscape Buffer Specifications” or its replacement;

1.3.2 Incorporate landscaping that reinforces the character of agricultural lands. A majority of plant material selected should include low maintenance, indigenous vegetation;

1.3.3 Preserve all healthy existing mature trees located within the buffer area;

1.3.4 Integrate double rows of trees, including coniferous trees, and dense vegetation into the buffer;

1.3.6 Utilize where appropriate, roads, topographic features, watercourses, ditching, no-build areas, vegetated and fenced barriers as buffers to preserve larger farm units and areas from the gradual encroachment of non-agricultural uses. Where appropriate use statutory covenants to ensure that buffers are established and maintained.

1.4 On non-agricultural lands, design developments to protect the required landscape buffer from potential negative impacts related to on-site activities (i.e. drainage, recreational pathways, driveways);

1.5 Design any subdivision or urban development of land to reduce densities and the intensity of uses gradually towards the boundary of agricultural lands;

1.6 Incorporate subdivision design that minimizes potential negative impacts that may occur between farm and non-farm users (i.e., avoid road endings or road frontage next to agricultural land);

⁹ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

¹⁰ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Farm Protection DP Chapter; p. 15.3 - 15.4.

1.7 *Require statutory covenants on non-agricultural land at subdivision to notify landowners that “normal farm practices” occur in close proximity.*

4.2 City of Kelowna Agriculture Plan

*ALR Application Criteria*¹¹

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

*Urban - Rural/Agricultural Boundary Policies*¹²

Urban Buffers. Require new development, adjacent to agricultural areas, to establish setbacks, fencing and landscape buffers on the urban side of the defined urban - rural/agricultural boundary.

5.0 **Technical Comments**

5.1 Subdivision Approvals

No concerns with ALR application at this time. If approved by the ALC then a Preliminary Layout Review application will be required to address the subdivision, servicing and zoning bylaw requirements.

5.2 Development Engineering Department

No comments.

6.0 **Application Chronology**

Date of Application Received: June 21, 2013

Agricultural Advisory Committee July 11, 2013

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on July 11, 2013 and the following recommendations were passed:

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve appeal Application No. A13-0009 for 984 DeHart Road/1010 DeHart Road to obtain permission from the Agricultural Land Commission to exclude 2.19 ha at 1010 DeHart Road from the Agricultural Land Reserve in exchange for including 2.19 ha at 984 DeHart Road into the Agricultural Land Reserve.

Anecdotal Comments:

While the AAC supported the proposed swap, they wished to express that their decision to recommend that Council support this application was difficult. In particular while it was easy to understand the benefit for the community in terms of transportation, it is much more difficult to quantify the benefit to agriculture as positive, especially given the superior agricultural capability of the proposed exclusion property relative to the portion to be included.

The AAC felt it was important to note specifically that:

- while giving support to the proposed land swap, the original proposal which resulted in a three lot consolidation versus the amended proposal which proposes a two lot consolidation was much preferred;

¹¹ City of Kelowna Agriculture Plan (1998); p. 130.

¹² City of Kelowna Agriculture Plan (1998); p. 131.

- City Council understand that there are drainage issues in the area bound by DeHart, Swamp and Gordon Roads which were not resolved through the development of the Mission Recreation Park as was anticipated. The drainage issues continue to negatively affect the agricultural viability of agricultural land in this area;
- a future lot line adjustment/lot consolidation should provide for more uniform parcel shapes that are more easily farmed compared with what currently exists to the north of the proposed development parcel (i.e. 4150 & 4210 Swamp Road); and,
- a Right-of-Way should be registered on the lands to ensure that licensed water rights are provided to downstream water license holders (e.g. Thomson Farm) and that the land owner should retain water rights from South-East Kelowna Irrigation District (SEKID) for the land proposed for inclusion into the ALR.

7.0 Alternate Recommendation

THAT Agricultural Land Reserve appeal A13-0009 for an exclusion of land from the Agricultural Land Reserve for Lot 2, Section 31, Township 29, Osoyoos Division Yale District Plan KAP62654, located at 1010 DeHart Road; and for the inclusion into the Agricultural Land Reserve of part of Lot 1, Section 31, Township 29, Osoyoos Division Yale District Plan KAP62654, located at 984 DeHart Road, Kelowna, B.C., pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Municipal Council;

AND THAT Municipal Council recommend that the exclusion of 1010 DeHart Road from the ALR be conditional on the registration of a right-of-way to ensure that licensed water rights are provided to downstream water license holders;

AND THAT Municipal Council recommend that the water rights from the proposed exclusion lands be transferred to the land proposed for inclusion;

AND FURTHER THAT Municipal Council forward the subject application to the Agricultural Land Commission.

Report prepared by:

Greg Sauer, Land Use Planner

Reviewed by: Todd Cashin, Manager, Environment & Land Use

Approved for Inclusion: Shelley Gambacort, Director, Land Use Management

Attachments:

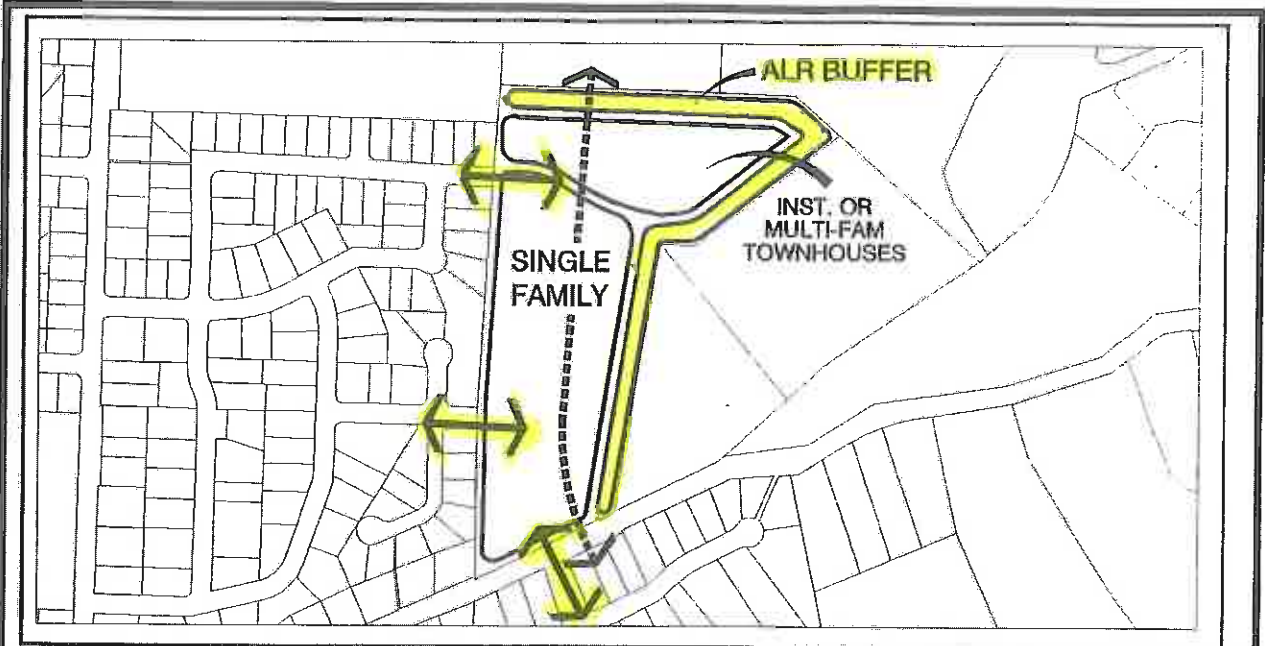
- Site Photos
- Subject property/zoning & ALR map (2 pages)
- North Mission/Crawford Sector Plan Illustrative Concept (1 page)
- Canada Land Inventory - Land Capability and Soil Classification (2 pages)
- Letter of Rationale (4 pages)
- Agrology Report (6 pages)

Photo 1 - Canal-channel dug along eastern property boundary as water catchment for SEKID out flow, located near telephone pole in photo, and Ahern Spring.



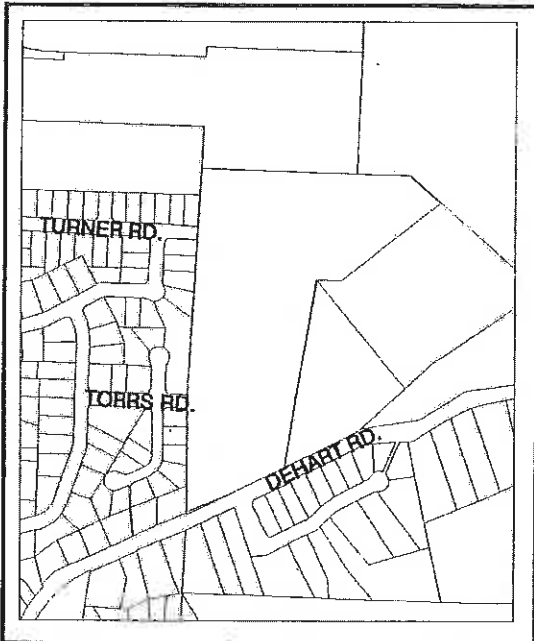
Photo 2 - Looking south from the central portion of the subject property. The area has been used to graze sheep for several years.





Illustrative Concept

LEGEND: (---) PEDESTRIAN CONNECTION (—) VEHICULAR CONNECTION

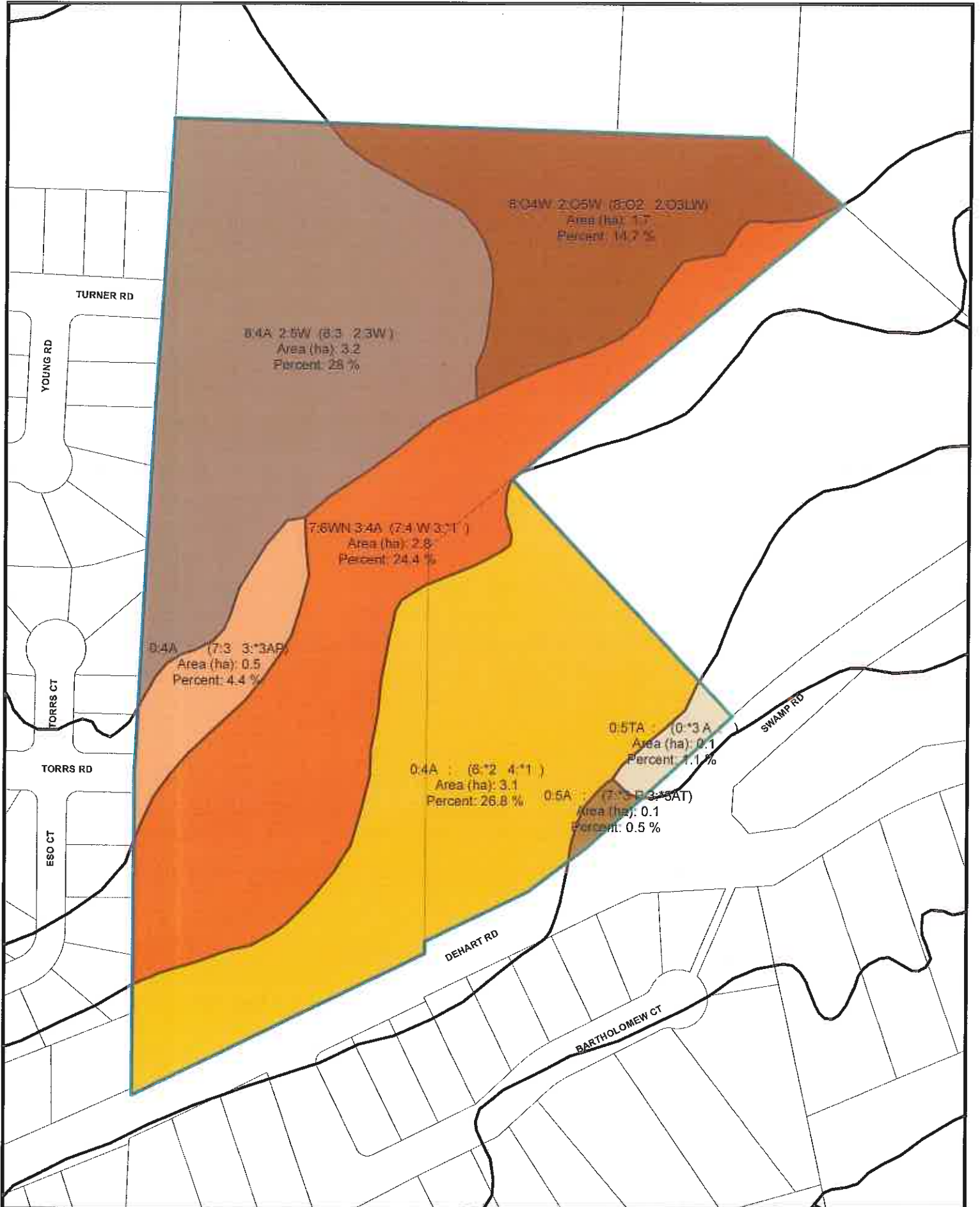


Site Location

- ALR buffer strip placed along the boundary of site.
- Single family residential development on lower portion of site, and on upper portion fronting Dehart Road.
- Institutional (seniors home) or multiple family in the form of townhouses at the northern portion of the property.
- Vehicle circulation to provide interconnection with Turner Road, Torris Road and Dehart Road.
- Linear trail/ pedestrian circulation to be provided, as part of future trail connection from Mission Ridge Escarpment to Mission Creek Sportsfields.
- Geotechnical analysis will be required to review soils analysis and development impacts on local springs.
- Consideration must be given to the future re-alignment of Swamp Road as part of any development application.

Development Criteria

Land Capability = Brown/ Soil Class = Green



Land Capability = Brown/ Soil Class = Green



ALR EXCLUSION / INCLUSION APPLICATION RATIONALE

Between 1010 & 984 Dehart Road, Kelowna BC.

Exclusion: Lot 2, Plan KAP62654

Inclusion: Lot 1, Plan KAP62654

BACKGROUND

The motivation for this application is a result of a development application on an adjacent property that has resulted in the City of Kelowna preferring to resolve an existing road design fault. Implementing the improvement will impact an ALR designated property. To mitigate the impact on agricultural property and to support the mandate of the ALC, the applicant is proposing to include an equal amount of land for the property being excluded. Additionally, the applicant owns several ALR properties within the area and is offering to consolidate them into a single larger farming unit.



ALR Exclusion / Inclusion Context Plan



ALR Lot Consolidation Plan





Potential Development Site
(Green Outline of Development Site)

Proposed Development Site (Conditional on ALC Endorsement)

SITE CONTEXT

This property is at the edge of the City of Kelowna’s urban containment boundary. City Staff generally would not direct an applicant to amend the containment boundary nor offer assistance in making an application to amend the ALR. However, the existing intersection of Dehart and Swamp Roads is poorly constructed and is a significant safety concern to motorists. The property to the east and south of the proposed development site is presently developed with single family detached housing but lacks ALR buffers.

PROPOSED EXCLUSION / INCLUSION

The properties proposed for exclusion and inclusion are equal in size at 2.194ha. Both are farmed for hay. The exclusion of Lot 2, Plan KAP 62654 is to be balanced with the inclusion property to result in a no-net-loss of ALR within the City of Kelowna.



The ALR property exchange is based on the area balancing approach. Both properties are very suitable for agriculture.

Lot 1, Plan KAP62654 (Part) - Inclusion

Lot 2, Plan KAP62654 – Exclusion

City’s Round-About Location



PROPOSED ALR LOT CONSOLIDATION

As the application is being advanced with a no-net-loss balanced approach of the ALR acreage in the exchange, we also propose to improve the function of BC agriculture with another benefit. We believe it is in the collective interest to create, through amalgamation of 2 separate ALR titles, one larger and more functional farming unit will contribute to farm viability. The proposed titles for amalgamation are:



Lot 2, Plan 5661 (10.19ha approx.) is encased within ALR and has a small frontage to Swamp Road.

Part - Lot 1, Plan 62654 (2.194ha approx.) is the exchange property for the land requested for relief from the regulations under the Land Reserve Act.

RESIDUAL BENEFITS IF SUPPORTED

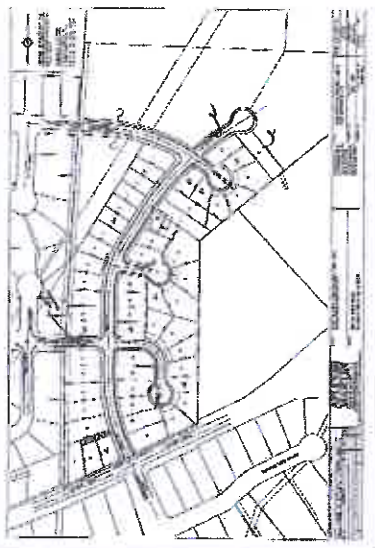
1. **REDUCED URBAN TO FARM INTERFACE** - the existing ALR interface is 895.28 meters in length while the proposed interface between the existing and proposed ALR excluded property drops by 45% to approximately 500 meters. This reduction in urban containment boundary exposure is a benefit to both agriculture and urban uses.
2. **LARGE SCALE AGRIBUSINESS OPPORTUNITY** - an agriculture dedicated land unit with a net area of approximately 12.38 hectares (30.6 acres) could be large enough to attract a major food producing operation such as greenhouse or high production ground crops. This area has abundant water and suitable for geothermal energy systems.
3. **IMPROVED PUBLIC SAFETY** – the intersection of Dehart and Swamp is subject to significant traffic. The movement is hampered as a result of Swamp Road intersecting



with Dehart at a very acute angle. As a result, visibility is reduced and a significant traffic hazard has resulted. The impetus to make the ALR application is driven by this issue as it is that important to the City of Kelowna. If approved, the intersection will be transformed to a traffic round-about by the City.

DEVELOPMENT BACKGROUND

EXISTING APPLICATION



The proposal advanced to the City is to develop the existing non ALR parcel for a combination of single detached homes and a nursing home with town-homes. The net yield is in the range of 200 units. One option provides an access to Dehart Road west of the proposed new intersection with Swamp Road. This approach is a back-up plan should the ALC not support this application as proposed.

CITY REQUESTED AMENDMENT



The intersection improvement is a significant benefit to all motorists including farm vehicle traffic. The creation of the traffic round-about would ultimately be the request from the municipality which would then impact ALR land base for additional road right-of-way. If the exchange is endorsed by the ALC, the needed land for road will come from non ALR.



Agrology Report

Agricultural Soils Classification Assessment for 984 DeHart Road and Adjoining Property

Prepared for:

New Town Planning Services Inc.
1464 St. Paul Street
Kelowna, BC
V1Y 2E6

July 3, 2013

Prepared by:

James Calissi,
B.Sc, M.Sc., P.Ag.
Calissi Farms Inc.
3810 East Kelowna Road
Kelowna, BC
V1W 4H2

Scope

New Town Planning Services Inc. has engaged James Calissi P.Ag of Calissi Farms Inc. to prepare an agrologist's report concerning a proposal to remove land from the Agricultural Land Reserve. In exchange for the removal of the ALR land, an adjacent property has been proposed to be added into the ALR.

From this, Calissi Farms Inc. proposed to compare the soil characteristics and climate and agricultural capability of the inclusion and exclusion lands.

Site Descriptions:

Exclusion Property

The property desired for exclusion from the ALR is located in Kelowna immediately north of the intersection of DeHart and Swamp roads. Adjacent to and east of the property is a conifer nursery. To the west is vacant that is not contained within the ALR. Immediately adjacent to the south of Swamp road is a vineyard.

The land is irrigated and water is sourced from the South East Kelowna Irrigation District.

There are three main soil types on the property according to map 82E.083 of the Soils of the Okanagan and Similkameen Valleys. The top 1/3 (south-most) portion of the property is 60% Kalamoir soil and 40% Gellatly soil. The bottom 2/3 (north-most) portion of the property is mostly Gellatly soil with a small amount of Summerland (less than 5%) at the north end of the property. The land slopes to the north with 5 to 15% slopes. The land has the ability to be drained if necessary since there is a sharp three meter drop at the bottom end of the property, with a drainage ditch at the bottom of the drop-off.

Kalamoir soils have developed to a loamy eolian veneer over glaciolacustrine sediments and consist of stratified layers of silt and sandy materials. The soils are well drained and have moderate to low water holding capacity. Kalamoir soils with less than 20% slope are well suited for most agricultural crops.

Gellatly soils have developed into a moderately coarse to medium textured fluvial veneer between 10 and 50 cm. They tend to be loamy to sandy loam. The soils are well drained have a high water holding capacity and are suitable for a wide range of agricultural crops.

Summerland soils are lake bed type soils that have developed in medium to moderately fine textured, calcareous and saline glaciolacustrine sediments. They tend to be silty loam or silty clay in texture and are poorly drained on the tops in some situations. They

have a high water holding capacity. To be suitable for agriculture they must be properly drained to remove excess water and salts.

The climate capability of the property is high, class 1b to class 1c. This offers greater than 150 frost free days and 1700 to 2225 growing degree days. The land is suitable for the production of high valued horticultural crops such as tree fruits, grapes and vegetables. The elevation is 360 to 370 meters. The slope of the property offers air drainage and supports the high climate capability since cold air is able to drain from the property during spring frost and winter conditions.

The agricultural capability is rated 40% Class 1 and 60% Class 2 – with irrigation (6:2A 4:1), according to the Land Capability for Agriculture of the Okanagan and Similkameen Valleys map 82E.083. The lower rating on the class to land is due to low soil water holding capacity. Without irrigation the land is 100% Class 4 (4A) due to lack of precipitation and soil water holding capacity.

Class 1 land is considered to have no or slight limitations for agriculture. Productivity is easily maintained on a wide range of crops.

Class 2 land is considered to have minor limitations that require good, ongoing management. Crop ranges are slightly restricted. Productivity is considered less than Class 1 land but crops can be managed with little difficulty.

Class 4 land is considered to have limitations which make it suitable only for a few crops or the yield for a wide range of crops is low or the risk of crop failure is high, or the soils conditions are such that special development and management practices are required.

Inclusion Property

The property proposed for inclusion is adjacent and north east of the exclusion property. The property is lower in elevation and flat, with no air drainage. The water table is naturally near the surface of the land, and the property has drainage ditches on all sides. Even with drainage, the land appears to only support minimal grass cover and sedges. There is a bog on the neighbouring property to the south east.

The soils are 80% Rumohr and 20% Kendal according to map 82E.083 of the Soils of the Okanagan and Similkameen Valleys. The slope of the land is 0.5% to 2%, which is near to flat.

Rumohr soils developed under wet conditions into mesic organic material between 20cm to 60cm in depth. These soils are poorly drained and exist in situations with highly fluctuating groundwater table conditions. Properly drained, the soils are suitable for hay production but also for narrow range of vegetable crops. Portions of these soils are further limited by strongly calcareous in the subsurface below 30 centimeters.

Kendall soils have developed into organic deposits between 40 cm and 160 cm in depth. The surface layer is partially decomposed and consists of sedges, reeds and shrub remains. The soils are very poorly drained and have a high water holding capacity and slow surface runoff. The water table is generally 50 cm or less below the surface. Kendall soils are generally severely limited for agriculture by the high water table and are mostly used for grazing, hay production and some vegetables -- if drained.

The climate capability for agriculture is class 1a. Growing degree days are between 1505 to 1779, with 120 to 150 frost free days. The land has poor air drainage, and the climate cannot support perennial fruit crops or grapes due to the risk of cold air settling during cold winter months and during sensitive spring blossom periods. The land is 350 meters in elevations, less than 10 meters above Okanagan Lake. The land is suitable for non-soil agriculture, such as containerized ornamental seedlings of hardy ornamentals or greenhouses.

The agricultural capability of the inclusion land is 80 % Class 2 and 20% Class 3 (802W 203LW) land with improvements made to drainage and permeability. Without improvements the land is 80% Class 4 and 20% Class 5 (804W 205W) due to the excess soil moisture. The agricultural capability map classifies these soils as organic in nature. In its current state I would classify the land as unimproved.

Class 2 land is considered to have minor limitations that require good, ongoing management. Crop ranges are slightly restricted. Productivity is considered less than Class 1 land but crops can be managed with little difficulty.

Class 3 land has limitations that require moderately intensive management practices or moderately restrict the range of crops or both. Land management practices are more difficult to maintain than those on Class 2 land.

Class 4 land is considered to have limitations which make it suitable only for a few crop, or the yield for a wide range of crops is low, or the risk of crop failure is high, or the soil conditions are such that special development and management practices are required.

Class 5 land has limitations that restrict its capability of producing perennial forage or other specially adapted crops. Class 5 lands can be used for cultivated field crops provided unusually intensive management is employed and/or the crop is particularly adapted to the conditions.

Summary

The two parcels are substantially different in soils and climate capability. The parcel proposed for exclusion is high quality agricultural soils, suitable for growing a range of

crops, provided the land is irrigated – which it is. In previous times the land supported an orchard and is highly suitable for such agricultural activities, including vineyard.

The land proposed for inclusion is substantially lower quality from an agricultural perspective. The soils currently support native grasses and sedges, and will require significant management to support basic crops such as oats. Cattle- grazing is limited due to poor growth of grasses and equestrian activities may be limited due to the wet nature of the soil and the risk of injury to the animals. The climate is a lower grade than the exclusion property due to its low lying nature. This precludes the use of winter sensitive perennial crops, such as fruit crops and grapes. The property in its unimproved state does have the potential to support high valued non-soil type agriculture such as greenhouses and ornamental container production.

The inclusion land has the potential for agricultural improvements to the soils, which would significantly increase its value from an agricultural perspective. If improvements are made in the form of drainage and irrigation, the land will support some higher valued vegetable crops. These crops required less than 120 frost free days for production, and limited growing degree days, depending on the vegetable crop produced. However the calcareous-nature of the soil will continue to present cropping challenges, even with improvements.

References

1. Soil Survey of the Okanagan and Similkameen Valleys, CC Kelley and Spilsbury; Report No 3 of the British Columbia Survey.
2. Soils of the Okanagan and Similkameen Valleys, MOE Technical Report 18, Government of British Columbia, Map 82E.083.
3. Land Capability for Agriculture of the Okanagan and Similkameen Valleys, Ministry of Environment, Map 82E.083
4. Climate Capability for Agriculture of the Okanagan and Similkameen Valleys, Ministry of Environment, Map 82E.082

REPORT TO COUNCIL



Date: August 13, 2013

RIM No. 1250-30

To: City Manager

From: Urban Planning, Community Planning & Real Estate (JM)

Application: Z13-0028 **Owner:** Braniff Real Estate Services Inc. (Michael Hoffman) & Crown (Ministry of Forests, Land and Natural Resource Operations)

Address: 3935 Lakeshore Road & adjacent Bed of Mission Creek **Applicant:** Michael Hoffman

Subject: [Title]

Existing OCP Designation: COMM - Commercial
PARK - Major Parks & Open Space

Existing Zones: C1 - Local Commercial
RU5 - Bareland Strata

Proposed Zones: C3 - Community Commercial
RU5 - Bareland Strata

1.0 Recommendation

THAT Rezoning Application No. Z13-0028 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of part of Lot A, Section 6, Township 26, ODYD, Plan 12477, Except Plan KAP92361, located on 3935 Lakeshore Road, Kelowna, BC, from the C1 - Local Commercial zone to the C3 - Community Commercial zone, and from the C1 - Local Commercial Zone to the RU5 - Bareland Strata zone and to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of part of All that unsurveyed Crown foreshore being part of the bed of Mission Creek adjacent to Lot A, Section 6, Township 26, ODYD, Plan 12477, Except Plan KAP92361, containing 56.5 square metres, more or less, from the RU5 - Bareland Strata zone to the C3 - Community Commercial zone as shown on Map "B" attached to the Report of the Urban Planning Department dated August 13, 2013, be considered by Council.

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered in conjunction with Council's consideration of a Development Permit and Development Variance Permit for the subject property;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to registration of the proposed lot line adjustment on the eastern property line of the subject property;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the registration on title of an access easement in favour of the Province and the City for the purposes of dike maintenance.

2.0 Purpose

To consider a proposal to rezone portions of subject properties from the C1 - Local Commercial zone to the C3 - Community Commercial, from the RU5 - Bareland Strata zone to the C3 - Community Commercial zone, and from the C1 - Local Commercial zone to the RU5 - Bareland Strata zone to permit the development of a 3 storey retail and office building.

3.0 Urban Planning Department

Urban Planning staff are supportive of the proposed land use change, as it complies generally with the objectives and policies of the Official Community Plan (OCP). The proposed land use represents the next step in the gradual intensification of commercial land use on the east side of Lakeshore Road, moving from piecemeal local commercial development to a small, but established node of community commercial development. The development of commercial projects in this node will create a concentration of commercial uses that is needed to support bona fide community commercial purposes.

The siting and landscaping for the proposal are consistent with the development to the south; however, the three-storey massing of the proposed building is a departure from the two-storey commercial/residential building to the south and the single storey development to the north. Nevertheless, staff acknowledge the considerable effort that the applicant team has made in creating a respectful transition to neighbouring development. Staff further note that overall building massing for the area will likely continue to evolve and to intensify, as remaining underdeveloped sites are redeveloped over time.

4.0 Proposal

4.1 Background

In 2012, the Province and the City cooperated to improve the dike of the south side of Mission Creek. Since that work was completed, the Province has taken access through the subject property for dike maintenance purposes, with the permission of the land owner.

Since the applicant team has decided to move forward with the redevelopment of the site, they have been working with the staff from the City and the provincial government regarding a potential lot line adjustment for the eastern boundary of the subject property, which abuts the existing Mission Creek dike. This proposal would result in a more consistent setback from the dike. Provincial staff have confirmed that they support such a lot line adjustment on the condition that permanent maintenance access for the dike be granted through the site. However, the applicant team must make the necessary applications and receive formal provincial approval prior to final adoption of the zoning.

In addition to access for the Province for dike maintenance, the City is seeking the same, and has also worked with the applicant to re-establish a riparian area west of the dike. The riparian

restoration will be addressed through a Natural Environment Development Permit, which will be executed at a staff level.

The Official Community Plan (OCP) Future Land Use designation for the subject property is split between the COMM - Commercial designation and the PARK - Major Park & Open Space designation. There is a staff-initiated OCP amendment package being prepared for Council consideration, which includes a proposal to reduce the portion of the subject property identified for PARK such that it is consistent with the 15m riparian setback for this stretch of Mission Creek.

In accordance with Council Policy No. 367, the applicant team has been proactive in engaging with surrounding land owners and residents within 50m of the subject property. Feedback received was generally very positive, and is summarized in Appendix 'A'.

4.2 Project Description

The proponent is seeking to develop a three storey commercial building on the subject property, containing a mix of retail and office space. The retail space would be located on the ground floor, with offices occupying the second and third floors. The footprint of the building is 490m² in area, and the Gross Floor Area of the three storeys together will be 1,336m².

The proposal features a covered sidewalk, or "arcade", that is continued from the development to the south, allowing for seamless pedestrian movement between the two lots. The retail units will be accessed directly from this sidewalk, as will the lobby for the offices on the upper two storeys. There is a service access at the rear of the building for the retail units.

Vehicle access for the development would be achieved through the use of a cross-access easement with the property to the south, using a common entry/exit onto Lakeshore Road across from Radant Road. Customer parking is located principally in the front of the parcel, between Lakeshore Road and the proposed building. Staff parking is proposed to be located at the rear of the property, accessed through a service lane at the north side of the building. Short-term bicycle parking will be located at the front entrance to the building, and long-term secure bike storage is proposed in a "bike box" at the rear of the building. The garbage and recycling enclosure is also located at the rear of the building, adjacent to the secure bike parking.

As a condition of the zoning, the applicant will be required to urbanize the Lakeshore Road frontage, including sidewalk and landscaped boulevard.

In terms of form and character, the building displays a distinctly modern, playful esthetic that is inspired by the tourist commercial areas around Cook Road and the South Pandosy Urban Centre. While this architecture is a significant departure from the character of the building to the south, it nevertheless presents very high quality design and finishing, and responds to more contemporary massing from the recent building at 3975-3979 Lakeshore Road, and the residential development to the south ("The Lexington").

Three variances are triggered by the proposed development: two variances to the minimum side yard setback and minimum landscape buffer abutting residential development, and one variance to the minimum parking setback in a side yard. Two of these variances are triggered purely as a result of the building face extending for approximately 2-3m into the portion of the property abutting residential development.

Should Council give favourable consideration to this application, the Development Permit for form and character and the Development Variance Permit will be brought forward for consideration at a later meeting. A more detailed analysis of each request will be brought forward at that time.

4.3 Site Context

The subject property is approximately 1,871m² in area and is located on the east side of Lakeshore Road, south of the Mission Creek bridge. The lot is presently empty, but formerly contained a dentist's office building. The lot is within the Permanent Growth Boundary, but is not within any Urban or Village Centres.

The surrounding neighbourhood is characterized by a mix of commercial, service and residential uses. The lots fronting the east side of Lakeshore Road south of the Mission Creek bridge are gradually developing into a neighbourhood/community commercial centre, with a mix of retail and office development.

Specifically, adjacent land uses are as follows:

| Orientation | Zoning | Land Use |
|-------------|--|--|
| North | C2RLS - Neighbourhood Commercial (Retail Liquor Sales) | Creekside Pub Liquor Store |
| East | Mission Creek | Mission Creek |
| South | C2 - Neighbourhood Commercial RU5 - Bareland Strata | Mixed retail commercial/apartment housing The Lexington - bareland strata |
| West | C2 - Neighbourhood Commercial | Petro Canada |

Subject Property Map: 3935 Lakeshore Road



4.4 Zoning Analysis Table

| Zoning Analysis Table | | |
|--|---|---|
| CRITERIA | C3 ZONE REQUIREMENTS | PROPOSAL |
| Existing Lot/Subdivision Regulations | | |
| Lot Area | 1,300 m ² | 1,871 m ² |
| Lot Width | 30.0 m | Approx. 25 m * |
| Lot Depth | 40.0 m | exceeds |
| Development Regulations | | |
| Floor Area Ratio | 1.0 | 0.71 |
| Site Coverage | 50% | 26% |
| Height | 15.0 m / 4 storeys | 12.0 m / 3 storeys |
| Front Yard | 3.0 m | m |
| Side Yard (south) | 0.0 m (abutting commercial) 2.0 m (abutting residential) | 0.0 m (abutting commercial) 0.0 m (abutting residential) ^① |
| Side Yard (north) | 0.0 m | 6.0 m |
| Rear Yard | 0.0 m | exceeds |
| Other Regulations | | |
| Minimum Parking Requirements | Office @ 2.5/100m ² GFA + Retail @ 2.0/100m ² GFA = 26 stalls | 28 stalls |
| Parking Setbacks | 1.5 m from residential | 0.0 m from residential ^② |
| Bicycle Parking | Class I = 3 Class II = 7 | Class I = 3 Class II = 7 |
| Loading Space | 1 stall | 1 stall |
| Landscaping | Front - Level 2 Side - Level 3 (abutting res) Rear - Level 3 | Front - Level 2 Side - Level 1 (abutting res) ^③ Rear - Level 3 |
| <p>* the subject property does not need to meet minimum subdivision standards, as no subdivision is proposed.</p> <p>① Indicates a requested variance to the minimum side yard setback abutting a residential zone from 2.0m permitted to 0.0m proposed.</p> <p>② Indicates a requested variance to the minimum setback for parking areas from 1.5m permitted to 0.0m proposed.</p> <p>③ Indicates a requested variance to the minimum landscape buffer abutting a non-commercial zone from Level 3 permitted to Level 1 proposed.</p> | | |

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

Maximize Pedestrian / Cycling Connectivity.² Require that pedestrian and cyclist movement and infrastructure be addressed in the review and approval of all City and private sector developments, including provision of sidewalks and trails and recognition of frequently used connections and informal pedestrian routes. With new developments, require dedication of on-

¹ City of Kelowna Official Community Plan, Policy 5.3.2 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.10.1 (Development Process Chapter).

site walking and cycling paths where necessary to provide links to adjacent parks, schools, transit stops, recreation facilities, employment nodes, cul-de-sacs and large activity areas.

Environmentally Sensitive Area Linkages.³ Ensure that development activity does not compromise the ecological function of environmentally sensitive areas and maintains the integrity of plant and wildlife corridors.

Offices Near Transit.⁴ Direct new office development to areas served by public transit.

6.0 Technical Comments

6.1 Building & Permitting Department

- 1) Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permit(s) for new construction
- 2) A minimum Geodetic Elevation of 343.66 meters is required for all habitable spaces
- 3) A Geotechnical report is required to address the sub soil conditions.
- 4) Access to any mechanical rooms at roof level are required or access to the roofs are required
- 5) Size and location of all signage to be clearly defined as part of the development permit.
- 6) Full Plan check for Building Code related issues will be done at time of Building Permit applications

6.2 Development Engineering Department

See attached Memorandum, dated July 19, 2013.

6.3 Fire Department

Fire department access, fire flows, and hydrants as per the BC Building Code and City of Kelowna Subdivision Bylaw #7900. The Subdivision Bylaw #7900 requires a minimum of 150ltr/sec fire flows. Additional comments will be required at the building permit application.

6.4 Telus

TELUS will provide underground facilities to this development. Developer will be required to supply and install conduit as per TELUS policy.

6.5 Infrastructure Planning (Parks & Public Places)

1. Black Cottonwood is naturally occurring along Mission Creek, therefore substitute the proposed trembling aspens with Black Cottonwood.
2. No conifers have been included in the riparian area. Western Red Cedar is naturally occurring along Mission Creek, therefore add this species to the riparian planting area.
3. Planting bed along the Lakeshore frontage seems to be light on plant quantities, therefore suggest adding more plants.

6.6 FortisBC Energy (gas)

³ City of Kelowna Official Community Plan, Policy 5.15.3 (Development Process Chapter).

⁴ City of Kelowna Official Community Plan, Policy 5.27.2 (Development Process Chapter).

Please be advised FortisBC gas division has reviewed the above mentioned referral and has no objections or comments.

6.7 FortisBC (electric)

There are primary distribution facilities along Lakeshore Road. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required.

Otherwise, FortisBC Inc. (Electric) has no concerns.

7.0 Application Chronology

Date of Application Received: July 5, 2013

Report prepared by:

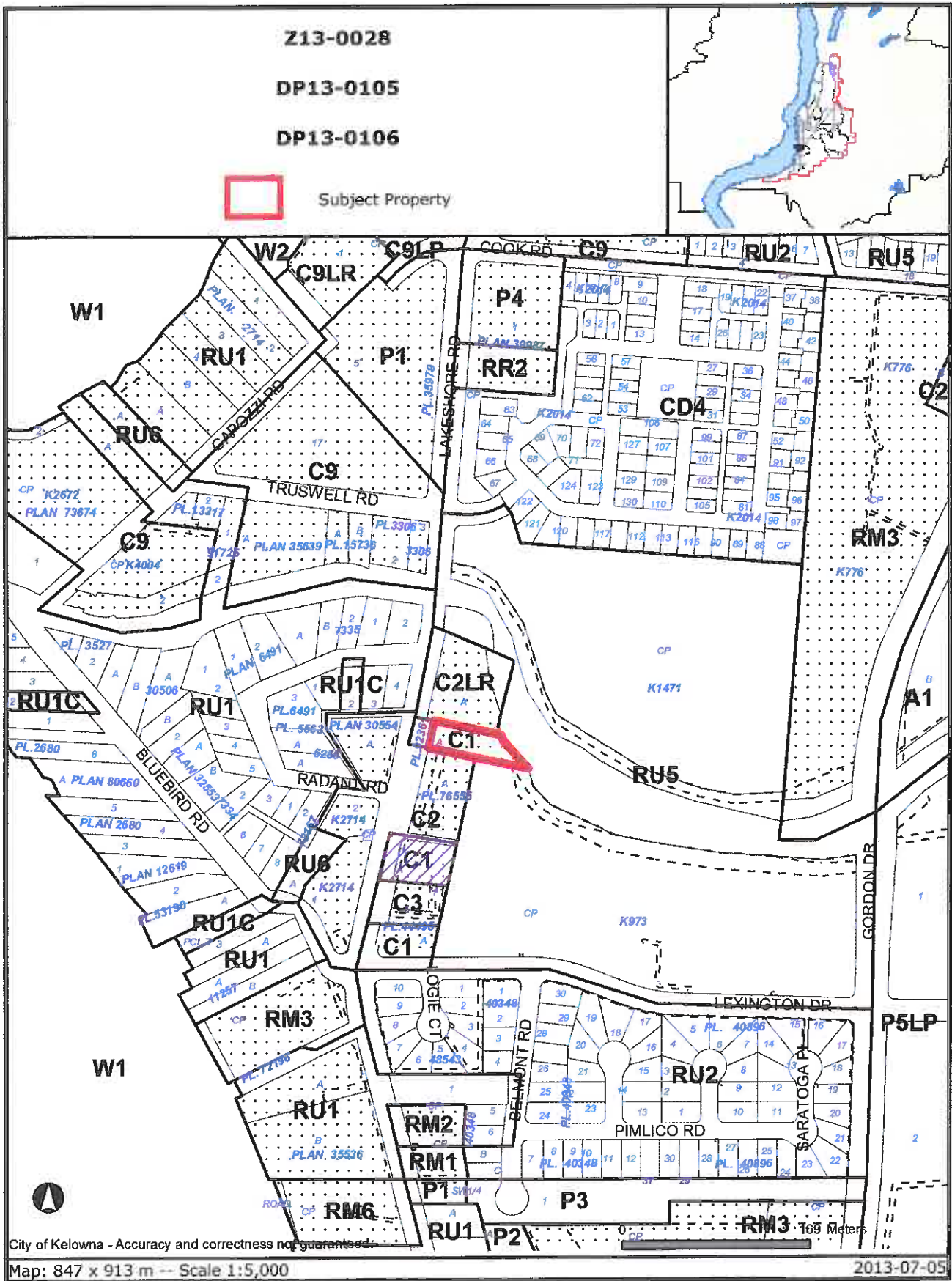
James Moore, Urban Land Use Planner

Reviewed by: Danielle Noble, Manager, Urban Land Use

Approved for Inclusion D. Gilchrist, Divisional Director
Community Planning & Real Estate

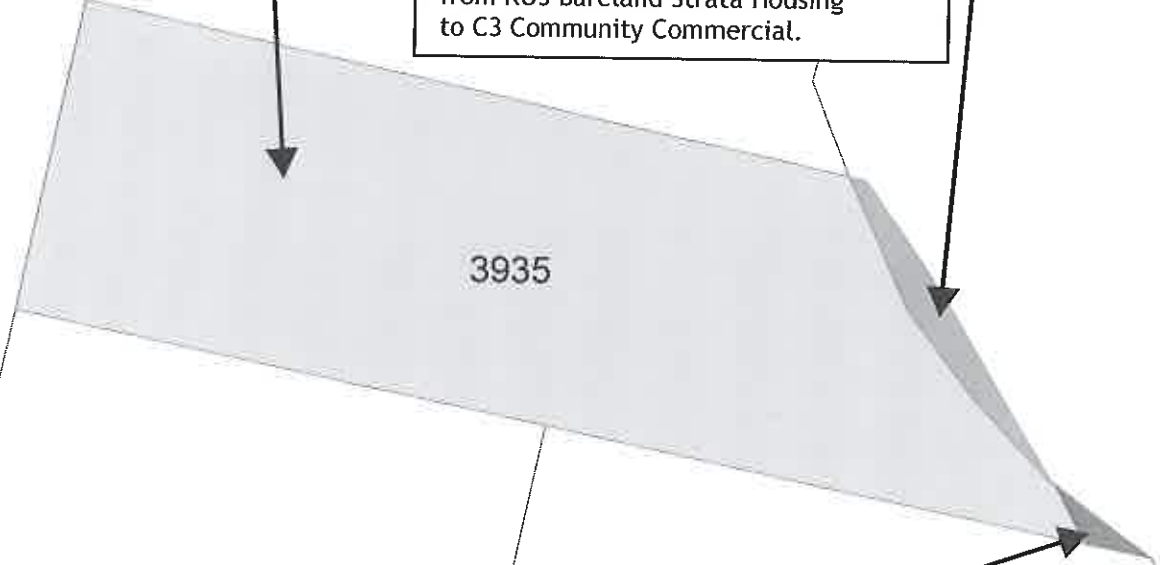
Attachments:

- Subject Property Map (1 page)
- Map 'B' - Proposed Zoning
- Site Plan (1 page)
- Conceptual Elevations (1 paged)
- Applicant's Record of Public Consultation (3 pages)
- Memorandum from the Development Engineering Branch, dated July 19, 2013 (5 pages)



Subject Property Notes:
Rezone a portion of the subject property from C1 Local Commercial to C3 Community Commercial.

Subject Property Notes:
Rezone a portion of the subject property from RU5 Bareland Strata Housing to C3 Community Commercial.



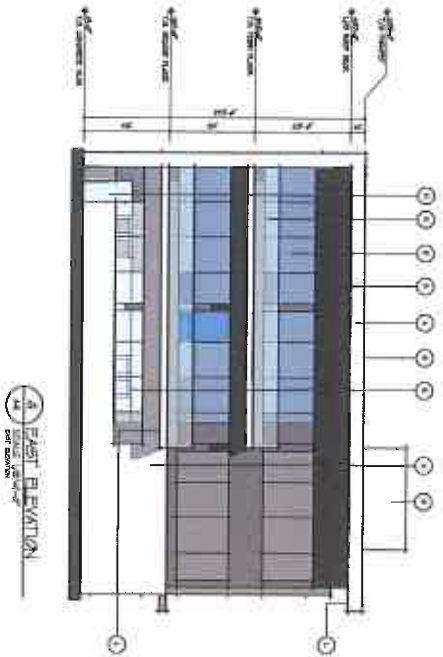
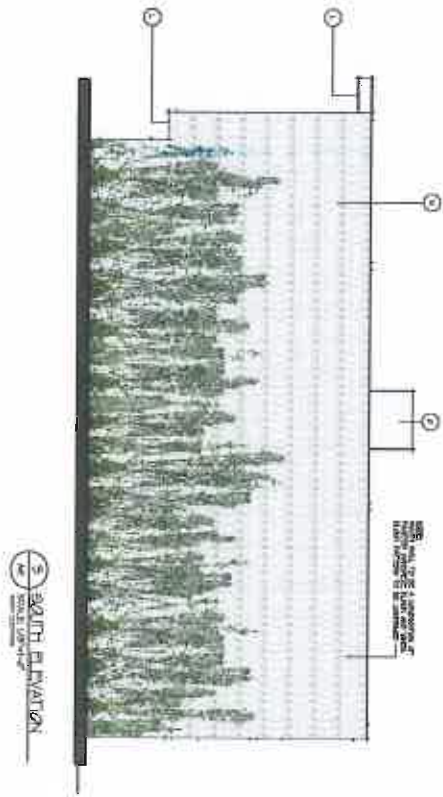
Subject Property Notes:
Rezone a portion of the subject property from C1 Local Commercial to RU5 Bareland Strata Housing.

MAP "B" PROPOSED ZONING
File #Z13-0028

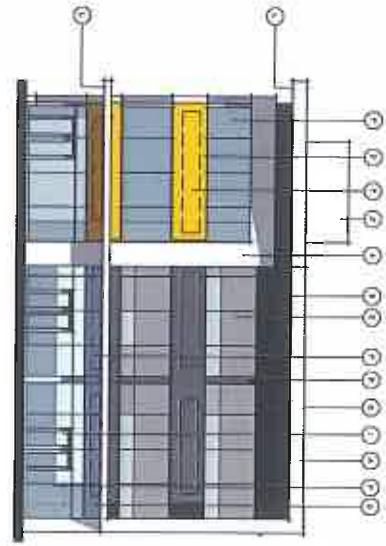
- Proposed Legal
- C1 to C3
- C1 to RU5
- RU5 to C3

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

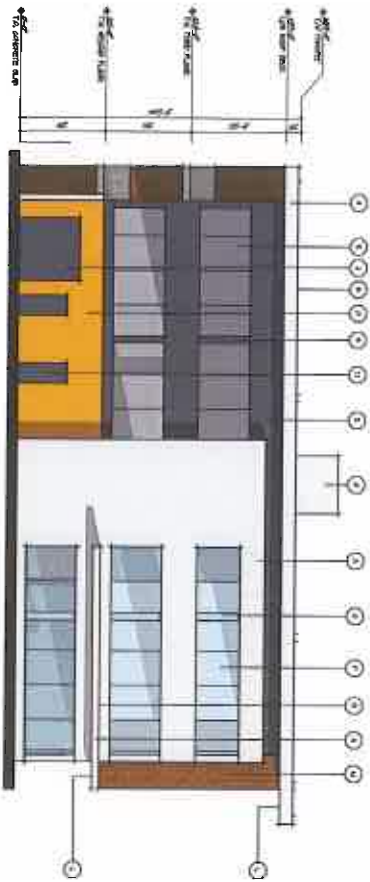




WEST ELEVATION



NORTH ELEVATION



| LEGEND | |
|--------|-----------------------------|
| 1 | BRIS 1 |
| 2 | BRIS 2 |
| 3 | BRIS 3 |
| 4 | BRIS 4 |
| 5 | 1 IN ALUM. FRAME GLAZING |
| 6 | 2 IN ALUM. FRAME GLAZING |
| 7 | PREFINISHED ALUM. FRAME |
| 8 | METAL DOOR & FRAME |
| 9 | METAL DOOR IN ALUM. FRAME |
| 10 | METAL OVERHEAD DOOR |
| 11 | GLASS GLAZED IN ALUM. FRAME |
| 12 | WOOD FINISH |
| 13 | ASBEST. BLOCK |
| 14 | SCHEDULED MECHANICAL UNIT |
| 15 | POTENTIAL SIGNAGE LOCATION |

KR_ARCHITECT INC
PROJECT: 3935 LAKESHORE ROAD

DATE: AUGUST 7, 2013
ISSUED FOR DEVELOPMENT PERMIT REVISIONS

THIS DRAWING IS A PRELIMINARY DESIGN AND IS THE PROPERTY OF THE ARCHITECT AND SHALL NOT BE REPRODUCED WITHOUT THE ARCHITECT'S PERMISSION AND UNLESS THE ARCHITECT HAS GIVEN WRITTEN PERMISSION TO DO SO. ALL RIGHTS ARE RESERVED BY THE ARCHITECT. NO PART OF THIS DRAWING SHALL BE USED FOR ANY OTHER PROJECT WITHOUT THE ARCHITECT'S PERMISSION. THE ARCHITECT SHALL HAVE PRECEDENCE OVER ALL OTHER CONTRACTORS AND CONSULTANTS IN THE EVENT OF ANY CONFLICT.

A41

Michael Hoffman
Director of Development & Construction
Braniff Real Estate Services
1240 industrial road
West Kelowna, BC
V1Z 1G5

August 14, 2013

James Moore, MCIP, RPP
Planner II
Urban Planning | Community Planning & Real Estate Division
City of Kelowna
1435 Water Street
Kelowna, BC
V1Y 1J4

Dear James,

Subject: Z13-0026 & Z13-0028 3935 Lakeshore Rd. Neighbour Consultation

As the owners of 3935 Lakeshore Rd., we have endeavoured to meet with our neighbours in accordance with City of Kelowna Policy No. 367. As our property lies within the City of Kelowna Permanent Growth Boundary, per the attached diagram, we have identified the following properties as being within 50m of our property:

- 3929-3933 Lakeshore Road (met owners on August 13, 2013)
- 3957 Lakeshore Road (met owner on August 13, 2013)
- 3950 Lakeshore Road (met owner on August 14, 2013)
- 588 Radant Road (made efforts to contact owner and waiting for response)
- 594 Radant Road (made efforts to contact owner and waiting for response)
- 650 Lexington Road (met strata council on August 8, 2013)

In addition to these properties, we have also contacted and met with the strata council of 609 Truswell Road on August 2, 2013 as this development is immediately adjacent to our property across the creek to the east. For all of the above noted properties to date, with the exception of the properties indicated, we have successfully met with and fulfilled the requirements of Policy 367 to present:

- Location of the proposal;
- Detailed description of the proposal, including the specific changes proposed;
- Visual rendering and/or site plan of the proposal;
- Contact information for the applicant or authorized agent;
- Contact information for the Land Use Management department;
- Identification of available methods for feedback.

Our meetings included but were not limited to a full review of the drawings submitted to the City of Kelowna, discussion around rezoning of the site, removal of existing trees on site and the proposed landscaping, discussion around the form and character of the proposed building, discussion around parking and access to the site, discussion around flooding, and the following variances:

- Variance to the minimum setback for parking in a side yard abutting a residential zone from 1.5m permitted to 0.0m proposed.
- Variance to the minimum side yard setback abutting residential zones from 2.0m permitted to 0.0m proposed.
- Variance to the minimum landscape requirement of a property zoned C3 abutting a residential use from Level 3 required to Level 1 proposed.

Any questions that were raised by any party were resolved through a detailed dialogue and a thorough explanation and understanding of the proposal. We have not been made aware of any formal objections by any party, and no additional efforts or revisions to the proposed design as discussed have been requested.

We are continuing efforts to contact the owners of the properties who are currently unavailable due to the summer season, and once we have met with them, we will confirm this to you.

Sincerely,



Michael Hoffman
Director of Development & Construction
Braniff Real Estate Services

Encl.



CITY OF KELOWNA
MEMORANDUM

Date: July 19, 2013
File No.: Z13-0028
To: Urban Planning Department (JM)
From: Development Engineering Manager (SM)
Subject: 3935 Lakeshore Rd

C1 to C3

The Development Engineering Department has the following comments and requirements associated with this application to rezone from C1 to C3. The road and utility upgrading requirements outlined in this report will be a requirement of this development.

The Development Engineering Technologist for this project is Sergio Sartori

General

- a) The postal authorities must be contacted to determine whether or not a "community mailbox" will be utilized, and if so, its location should be determined and the proposed location shown on the construction plans. Please contact the Canadian Post Corporation, Delivery Services, P.O. Box 2110, Vancouver, B.C. V6B 4Z3 (604) 662-1381 in this regard.
- b) Where there is a possibility of a high water table or surcharging of storm drains during major storm events, non-basement buildings may be required. This must be determined by the engineer and detailed on the Lot Grading Plan required in the drainage section.
- c) Provide easements and cross access may be required.

1. Domestic Water and Fire Protection

- (a) The existing lot is serviced with a 19mm diameter water service. The developer's consulting mechanical engineer will determine the domestic and fire protection requirements of this proposed development and establish hydrant requirements and service needs.
- (b) Only one service will be permitted per lot. The applicant, at his cost, will arrange for the removal of all existing services and the installation of fire hydrants and new larger metered water services. The estimated cost of this construction for bonding purposes is **\$20,000.00**
- (c) A water meter is mandatory for this development and must be installed inside the building on the water service inlet as required by the City Plumbing Regulation and Water Regulation bylaws. The developer or building contractor must purchase the meter from the City at the time of application for a building permit from the Inspection Services Department, and prepare the meter setter at his cost. Boulevard landscaping, complete with underground irrigation system, must be integrated with the on-site irrigation system.

2. Sanitary Sewer

- (a) The developer's consulting mechanical engineer will determine the requirements of these proposed developments and establish the required sizes and preferred location of the new services. Only one service will be permitted per lot. The applicant, at his cost, will arrange for the removal of the existing 100mm diameter services if necessary and the installation of new service if necessary. The estimated cost of this construction for bonding purposes is **\$20,000.00**

3. Storm Drainage

- (a) The developer must engage a consulting civil engineer to provide a storm water management plan which meets the requirements of the City Storm Water Management Policy and Design Manual. The storm water management plan must also include provision of a lot grading plan, identify minimum basement elevation (MBE), overland drainage routes, floodplain elevations and setbacks, and provision of a storm drainage service for the lot and /or recommendations for onsite drainage containment and disposal systems. The on-site drainage systems may be connected to the street drainage system with an overflow service when the City upgrades Lakeshore Rd anticipated in 2014. The estimated cost of this construction for bonding purposes is **\$5,000.00**
- (b) Storm drainage systems and overflow service(s) for the site will be reviewed and approved by Engineering when site servicing designs are submitted.

4. Road Improvements

- (a) Lakeshore Road is to be upgraded to full urban standards along the full frontage including curb, gutter, separate sidewalk, pavement, street lights, and adjustment and/or re-location of existing utility appurtenances if required to accommodate this construction.

5. Road Dedication and Subdivision Requirements

- (a) Grant Statutory Rights Of Way if required for utility services.
- (b) Provide cross access agreements with the adjacent properties.
- (c) If any road dedication or closure affects lands encumbered by a Utility right-of-way (such as Hydro, Telus, Gas, etc.) please obtain the approval of the utility. Any works required by the utility as a consequence of the road dedication or closure must be incorporated in the construction drawings submitted to the City's Development Manager.

6. Electric Power and Telecommunication Services

All proposed service connections are to be installed underground. It is the developer's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for these services, which would be at the applicant's cost. If the electrical source is on the west side of Lakeshore Road, this source must be in underground ducts.

7. Engineering

Road and utility construction design, construction supervision, and quality control supervision of all off-site and site services including on-site drainage collection and disposal systems, must be performed by an approved consulting civil engineer. Designs must be submitted to the City Engineering Department for review and marked "issued for construction" by the City Engineer before construction may begin.

8. Survey Monuments and Iron Pins

If any legal survey monuments or property iron pins are removed or disturbed during construction, the developer will be invoiced a flat sum of \$1,200.00 per incident to cover the cost of replacement and legal registration. Security bonding will not be released until restitution is made.

9. Bonding and Levy Summary(a) Bonding

| | |
|------------------|---------------------|
| Service Upgrades | \$ 45,000.00 |
| Total | \$ 45,000.00 |

NOTE: The bonding amount shown above are comprised of estimated construction costs escalated by 140% to include engineering design and contingency protection and are provided for information purposes only. The owner should engage a consulting civil engineer to provide detailed designs and obtain actual tendered construction costs if he wishes to do so. Bonding for required off-site construction must be provided and may be in the form of cash or an irrevocable letter of credit, in an approved format.

- (b) Only the service upgrades must be completed at this time. The City wishes to defer the remainder of the upgrades to Lakeshore Road fronting this development. Therefore, cash-in-lieu of immediate construction is required and the City will initiate the work later, on its own construction schedule.

| Item | Cost |
|---------------------|--------------------|
| Drainage | \$6,250.00 |
| Curb & Gutter | \$ 1,906.00 |
| Sidewalk | \$ 2,188.00 |
| Street Lighting | \$ 844.00 |
| Landscape Boulevard | \$ 2,500.00 |
| Road Fillet | \$ 3,375.00 |
| Total | \$17,063.00 |

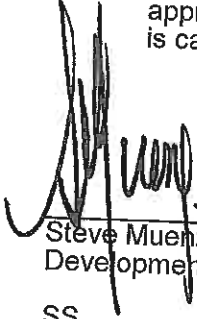
10. Development Permit and Site Related Issues

(a) Access and Manoeuvrability

- (i) An SU-9 standard size vehicle must be able to manoeuvre onto and off the site without requiring a reverse movement onto public roadways.
- (ii) Indicate on the site, the locations of loading bays as well as the garbage and recycle bins.

14. Administration Charge

An administration charge will be assessed for processing of this application, review and approval of engineering designs and construction inspection. The administration charge is calculated as (3% of Total Off-Site Construction Cost plus GST)



Steve Muenz, P. Eng.
Development Engineering Manager

SS

CITY OF KELOWNA

BYLAW NO. 10885

**Z13-0028 - Braniff Real Estate Services Inc. (Michael Hoffman)
& Crown (Ministry of Forests, Land and Natural Resource
Operations)
3935 Lakeshore Road and adjacent Bed of Mission Creek**

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of part of Lot A, Section 6, Township 26, ODYD, Plan 12477, Except Plan KAP92361 located on 3935 Lakeshore Road, Kelowna, B.C., from the C1 - Local Commercial zone to the C3 - Community Commercial zone, and from the C1 - Local Commercial zone to the RU5 - Bareland Strata zone; and to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of part of All that unsurveyed Crown foreshore being part of the bed of Mission Creek adjacent to Lot A, Section 6, Township 26, ODYD, Plan 12477, Except Plan KAP92361, containing 56.5 square metres, more or less, from the RU5 - Bareland Strata zone to the C3 - Community Commercial zone as shown on Map "B" attached to and forming part of this bylaw.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk



609

Subject Property Notes:

Rezzone a portion of the subject property from C1 Local Commercial to C3 Community Commercial.

Subject Property Notes:





Rezzone a portion of the subject property from RU5 Bareland Strata Housing to C3 Community Commercial.

3935

Subject Property Notes:

Rezzone a portion of the subject property from C1 Local Commercial to RU5 Bareland Strata Housing.

MAP "B" PROPOSED ZONING
File #Z13-0028

-  Proposed Legal
-  C1 to C3
-  C1 to RU5
-  RU5 to C3

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

0 5 10 Metres

Rev. Aug 13, 2013



REPORT TO COUNCIL



Date: August 8, 2013
RIM No. 1250-30
To: City Manager
From: Urban Planning, Community Planning and Real Estate (PM)
Application: Z07-0073/OCP07-0022 **Owner:** Al Stober Construction Ltd
2728 Pandosy Street
Address: (Formerly 477 Osprey Avenue and 2728 Pandosy Street) **Applicant:** Meiklejohn Architects Inc.
Subject: Rezoning Application, Extension Request
Existing Zone: P2 - Education and Minor Institutional
Proposed Zone: C4 - Urban Centre Commercial

1.0 Recommendation

THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Official Community Plan Amending Bylaw No. 10265 and Zone Amending Bylaw No. 10266, for Lot 1, D.L. 14, ODYD, Plan KAP91460 located on 2728 Pandosy St., Kelowna, BC, be extended from December 15, 2012 to December 15, 2013.

AND THAT this is the final extension for this project.

2.0 Purpose

To extend the date for adoption of the Official Community Plan and Zone Amending Bylaws (BL10265/BL10266) from December 15, 2012 to December 15, 2013 in order to facilitate the rezoning of the subject property from the P2 - Education and Minor Institutional zone to the C4-Urban Centre Commercial zone to construct a seven storey mixed use development.

3.0 Land Use Management

Section 2.12.1 of Procedure Bylaw No. 10540 states that:

In the event that an application made pursuant to this bylaw is one (1) year old or older and has been inactive for a period of six (6) months or greater:

a) The application will be deemed to be abandoned and the applicant will be notified in writing that the file will be closed;

- b) Any bylaw that has not received final adoption will be of no force and effect;
- c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, **Council** may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10266 and 10265 received second and third readings on December 15, 2009 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional twelve (12) months in order to consider all options for the project. As there has been no file activity, and given the tenant improvements on the site for a restaurant use, it is logical that this be considered the final extension. When the applicant team deems a similar/identical project to be feasible at some point in the future, Staff will endeavour to expedite the review process given the time and resources that have been allocated to this proposal.

Report prepared by:

Paul McVey, Land Use Planner
/dc

Reviewed by:

Danielle Noble, Manager, Urban Planning

Approved for Inclusion

Doug Gilchrist, Divisional Director, Community Planning
and Real Estate

Attachments:

Subject Property Map

REPORT TO COUNCIL



Date: August 8, 2013

To: City Manager

From: Land Use Management, Community Sustainability (PMcV)

Application: Z09-0035

Owners: Matthew James Ewonus

Address: 3130 Sexsmith Road

Applicant: Protech Consulting

Subject: Extension Report

Existing Zone: A1 - Agriculture 1

Proposed Zone: I6 - Low-Impact Transitional Industrial

1.0 Recommendation

THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Amending Bylaw No. 10436 (Z09-0035, for Lot 28 Section 3 Township 23 ODYD Plan 18861, located at 3130 Sexsmith Road, Kelowna, BC, be extended from May 16, 2013 to November 16, 2013.

2.0 Purpose

To extend the date for adoption of the Zone Amending Bylaw (BL10436) from May 16, 2013 to November 16, 2013 in order to rezone the subject property from the A1 - Agriculture 1 zone to the new I6 - Low-Impact Transitional Industrial zone. This zone is intended to perform a transition role allowing for reasonable industrial land uses between the general industrial land use to the south, and residential land use to the north.

3.0 Land Use Management

The above noted development application was originally considered at a Public Hearing by Council on November 16, 2010.

Section 2.12.1 of Procedure Bylaw No. 10540 states that:

In the event that an application made pursuant to this bylaw is one (1) year old or older and has been inactive for a period of six (6) months or greater:

- a) The application will be deemed to be abandoned and the applicant will be notified in writing that the file will be closed;
- b) Any bylaw that has not received final adoption will be of no force and effect;

c) In the case of an amendment application, the **City Clerk** will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision for Council to consider an extension to an amending bylaw for up to 6 months beyond the 12 months deadline.

By-Law No. 10436 (Z09-0035) received second and third readings on November 16, 2010 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional six months in order to submit a Development Permit for a concept proposal that would span this property and one adjacent parcel.

When the last extension application was considered by Council, the following notification was formalized to inform the applicant with respect to future bylaw extensions:

“Please be advised that Council had a general discussion with respect to extending applications at third reading and requested that you be advised that future extensions may not be granted without compelling rationale to do so.”

Given that three years has lapsed with limited activity and in consideration of Council’s previous anecdotal forewarning at the last extension granted, Staff will be reluctant to support any future extensions. The subject property requires a Development Permit to be submitted in order to review the scope of the proposal, which remains an outstanding item.

Report prepared by:

Paul McVey, Land Use Planner

Reviewed by:

Danielle Noble, Manager, Urban Planning

Approved for Inclusion:

Doug Gilchrist, Divisional Director, Community Planning &
Real Estate

/dc

c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, **Council** may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10443 received second and third readings on November 16, 2010 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional six months in order to submit a Development Permit for a concept proposal that would span this property and one adjacent parcel.

When the last extension application was considered by Council, the following notification was formalized to inform the applicant with respect to future bylaw extensions:

“Please be advised that Council had a general discussion with respect to extending applications at third reading and requested that you be advised that future extensions may not be granted without compelling rationale to do so.”

Given that three years has lapsed with limited activity and in consideration of Council’s previous anecdotal forewarning at the last extension granted, Staff will be reluctant to support any future extensions. The subject property requires a Development Permit to be submitted in order to review the scope of the proposal, which remains an outstanding item. The consultant has met with Staff to apprise them of a development concept which will form a pending Development Permit submission, but this has not been received as of the date of this report.

Report prepared by:

Paul McVey, Land Use Planner
/dc

Reviewed by: Danielle Noble, Manager, Urban Planning

Approved for Inclusion Doug Gilchrist, Divisional Director, Community Planning and Real Estate

Attachments:

Site Plan

c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, **Council** may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10445 received second and third readings on November 16, 2010 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional six months in order to submit a Development Permit for a concept proposal that would span this property and one adjacent parcel.

When the last extension application was considered by Council, the following notification was formalized to inform the applicant with respect to future bylaw extensions:

“Please be advised that Council had a general discussion with respect to extending applications at third reading and requested that you be advised that future extensions may not be granted without compelling rationale to do so.”

Given that three years has lapsed with limited activity and in consideration of Council’s previous anecdotal forewarning at the last extension granted, Staff will be reluctant to support any future extensions. The subject property requires a Development Permit to be submitted in order to review the scope of the proposal, which remains an outstanding item. The consultant has met with Staff to apprise them of a development concept which will form a pending Development Permit submission, but this has not been received as of the date of this report.

Report prepared by:

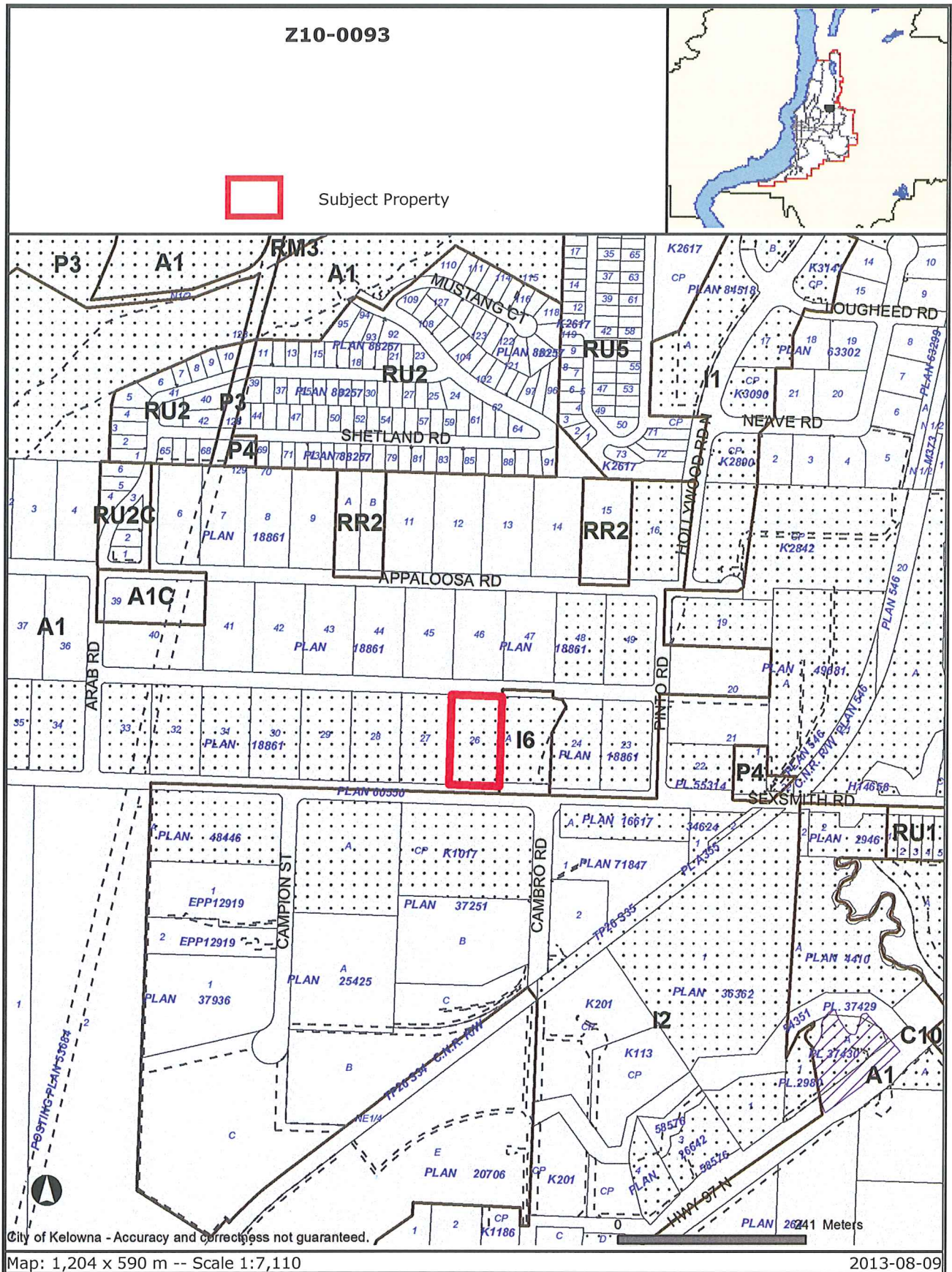
Paul McVey, Land Use Planner
/dc

Reviewed by: Danielle Noble, Manager, Urban Planning

Approved for Inclusion Doug Gilchrist, Divisional Director, Community Planning and Real Estate

Attachments:

Site Plan



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.

c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of **Council** a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, **Council** may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10731 received second and third readings on August 2, 2012 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional twelve (12) months in order to allow for more time to arrange financing. This project remains unchanged and is the same in all respects as originally applied for.

The Urban Planning Department recommends Council consider the request for an extension favourably.

Report prepared by:

Birte Decloux, Land Use Planner
/dc

Reviewed by:

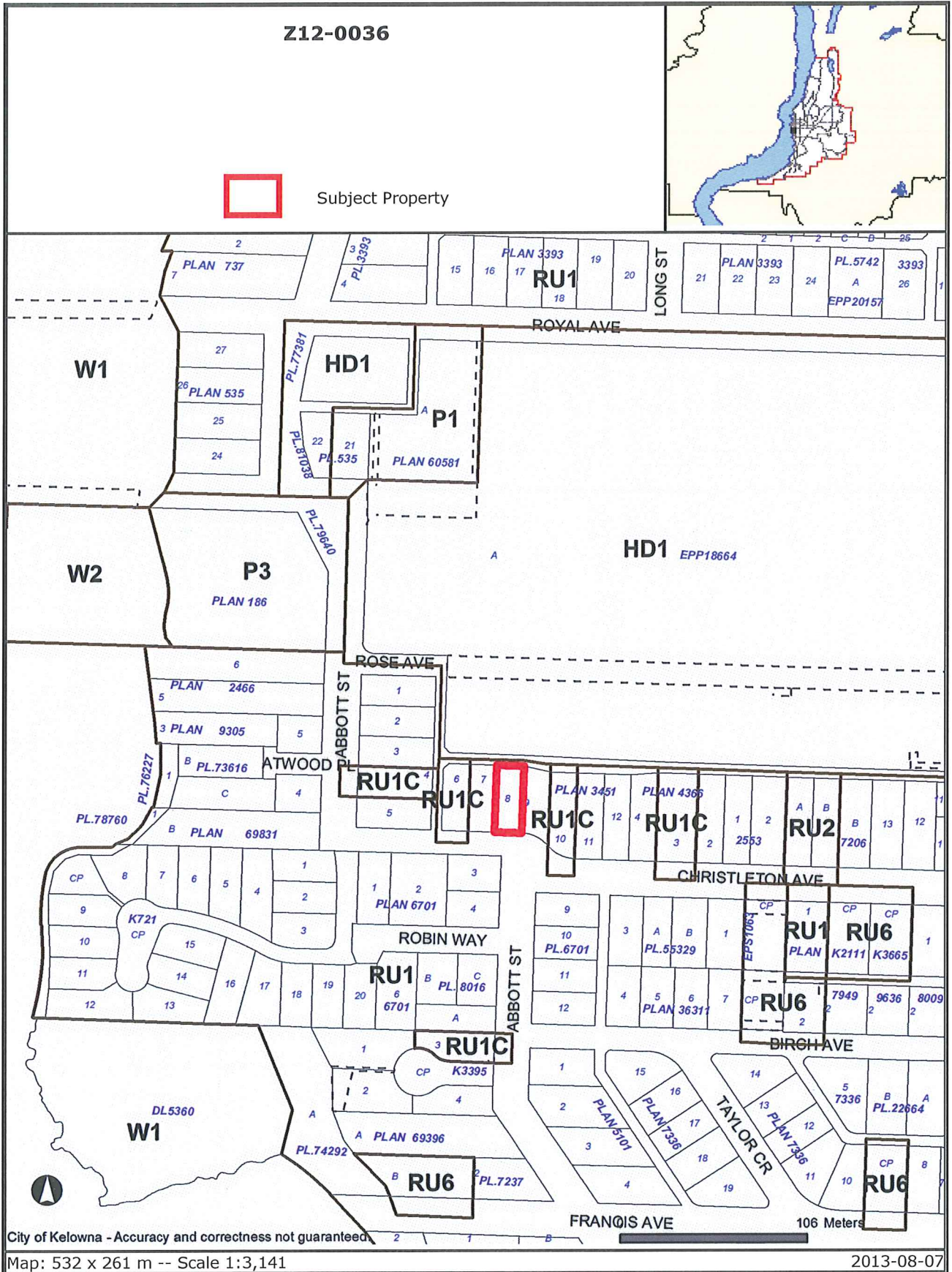
Danielle Noble, Manager, Urban Planning

Approved for Inclusion

Doug Gilchrist, Divisional Director, Community Planning and Real Estate

Attachments:

Site Plan



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.

Report to Council



Date: August 7, 2013
Rim No. 0610-53
To: City Manager
From: Noreen Redman, Airport Finance & Administration Manager
Subject: 2013-07-16 Report to Council Amend Airport Fees and Charges Bylaw 7982
Report Prepared by: Toni McQueenie, Legal & Administrative Coordinator

Recommendation:

THAT Council receives for information the report of the Airport Finance & Administration Manager dated August 7, 2013 outlining recommended changes to the fees in the Airport Fees Bylaw;

AND THAT Bylaw No. 10884 being Amendment No. 27 to the City of Kelowna Airport Fees Bylaw 7982 be advanced for reading consideration.

Purpose:

To obtain Council's approval to amend the Kelowna International Airport's fees and charges by amending bylaw No. 7982.

Background:

In April, 2012, the City of Kelowna, through the City's Request for Proposal process, selected a contractor as the City's Marketing and Advertising Agency of Record. The City's Purchasing Department has approved an addendum to the Marketing and Advertising Agency of Record Agreement that permits the Contractor to act as the sales agency for the advertising displays at the Kelowna International Airport. Seventy percent (70%) of the revenue from the sales of the advertising will be paid to the airport.

The contractor and YLW will work together to improve and expand the advertising opportunities within the airport. Some upcoming changes include updating some of the backlit signage with brighter LED backlit displays, adding a digital network and implementing the attractions kiosk. As well, clients will have the ability to have exterior displays, interior product sampling, unique displays, and short-term decal options.

Having a dedicated advertising sales provider will improve the level of service offered, while keeping in mind the needs of small business and local advertisers. The airport anticipates an

increase of \$25,000 in 2014, which will be included in the upcoming budget process and staff are working with the Agency of Record to determine sales targets for future years.

As advertising rates will now be negotiated by the Contractor and may be reviewed for reasonableness by Airport staff, it is recommended that section 10 of Bylaw 7982 be removed in its entirety.

Several other sections of Bylaw 7982 are out-of-date and the following changes are recommended:

1. The title of Airport General Manager be changed to Airport Director.
2. Section 5 - After Hours Firefighting and Maintenance Services Fees. It is recommended that this section be deleted in its entirety as YLW expanded its hours of operation, and these charges are no longer applicable.
3. Section 7.4 - Common Use Counter Charge. This charge is based on a rate set out in the Airport Director's Circulars. It is recommended that the specific circular number and date be removed, so that Bylaw 7982 will not have to be updated when an amendment to the circular necessitates a change in the circular number.
4. Section 11 - Pay Telephone Concession Fees. It is recommended that this section be deleted in its entirety as the rates reflect the commission paid by Telus, and not a fee set by the City.
5. Section 12 - Land Rental Rates. An independent study conducted in December, 2011 confirmed that the ground rent policy adopted by Kelowna City Council 10 years ago for airport leases, whereby the year 1 rent is indexed at an annual rate of 2% rather than conducting costly periodic rent reviews, is the best approach concerning the estimation and management of ground rents and rate increases at YLW. In order to bring the bylaw up-to-date, it is recommended that section 12 be amended by removing it in its entirety and replacing it with the 2013 rental rates as recommended in the 2011 study.
6. Section 13 - Airport Maintenance Charge. The independent study set out in number 4 above also confirmed that the rate charged in 2011 plus increases of 2% per annum will keep pace with rates charged at similar airport locations. In order to bring the bylaw up-to-date, it is recommended that section 13 be amended by replacing the 2001 rate with the 2013 rate of \$0.0280 per square foot per annum.
7. Section 25 - Security Fees and Charges. These charges do not include applicable taxes, and accordingly, the note stating that taxes are included should be removed.

Internal Circulation:

Financial/Budgetary Considerations:

2013 advertising revenue budget is \$180,000, and will increase to \$205,000 in the upcoming 2014 budget process.

Considerations not applicable to this report:

Legal/Statutory Authority: N/A

Legal/Statutory Procedural Requirements: N/A

Existing Policy: N/A

Personnel Implications: N/A

External Agency/Public Comments: N/A

Communications Comments: N/A

Alternate Recommendation: N/A

Submitted by:



N. Redman, Airport Finance & Administration Manager

Approved for inclusion:



Dave Fuller, Acting Airport Director and
Paul Macklem, Deputy City Manager

cc: Clerks Office, Purchasing Department

CITY OF KELOWNA

BYLAW NO. 10884

Amendment No. 27 to Airport Fees Bylaw No. 7982

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Airport Fees Bylaw No. 7982 be amended as follows:

1. THAT all references to "Airport General Manager" be deleted and replaced with "Airport Director";
2. AND THAT Schedule A, 5. AFTER HOURS FIRE FIGHTING AND MAINTENANCE SERVICES FEES, be deleted in its entirety that reads:

"AFTER HOURS FIREFIGHTING AND MAINTENANCE SERVICES FEES

For every landing or take-off requiring firefighting and maintenance coverage outside of the airport's normal published operating hours a fee of \$100.00 will be charged for every ½ hr or portion thereof."

3. AND THAT Schedule A, 7. AIRLINE TERMINAL BUILDING LEASE SPACE FEE, 7.4 COMMON USE COUNTER, be amended by deleting:

"\$4.50 per use (as defined in the Airport Manager's APM Circular No. 37/88, as amended from time to time)"

And replacing it with:

"\$4.50 per use (as defined in the Airport Director's Circulars, as amended from time to time)"

4. AND THAT Schedule A, 10. AIR TERMINAL BUILDING ADVERTISING SPACE FEE be deleted in its entirety that reads:

"AIR TERMINAL BUILDING ADVERTISING SPACE FEE

Effective : January 1, 2012

| | | |
|----------------------------|------------------------|-----------------------|
| 10.1 Strip Signs | approx. size 2' x 4' | \$680.00 per annum |
| 10.2 Super Signs | approx. size 30" x 40" | \$2,681.00 per annum |
| 10.3 Hotel Directory Board | approx. size 8" x 10" | \$473.00 per annum |
| 10.4 Bag Belt Signs | approx. size 2' x 4' | \$1,208.00 per annum |
| 10.5 Spectacular Signs | approx. size 9' x 5' | \$8,400.00 per annum |
| 10.6 Entrance Roadway Sign | approx. size 15' x 6' | \$10,500.00 per annum |

Effective : January 1, 2013

| | | |
|----------------------------|------------------------|-----------------------|
| 10.1 Strip Signs | approx. size 2' x 4' | \$714.00 per annum |
| 10.2 Super Signs | approx. size 30" x 40" | \$2,815.00 per annum |
| 10.3 Hotel Directory Board | approx. size 8" x 10" | \$496.00 per annum |
| 10.4 Bag Belt Signs | approx. size 2' x 4' | \$1,268.00 per annum |
| 10.5 Spectacular Signs | approx. size 9' x 5' | \$8,820.00 per annum" |

5. AND THAT Schedule A, 11. PAY TELEPHONE CONCESSION FEES be deleted in its entirety that reads:

“PAY TELEPHONE CONCESSION FEES

| | | |
|------|----------------------|---|
| 11.1 | Coin in Box Phones | \$12.00 per month plus 11% of cash in box and 1.6% of total charge call revenue |
| 11.2 | Card/Coin Phones | \$12.00 per month plus 11% of cash in box and 1.6% of total charge call revenue |
| 11.3 | Non Coin/Card Phones | \$22.00 per month plus 1.6% of total charge call revenue” |

6. AND THAT Schedule A, 12. LAND RENTAL RATES be deleted in its entirety that reads:

“LAND RENTAL RATES

(Effective January 1, 1995 to December 31, 1999)

| <u>Sub-Lessee</u> | <u>Per sq. ft per Annum</u> |
|----------------------------------|-----------------------------|
| Callahan Construction | \$0.201 |
| Kelowna Flightcraft - new hangar | \$0.145 |
| Kelowna Flightcraft - north end | \$0.336 |
| Northern Air Support | \$0.209 |
| Phoenix Investments | \$0.225 |
| Shell - North Fuel Storage | \$0.565 |
| Shell - Bulk Fuel Storage | \$0.298 |
| S.I.F.C. - Fuel Storage | \$0.565 |
| S.I.F.C. - Hangar | \$0.161 |

(Effective August 1, 1996 to July 31, 2000)

| | |
|-------------------------|---------|
| E & D Aircraft Services | \$0.226 |
|-------------------------|---------|

(Effective January 1, 2001)

| <u>Sub-Lessee</u> | <u>Per sq. ft per Annum</u> |
|--|-----------------------------|
| Callahan Construction | \$0.276 |
| Kelowna Flightcraft - new hangar | \$0.165 |
| Kelowna Flightcraft - parking lot | \$0.165 |
| Kelowna Flightcraft - component workshop | \$0.352 |
| Northern Air Support | \$0.234 |
| E & D Aircraft Services Ltd. | \$0.276 |
| Shell - Bulk Fuel Storage | \$0.413 |
| A.O.G. Air Support | \$0.207 |
| Southern Interior Flight Centre - Hangar | \$0.207 |

Land rental rates for the airport leases listed above shall increase by 2 percent per annum effective January 1, 2002 for the balance of their term.

Land rental rates for new airport leases and sub-leases will be based on current market value as determined by an independent appraisal for the initial year of the term, plus annual increases of 2 percent per annum for the balance of the term beyond the first year.”

And replace with:

“LAND RENTAL RATES

(Effective January 1, 2013)

Land rental rates for airport leases and sub-leases will be based on current market value as determined by an independent appraisal for the initial year of the term, plus annual increases of 2 percent per annum for the balance of the term beyond the first year.

Based on an independent study conducted in December, 2011 the land rental rates effective January 1, 2013 are:

| | | |
|-------------------|---|-------------------------|
| ±.50 acres | = | \$0.86 per square foot |
| 1.0 - 5.0 acres | = | \$0.57 per square foot |
| 6.0 - 10.0 acres | = | \$0.47 per square foot |
| 11.0 - 20.0 acres | = | \$0.41 per square foot” |

7. AND THAT Schedule A, 13. **AIRPORT MAINTENANCE CHARGE**, be deleted in its entirety that reads:

“AIRPORT MAINTENANCE CHARGE

\$0.022 per square foot per annum for all land leases and sub-leases until December 31, 2001. Effective January 1, 2002, the airport maintenance charge will increase by 2 percent per annum for the term of the individual land leases and sub-leases.”

And replaced with:

“AIRPORT MAINTENANCE CHARGE

Effective January 1, 2013, the airport maintenance charge is \$0.028 per square foot per annum and will increase by 2 percent per annum for the term of the individual land leases and sub-leases.”

AND THAT Schedule A, 25. **SECURITY FEES AND CHARGES - EFFECTIVE 15, 2009** be amended by deleting in its entirety “Note: All security fees and charges include applicable taxes.”

8. This bylaw may be cited for all purposes as "Bylaw No. 10884, being Amendment No. 27 to Airport Fees Bylaw No. 7982".
9. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first, second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Report to Council



Date: August 21, 21013
Rim No. 0505-80
To: City Manager
From: Community & Neighbourhood Programs Manager
Subject: Senior Societies Service Delivery Agreements

Recommendation:

THAT Council receives, for information, the Report from the Community & Neighbourhood Programs Manager dated August 21, 2013, regarding the Senior Societies Service Delivery Agreements;

AND THAT Council endorses the Service Delivery Agreements between the City of Kelowna and the Rutland Senior Centre Society and the Okanagan Mission Senior Centre Society as attached to the Report of the Community & Neighbourhood Programs Manager dated August 21, 2013;

AND FURTHER THAT the Divisional Director of Active Living and Culture be authorized to execute the Service Delivery Agreements with the Rutland Senior Centre Society and the Okanagan Mission Senior Centre Society on behalf of the City of Kelowna.

Purpose:

To seek Council's endorsement for a new Service Delivery Agreement between the City of Kelowna and the Rutland Senior Centre Society and the Okanagan Mission Senior Centre Society.

Background:

In 1998 the City was involved in establishing Senior Societies that would deliver services out of its facilities; Water Street Senior Centre, Rutland Senior Centre and the Okanagan Mission Activity Centre. As part of this process a Service Delivery Agreement was established between the Societies and the City. The original agreement outlined the roles and responsibilities in the management and operation of the facility. The City maintained the role in managing building operations while the Society was responsible for the delivery of a wide variety of recreational and educational programs for residents of Kelowna and district 50 years of age and older.

In 2009 the Service Delivery Agreements were altered to reflect the facilities change over to multi-age program centres. This direction was consistent with the recommendations from the Seniors Services Strategy (2005-2020) that future services for seniors be integrated into multi-age recreation facilities.

In 2012 the Agreement with the Water Street Senior Centre Society was updated as part of their move to the new Parkinson Activity Centre and approved by council. These new agreements follow the same format and content as the agreement with the Parkinson Senior Society.

The updated agreements, while respecting senior program requirements, allowed Active Living & Culture staff to provide community programming out of these facilities at times not utilized by the senior societies. This allowed these facilities to become multi-age program centres and assist the division with its goal to expand neighbourhood based program delivery.

Since January, 2013, department staff has been meeting with representatives from each of the two Senior Societies to review their current Service Delivery Agreements. The purpose of the review was to update any policies and/or procedures that had become outdated from the original agreement and to discuss new opportunities to improve overall services to reflect the current operation and the future direction and use of the facilities. During these discussions the primary focus was around clarifying operational functions and communication protocols between the City and the Society as well as standardizing the structure and wording of the agreements between the various senior societies.

Driving principles of these discussions included:

- The space allocated to the Societies would take into consideration its current and future programming requirements.
- The need to provide the Societies dedicated space for storage and specialized programming.
- The importance of the Societies members feeling a sense of community and identity in the facilities.
- The need for the City to provide multi-age programming out of the facilities to address community needs and increase capacity of services.
- The importance of maximizing facility utilization.
- The necessity of establishing a cohesive relationship between the Senior Societies and the City.

Primary business terms included in the agreement include:

Term - The agreement is for 1 year with an option to renew for 4 additional terms.

Scheduling - A scheduling protocol was followed that is consistent with scheduling practices in our other multi-age activity facilities.

1. The Society has first right of use in their allocated times in the facility shared spaces.
2. The City has first rights of use in the remaining times in the facility shared spaces.
3. Time in the facility shared spaces not used by the Society and/or the City for programs and services will be available to the community for rentals.

Other key points related to scheduling include:

- Facility scheduling is reviewed on a quarterly basis, at which time the Society can request additional time outside of their allocation. The request will be granted if space is available.
- The City has the right to utilize time allocated to the Society if they do not require it.

Equipment - The City will contribute annually up to \$1,000 towards the basic facility equipment such as tables and chairs that is considered "shared use" by the City, the Societies, and rentals. Both the City and the Society will provide and be responsible for program equipment and supplies that are for their sole use.

Security - The City and the Societies are both responsible for securing the facility; including the locking and unlocking of the exterior building entrances, and setting up the security system when they are accessing the facility. As well the City and the Society will also both be responsible for securing their program and storage spaces.

Communication and Reporting- A communication reporting structure was established.

- Staff will meet with the Society on a bi-weekly basis to discuss operational issues and service delivery concerns.
- Staff will attend the Society's monthly board meeting and AGM
- Staff will meet with the Society on a quarterly basis regarding space allocation.
- The Society will provide the City with an annual financial statement.

Internal Circulation: City Clerk; Manager, Building Services, Communications

Financial/Budgetary Considerations:

There are no budgetary implications in our financial commitment to the Society in this agreement. We will continue to provide up to \$1,000 annual towards the cost of the facilities table and chair replacement.

Personnel Implications:

There are no changes in our staffing requirements to manage these service delivery agreements. The Active Living & Culture Division will continue to assign a Community Recreation Coordinators as a liaison between the City and the Society.

External Agency/Public Comments:

The Rutland Senior Centre Society and the Okanagan Mission Senior Centre Society endorsed the new Service Delivery Agreements at their June 2013 Board of Directors meetings.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Communications Comments:

Alternate Recommendation:

Submitted by:

L. Roberts-Taylor, Manager, Community & Neighbourhood Programs

Approved for inclusion:



(J. Gabriel, Division Director, Active Living & Culture)

Attachments:

Rutland Senior Centre Society Service Delivery Agreement

Okanagan Mission Senior Centre Society Service Delivery Agreement

cc: Division Director, Communications

City Clerk

Manager, Facility Services

THIS SERVICE DELIVERY AGREEMENT made the ____ day of _____, 2013

BETWEEN: CITY OF KELOWNA
A municipal corporation having its offices at
1435 Water Street, in the City of Kelowna,
Province of British Columbia
(Hereinafter known as the "City")

OF THE FIRST PART,

AND: OKANAGAN MISSION SENIOR CENTRE SOCIETY
C/O Lance Secret, President
4398 Hobson Road
Kelowna, BC V1W 1Y3
(Hereinafter known as the "Society")

OF THE SECOND PART,

WHEREAS the City is the registered owner of the Mission Activity Centre recreation facility situate in the City of Kelowna, Province of British Columbia and legally described as:

Lot 1, Plan 29652, District Lot 167, Land District 41, ODYD

(Hereinafter called "the Facility");

AND WHEREAS the Society has agreed to provide a wide variety of recreational and educational programs for the residents of Kelowna and district 50 years of age and older that respond to their interests, stimulate their growth and enhance their quality of life as outlined in its constitution and bylaws attached hereto as Schedule E.

AND WHEREAS the City, under the direction of the Recreation & Cultural Services Department, agrees to assist the Society, when requested and/or where required, with the programs and services that are delivered by the Society;

AND WHEREAS the Facility will be operated as a multi-age activity centre, under the direction of the Recreation and Cultural Services Department, at times not allocated for use by the Society;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

1.01 The Okanagan Mission Activity Centre:

The Okanagan Mission Activity Centre comprises the building as per the floor plans attached hereto as Schedule A, including Licensed Area of which the society has non-exclusive use of. The Society will have non-exclusive use of the following areas within the Facility; kitchen, main hall, meeting room, washrooms, hallways, and common spaces. The Society will be allocated exclusive storage space within the Facility for their program equipment and supplies.

2.01 Term of Agreement:

This agreement shall be for a one year term, commencing on the ____ day of _____, 2013.

2.02 **Option to Renew:**
The agreement can be renewed for four (4) terms. The agreement will automatically renew for an additional term upon each anniversary date, unless either party gives written notice at least 90 days prior to the anniversary of the agreement to negotiate changes or give notice of termination of the agreement.

2.03 **Default & Termination:**
If the Society is in breach of any of the terms or obligations of this Agreement, the City may deliver to the Society a notice of default stipulating what the default is and that the default must be rectified within 30 days of the notice. If the Society does not correct the default within the 30 day period following such notice, the City may at its discretion and without prejudice, take all steps considered necessary to rectify the default. At this time the City at its sole discretion may terminate this agreement. If the Society ceases to exist as a non-profit society in good standing in the records of the Registrar of Companies, the City may, in its sole discretion, terminate this Agreement.

3.00 **CITY COVENANTS:** The City covenants with the Society:

3.01 **Administration:**

The City will provide the Society administrative and program support under the direction of the Recreation and Cultural Services Department, primarily by a Community Recreation Coordinator. This includes, but not limited to:

- act as a liaison to other City departments; to communicate the Society's concerns and needs regarding security, janitorial, maintenance and repairs
- meet on a bi-weekly basis with a representative appointed by the Society to discuss operational issues and service delivery concerns
- attend the Society's monthly board of director meetings and AGM
- meet quarterly with a representative appointed by the Board regarding space allocation
- provide the Society a weekly facility schedule
- provide the Society with space in the City's "Active Living Guide for Older Adults" to promote their programs and services as well provide them with copies of the guide
- provide information about the Society on the City's Recreation web-page
- provide the Society with input and guidance when requested and/or where required regarding program delivery

3.02 **Finances:**

The City will contribute up to a maximum of \$1000 per year towards the cost of purchasing shared facility equipment, tables and chairs.

3.03 **Equipment:**

City Facility Equipment

The City will provide and maintain the City Facility Equipment, which will be used by both the Society and the City. Attached hereto as Schedule B

City Program Equipment

The City will be responsible for providing and maintaining all equipment and supplies exclusively used by the City for operating its programs and services. The City is responsible for returning all of its equipment and supplies to their allocated storage space when not in use.

The City will also be responsible for setting up and taking down all equipment required to deliver their programs and services.

3.04 **Facility:**

The City will maintain the Facility, at a standard established by the City, consistent with other City facilities.

The City will assume financial and operational responsibility for:

- janitorial service
- HVAC (heating, ventilation, air conditioning)
- all electrical components
- plumbing
- all structural elements of the Facility (foundation, floors, walls, roof)
- fire extinguishers
- snow removal
- landscaping
- utilities (heat & light, public telephones, water, sewer)
- garbage collection
- building and content insurance

3.05 **Scheduling of Facility Use:**

The City will be responsible for scheduling all Facility use, including both Society and City programs, special events and rentals. Times allocated for use by the Society is attached hereto as Schedule C. Remaining time will be utilized by the City for programs, services and rentals.

On a quarterly basis the City will book the Society programming information into the facility schedule.

- by May 31st the September through December program information
- by August 31st the January through March program information
- by November 30th the April through June program information
- by February 28th the July through August program information

The City may grant the Society additional space outside of their allocated space, as identified in Schedule C. This additional space allocation will only be in effect for that quarter. The Society must make a written request to the City a minimum of fourteen (14) days prior to the commencement of the additional requested facility use. The request will only be granted if space is available.

If the Society does not require all of the space allocated for its use, as identified in Schedule C, the City may utilize that space for its purposes.

At the beginning of each quarter the allocated space in the Facility will revert back to Schedule C.

3.06 **Collection of Fees:**

The City will collect and retain all fees for use of the Facility for City programs, events and rentals.

3.07 **Damage:**

The City will be responsible for damage done to Society Facility Equipment, identified in Schedule D, by programs offered by the City and/or by rental groups.

The City will not be responsible for damage done to Society Program Equipment, which has not been returned to and locked in its allocated storage space, by programs offered by the City and/or by rental groups.

3.08 **Signage:**

The City agrees to provide signage within the facility identifying the Society's presence in the Facility. The City will also provide the Society with a display board that they can post notices and other information.

3.09 **Locking and unlocking:**

The City will be responsible for the locking and unlocking of the Facility, for their usage, and the locking and unlocking of City allocated storage spaces.

- 3.10 **Security:**
The City will be responsible for ensuring that all doors, windows, and other entryways in the Facility can be properly locked and secured, as well as the management of the Facility's security system and security cameras.
- 4.00 **OKANAGAN MISSION SENIOR CENTRE SOCIETY COVENANTS:** The Society covenants with the City:
- 4.01 **Administration:**
The Society will be responsible for:
- approving, coordinating and delivering a wide variety of recreational and educational programs for seniors that responds to their interests, stimulates their growth, and enhances their quality of life
- A representative appointed by the Society will:
- meet on a bi-weekly basis with a representative of the City to discuss operational issues and service delivery concerns
 - meet quarterly with a representative appointed by the City regarding space allocation
 - provide the City with information regarding their programs and service for the City's "Active Living Guide for Older Adults"
- The Society will:
- notify the City of any proposed changes to their constitution and bylaws and shall make no further changes to its constitution (Schedule E) without the expressed written consent of the City which the City may withhold for any reason
 - provide the City a copy of their emergency procedures
- 4.02 **Finances:**
The Society will submit an annual financial statement to the City of Kelowna, prepared in accordance to generally accepted accounting principles and laws of the country, certified correct by the treasurer and approved by the Society. The Society will maintain an accurate and complete financial record that accounts for all revenues and expenses, and adheres to the Society's by-laws.
- 4.03 **Society Program Equipment:**
The Society will be responsible for providing and maintaining all equipment and supplies exclusively used by the Society for operating its programs and services. The Society is responsible for returning all of its equipment and supplies to their allocated storage space when not in use. The Society will also be responsible for setting up and taking down all equipment required to deliver their programs and services.
- 4.04 **Facility:**
The Society agrees to meet with City staff regarding janitorial service as needed to provide input and feedback, dates to be mutually agreed upon.
The Society agrees to maintain the Facility in a clean and tidy condition, and will be responsible for removing unreasonable quantities of waste or refuse generated through the delivery of their programs and services.
- 4.05 **Schedule of Facility Use:**
On a quarterly base the Society will provide the City in writing their programming information. This document will indicate the following information: program names, program location, program time (day of the week, dates, and time of day), and any set up and take down time requirements.
- Timeline:
- by May 24th provide the City the September through December program information
 - by August 24th provide the City the January through March program information
 - by November 23rd provide the City the April through June program information
 - by February 21st provide the City the July through August program information

The Society may request additional space outside of their allocated space, as identified in Schedule C. The Society must submit a request in writing a minimum of fourteen (14) days prior to the commencement of the additional requested facility use. The request will only be granted if space is available. Any additional space allocation will only be in effect for that quarter.

The Society agrees that if it does not require all the time allocated for its use, as identified in Schedule C, the City may utilize the space for its purposes. The Society will inform the City a minimum of seven (7) days prior to commencement of facility use if it no longer requires that space.

At the beginning of each quarter the allocated space in the Facility will revert back to Schedule C.

The Society agrees not to allocate in whole or in part any portion of the Facility without the prior written consent of the City, which consent may be withheld for any reason. The Society also agrees not to rent or "sub-let" any of its allocated time to any other organization.

4.06 Collection of fees:

The Society shall have the authority to collect and retain membership fees and fees for programs and special events offered by the Society. These funds are to be used for the purposes of the Society and are to be reported as per 4.02.

4.07 Damage:

The Society will be responsible for damage done to City Facility Equipment, identified in Schedule B, by programs offered by the Society.

The Society will not be responsible for damage done to City Program Equipment which has not been returned to and locked in its allocated storage space, by programs offered by the Society.

4.08 Signage:

The Society agrees not to post any notices or signs within the facility other than on their designated display board.

4.09 Unlocking and Locking:

The Society will be responsible for the unlocking and locking of the Facility for their usage, and the locking and unlocking of their allocated storage spaces.

4.10 Nuisance and Negligence:

The Society agrees not to do, suffer or permit any act which may in any manner directly or indirectly, cause injury or damage to the property or to any fixtures or appurtenances thereof, including, but not limited to any sidewalk, curb, gutter, road surface and/or landscaped boulevard bordering the property, or which may be or become a nuisance to or interference with anyone who occupies or has access to any part of the property, or which may render the property or any part thereof less desirable or injure the reputation thereof.

4.11 Abide by Laws:

The Society agrees to abide by and comply with, at its own expense, all laws, rules and regulations of every authority which in any manner relates to or affects the business or profession of the Society or the use of the property by the Society and to save harmless the City from all costs, charges or damages to which the City may be put or suffer by reason of any breach by the Society of such law, rule or regulation.

4.12 General Insurance Provisions:

Without in any way limiting the obligation or liabilities of the Society, the Society shall at its own expense maintain and keep in force during the term of this agreement, the insurance coverage listed in this article. The "deductible or reimbursement" for any policy required under this section shall not exceed Five Thousand Dollars (\$5,000.00) per claim. The Society shall be responsible for all deductible amounts under the policies.

The Society shall at the time this agreement is signed, submit to the City, a certificate as per attached Schedule F, for all insurance policies or certified copies of all insurance policies (if requested) required under this article and shall also provide to the City from time to time as may be required, satisfactory proof that such policies are still in full force and effect.

Each insurance policy required under this article shall contain an endorsement to provide all named insured with prior notice of changes and cancellations. Such endorsement shall be the following form:

"It is understood and agreed that the City will be provided at least thirty (30) days written notice in advance of cancellation, change or amendment restricting coverage. Notice shall be given or sent by registered mail to all additional insured".

4.13 Liability Insurance:

The Society shall be responsible for a policy of public liability and property damage insurance in an amount of no less than Two Million Dollars (\$2,000,000.00) against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage arising out of the performance of this agreement.

The City shall be an additional insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured there under. In addition, each insurance policy shall include the following "Cross Liability" clause:

"The insurance afforded by this policy shall apply in the same manner as though separate policies were issued, to any action brought against any of the named insured or on behalf of any other named insured."

4.14 Director's and Officer's Insurance:

The Society must have Director's and Officer's Insurance at the time this agreement is signed, and upon request must be able to provide the City proof that such policy is in full force and effect throughout the life of the agreement.

4.15 Not to Void Insurance:

The Society must not do or permit anything to be done which would render any other policy of insurance on the property or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event the Society does anything that would cause an increase in the insurance premiums on the property, the organizer shall pay that amount which represents the increase in the insurance premium by virtue of the Society's use or occupation of the premises.

4.16 Hold Harmless:

The Society shall save and hold harmless the City, its officers, agents, servants and employees from and against all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the performance of this Agreement, whether such claim shall be made by an employee of the Society or by a third party. The Society shall defend any and all such actions and pay all legal charges, costs and other expenses arising there from.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto on the date and year first written above.

Signed in the presence of:

CITY OF KELOWNA By its authorized signatory (ies)

Witness

Address

Occupation

Signed in the presence of:

OKANAGAN MISSION SENIOR CENTRE SOCIETY
By its authorized signatory (ies)

A. Ta Derkison

Witness

#131-3505-38 Ave

Address

Vernon, BC.
Retired

Occupation

Lance Secret

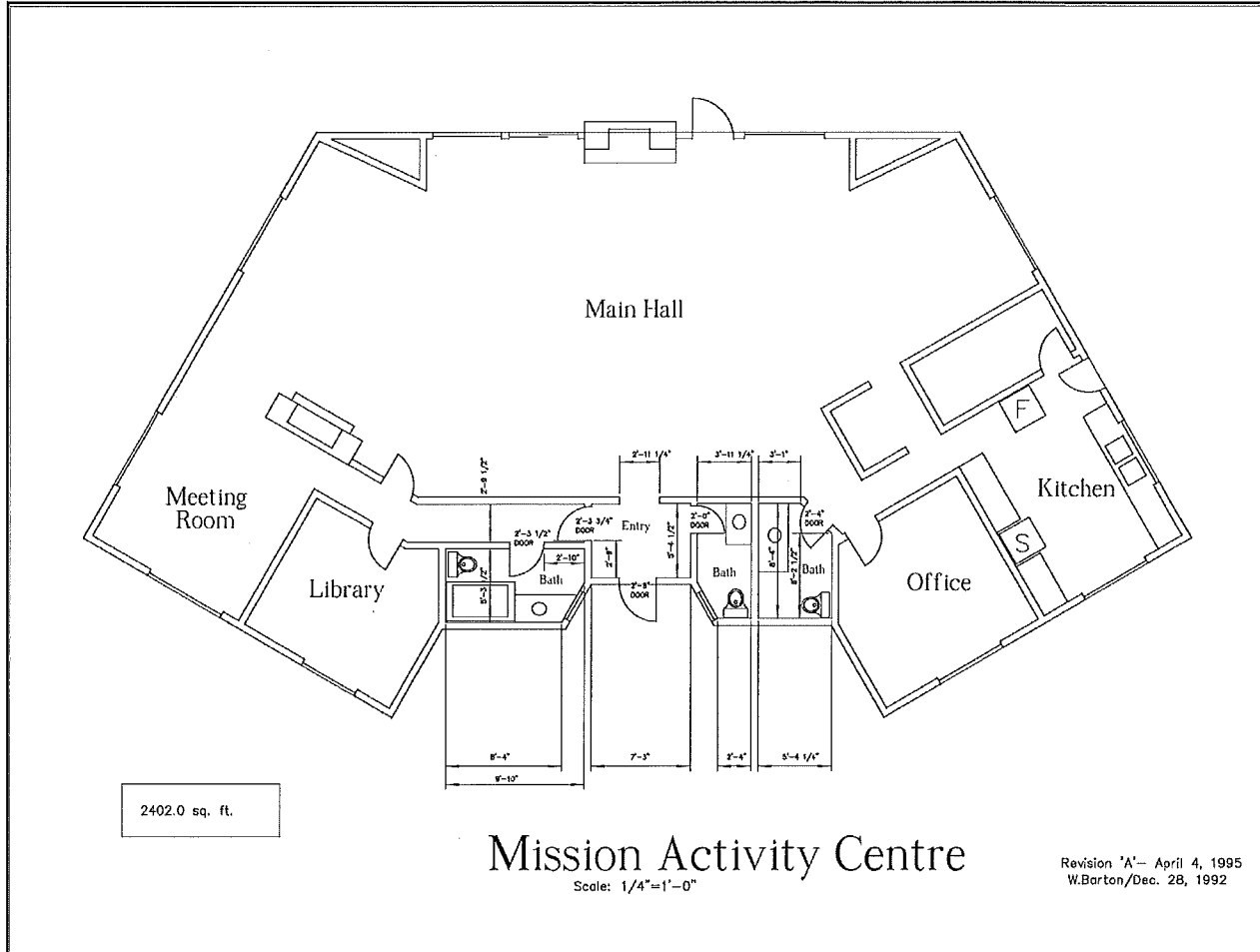
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DATE: *July 2, 2013*

List of Schedules:

| | |
|------------|---|
| Schedule A | Floor Plan – Okanagan Mission Activity Centre |
| Schedule B | City Facility Equipment |
| Schedule C | List of Room and Times available for use by the Society |
| Schedule D | Society Facility Equipment |
| Schedule E | Society Constitution & Bylaws |
| Schedule F | Certificate of Insurance |

SCHEDULE A - Floor Plan – Okanagan Mission Activity Centre



SCHEDULE A Con't Ortho Photograph – Okanagan Mission Activity Centre



City of Kelowna - Accuracy and correctness not guaranteed.

SCHEDULE B – City Facility Equipment

Kitchen

| | |
|-------------------------|---|
| Counter top range | 1 |
| Electric stove | 1 |
| Refrigerator | 1 |
| Counter top microwave | 1 |
| Stainless Steel Trolley | 1 |

Main Hall

| | |
|--------------------------------|---|
| Venetian blinds | 6 |
| Vertical blinds | 2 |
| Coat racks | 2 |
| Tables – 6 foot | 8 |
| Tables – 8 foot | 2 |
| Cupboard for Fitness Equipment | 1 |
| AED | 1 |

Owned Jointly with the Okanagan Mission Senior Centre Society

| | |
|------------|----|
| Chairs | 63 |
| Dishwasher | 1 |

SCHEDULE C - OKANAGAN MISSION ACTIVITY CENTRE

Space Allocated to the Society

| Facility | | # hrs |
|-----------------|---|--------------------------------|
| Sunday | | 0 |
| Monday | 9:00am – 3:00pm | 6 |
| Tuesday | 9:00 am - 2:00 pm | 5 |
| Wednesday | 9:00 am – 2:15 pm | 5.25 |
| Thursday | 9:00 am - 4:30pm | 7.5 |
| Friday | 9:00am – 4:30pm | 7.5 |
| Saturday | 3:00pm – 10:00pm (last Saturday of Month) | (7.0) |
| | Total Number of hours | 31.25 (38.25) |

SCHEDULE D – Society Facility Equipment

- Piano & Stool
- Crib Tables on Trolley
- Quilting Frame

SCHEDULE E – CONSTITUTION AND BYLAWS

OKANAGAN MISSION SENIOR CENTRE SOCIETY

4398 Hobson Road
Kelowna, B.C.
(250) 764-7642

CONSTITUTION

SECTION 1: NAME:

- 1.01 The name of the Society shall be OKANAGAN MISSION SENIOR CENTRE SOCIETY.

SECTION 2: PURPOSES:

- 2.01 To operate a senior centre for the senior citizens of Kelowna and district.
2.02 To organize activities for the seniors to participate in. This would include any senior visiting in the area.
2.03 To provide a wide variety of recreational and educational programs for the seniors that respond to their interests, stimulate their growth, and enhance their quality of life.
2.04 To co-operate with the City of Kelowna and all its elected or hired officials in any matter concerning the Okanagan Mission Senior Centre.
2.05 To enter into contracts with the City of Kelowna on matters of mutual concern.
2.06 To ensure that all activities of the Society be non-political and non-sectarian, and that all business be carried out in a truly democratic manner.
2.07 To do all such things as are conducive to the attainment of the above objectives.

SECTION 3: NON-PROFIT STATUS:

- 3.01 The Society shall be carried on without purpose of gain for its members, and no part of any income of the Society shall be payable or otherwise available for personal benefit of the member(s) thereof, and any profits or other accretions to the Society shall be used for promoting its purposes. This provision is unalterable.

SECTION 4: DISSOLUTION OF THE SOCIETY:

- 4.01 Upon wind-up or dissolution of the Society, the assets remaining after the payment of all costs, charges, and expenses properly incurred in the wind-up, including the remuneration of the liquidator, and after payment to employees of the Society of any arrears of salaries or wages, and after payment of any debts of the Society, shall be distributed to a charitable organization(s) in Canada, registered under the provisions of the Income Tax Act, and/or the Recreational Department of the City of Kelowna; such distribution shall be designated by the Board of Directors. This provision is unalterable.

BYLAWS

PART ONE: INTERPRETATION:

- 1.01 "Society Act" or "Act" means the Society Act of the Province of British Columbia from time to time in force and all amendments to it.
- 1.02 "Director(s)" means the directors of the Okanagan Mission Senior Centre for the time being.
- 1.03 "Registered Address" of a member means his address as recorded in the register of members.
- 1.04 Words importing the singular include the plural and vice versa; words importing the male person include a female person.
- 1.05 "Centre" designates the building where Okanagan Mission Senior Centre conducts its operations.
- 1.06 The definitions in the Society Act on the date these bylaws become effective apply to these bylaws.

PART TWO: MEMBERSHIP:

- 2.01 The members of the Society are the applicants for incorporation of the Society, and those persons who subsequently have become members, in accordance with these bylaws and in either case, have not ceased to be members.
- 2.02 Membership is voluntary and open to all seniors 50 years and over, especially those residing within the area described as the City of Kelowna.
- 2.03 Every member of the Society shall uphold the constitution and comply with the bylaws.
- 2.04 A person shall apply to the directors for membership in the Society, and upon acceptance by the directors shall become a member by paying the necessary fee.
- 2.05 The amount of the first annual membership dues shall be determined by the directors and thereafter, the annual membership dues shall be determined at the annual general meeting of the Society.
- 2.06 A person shall cease to be a member of the Society
 - (a) by submitting his resignation in writing; or
 - (b) on his death; or
 - (c) upon being expelled; or
 - (d) upon not having been a member in good standing for one year; or
 - (e) upon dissolution of the Society.
- 2.07
 - (a) A member of the Society may be expelled, for cause, by a special resolution of the membership passed at a general meeting.
 - (b) The notice of special resolution for expulsion shall be accompanied by a statement of reason(s) for the expulsion.
 - (c) The person who is the subject of the proposed resolution for expulsion shall be given the opportunity to be heard at the general meeting before the special resolution is put to the vote.
- 2.08 All members of the Society are in good standing except a member who has failed to pay his current annual membership fee, and is not in good standing so long as the debt remains unpaid;
- 2.09 For the purpose of participating in an activity organized by the Society, any visitor who signs his signature in the official Sign-In book shall be

- granted the same privileges as a member would have, except voting rights at general meetings, or holding an office on the Executive.
- 2.10 A member from another Senior Centre shall be acknowledged and accepted by the Society as far as participating in an activity goes, but shall not be eligible to vote or to hold office on the Executive.
- 2.11 Honorary Membership may be granted to any senior according to criteria established by the Board of Directors and passed at a general meeting. Such honorary members shall enjoy the same privileges and responsibilities as any other member who became a member via clause 2.04 of these bylaws.

PART THREE: MEETINGS OF MEMBERS:

- 3.01 General meetings of the Society shall be held at such time and place, in accordance with the Society Act, as directors decide.
- 3.02 Every general meeting, other than the annual general meeting is an extraordinary general meeting.
- 3.03 The directors may, whenever they deem fit, convene an extraordinary general meeting.
- 3.04 Notice of a general meeting shall specify the place, day and hour of the meeting, and, in the case of special business, the general nature of the business.
- 3.05 The first annual meeting shall be held within fifteen months after the date of incorporation. Thereafter, an annual meeting shall be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.
- 3.06 The accidental omission to give notice of a meeting to, or the non-receipt of notice by any member entitled to receive notice does not invalidate proceedings at the meeting.
- 3.07 Not less than fourteen days written notice of a general meeting of the Society shall be given to each member entitled to receive such notice. A notice sent by mail shall be deemed to have been given on the second day following that on which the notice is posted.

PART FOUR: PROCEEDINGS AT GENERAL MEETINGS:

- 4.01 A quorum required to conduct the business of a general meeting shall be 15 or more voting members.
- 4.02 Subject to bylaw 4.12, the president of the Society shall preside as chairman at a general meeting.
- 4.03 The chairman may not move or second a resolution or a motion.
- 4.04 A resolution requires a seconder.
- 4.05 In case of equality of votes, the chairman shall not have a second vote in addition to the one he is entitled to as a member in good standing, and the motion or resolution does not pass.
- 4.06 A proposed resolution or motion with a tie vote does not pass.
- 4.07 A member, regular or honorary, in good standing and present at a general meeting of members is entitled to one vote.
- 4.08 Voting shall be by show of hands, or by ballot, if agreed to by members present at the meeting.
- 4.09 Voting by proxy is not permitted.
- 4.10 The agenda at an Annual General Meeting shall include the following:

- (a) Confirmation that a quorum is present
 - (b) Reading of minutes of last AGM
 - (c) President's report
 - (d) Financial reports, and proposed budget
 - (e) Committee reports
 - (f) Setting of membership fees
 - (g) Old and new business
 - (h) Election of directors and officers
 - (i) Election of auditor, if applicable
 - (j) Adjournment
- 4.11 No business other than the election of a chairman and the termination of the meeting shall be conducted when a quorum is not present.
- 4.12 If at a general meeting
- (a) there is no president, vice-president or other director present within 15 minutes after the time appointed for holding the meeting; or
 - (b) the president and all the other directors present are unwilling to act as chairman, the members present shall choose one of their own to be chairman.
- 4.13 Candidates or others on their behalf shall not display goods or favors at the location where an election is to take place, at or immediately before the annual meeting.

PART FIVE: DIRECTORS AND OFFICERS:

- 5.01 The directors may exercise all the powers and do all the acts and things that the Society may exercise and do, and which are not by these bylaws or by statute or otherwise lawfully directed or required to be exercised or done by the Society in general meeting, but subject, nevertheless, to
- (a) all laws affecting the Society
 - (b) these bylaws
 - (c) rules which are made from time to time by the Society in general meeting.
- 5.02 The powers of the directors shall be limited to the extent that they shall take none of the following steps without first having obtained the sanction of a special resolution:
- (a) the sale or disposal of any real property;
 - (b) the sale or disposal of any item of personal property of a value in excess of \$10,000;
 - (c) the expenditure of any sum of money in excess of \$10,000 for any single purchase whether of real or personal property or for payment of services of any kind whatsoever with the following exceptions:
 - (1) sums in excess of \$10,000 may be expended without the sanction of a special resolution where such sums have been authorized in a budget passed at a general meeting; and
 - (2) in case of emergency requiring the immediate expenditure of a sum of money in excess of \$10,000 in order to secure or protect or repair a building or part of a building belonging to the Society which would otherwise be in danger of further damage to it or its

contents. In such cases, the directors shall make full report at the next general meeting, stating their reasons for making any such expenditure, and accounting fully for the money so expended.

- 5.03 There shall be five officers elected annually:
- (a) President
 - (b) First Vice-President
 - (c) Second Vice-President
 - (d) Secretary
 - (e) Treasurer
- The office of Secretary and Treasurer may be combined into one office, that of Sec-Treas.
- 5.04 Up to five directors shall be elected for a two year term, rotating so that approximately $\frac{1}{2}$ are elected each year. For the organizational year, two of the directors shall be elected for a one-year term, and three for a two-year term.
- 5.05 Separate elections shall be held for each office to be filled.
- 5.06 Elections may be by acclamation, otherwise by ballot.
- 5.07 The Board of Directors shall consist of
- 1. the elected officers
 - 2. immediate past president
 - 3. five directors at large, elected for a two-year term.
- 5.08 The officers shall not hold the same office for more than three consecutive terms.
- 5.09 The president shall appoint a Nominations Committee, annually, of three persons, not less than sixty days before the annual general meeting.
- 5.10 Any member present at the general meeting may nominate another member for office or director at large, having first received prior consent from the individual being nominated.
- 5.11 If no successor is elected, the person previously elected or appointed continues to hold office.
- 5.12 The directors shall serve without remuneration, and the directors shall not receive directly or indirectly any profits from their position as directors, but may be paid expenses incurred by them in the performance of their duties.
- 5.13 The members may by special resolution remove a director before the expiration of term of office for just cause provided the reasons are given, and the opportunity for the director to defend himself is provided.
- 5.14 Vacancies on the Board may be filled by appointment by the remaining directors; director(s) so appointed shall hold office until the next annual general meeting, and shall be known as Temporary Directors.
- 5.15 Any director who is absent for more than three consecutive meetings shall be removed from office unless such absence is excused by a board resolution.
- 5.16 No act or proceeding of the directors is invalid only by reason of there being less than the prescribed number of directors in office.
- 5.17 No rule, made by the Society in a general meeting, invalidates a prior act of the directors that would have been valid if the rule had not been made.

PART SIX: ADVISORS AND ASSOCIATES:

- 6.01 The board of directors may request appointed persons to serve the board

- as advisors or associates; such person(s) shall be non-voting participants.
- 6.02 Each activity committee should be comprised of three people who shall organize and operate their respective activities. They shall send a representative to the board of directors meetings, but shall not have a vote.

PART SEVEN: PROCEEDINGS OF DIRECTORS:

- 7.01 Directors shall meet on a monthly basis at a time and place to be determined by the Board, or failing which, by the president. A special meeting may be called at any time by the president, or at the request of three or more directors.
- 7.02 The directors may from time to time fix the quorum necessary for the transaction of business, and unless so fixed, the quorum shall be a majority of the directors then in office.
- 7.03 Questions are decided by a simple majority vote or by consensus.
- 7.04 The president shall chair the meeting.
- 7.05 The chairman may not move or second a motion or resolution.
- 7.06 Voting shall be by show of hands.
- 7.07 The directors may delegate any, but not all, of their powers to committees consisting of such directors as they deem fit.
- 7.08 A committee so formed in the exercise of the powers so delegated shall conform to any rules that may from time to time be imposed on it by the directors, and shall report back at the earliest meeting of the directors to be held next after it has done its work.
- 7.09 The members of a committee may meet and adjourn as they think proper.
- 7.10 In case of an equality of votes the chairman does not have a second or casting vote, and the motion shall not pass.
- 7.11 A resolution in writing, signed by all the directors and placed within the minutes is as valid as if regularly passed.
- 7.12 The Board of Directors shall establish a schedule of participation fees, excluding membership fees, subject to the approval of the voting members.

PART EIGHT: DUTIES OF OFFICERS:

- 8.01 The President shall preside at all meetings of the Society and of the directors.
- 8.02 The President is the chief executive officer of the Society and shall supervise the other officers in the execution of their duties.
- 8.03 The President shall be an ex-officio member of any and all committees formed within the Society; he shall not have voting privileges on these committees.
- 8.04 The Vice President shall carry out the duties of the President during his absence.
- 8.05 The Secretary shall
- (a) conduct the correspondence of the Society
 - (b) issue notices of meetings of the Society and its directors
 - (c) keep minutes of all meetings of the Society and directors
 - (d) have custody of all documents and records of the Society, except those required to be kept by the treasurer
 - (e) have custody of the common seal
 - (f) maintain the Register of Members.
- 8.06 The Treasurer shall

- (a) keep such financial records, including books of account, as are necessary to comply with the Society Act;
 - (b) render financial statements to the directors, members and others when required;
 - (c) prepare, in conjunction with the directors, a budget for presentation at the annual general meeting.
 - (c) deposit all monies received in the name of the Society in a bank or credit union selected by the board of directors.
- 8.07 In the absence of the secretary from the meeting, the directors shall appoint another person to act as secretary for the meeting.
- 8.08 The Board of Directors shall have the power to regulate the conduct of any member or user of the centre, if that conduct is considered to be detrimental to the best interests of the Society.
- 8.09 The Society may receive grants, donations, gifts or contributions from any person or corporation and may apply the same to the objectives of the Society.

PART NINE: FURTHER DUTIES AND POWERS OF THE DIRECTORS:

- 9.01 The directors may provide a common seal for the Society, and they shall have power from time to time to destroy it, and substitute a new seal in place of the one destroyed.
- 9.02 The common seal shall be affixed only when authorized by a resolution of the directors, and only then in the presence of any two of the officers as specified in the resolution.

PART TEN: CONTROL AND MANAGEMENT:

- 10.01 Approval of the annual budget for operation of the Society shall also constitute approval for the board to make such expenditures approved in the budget as are necessary for the day to day operation of the Centre.
- 10.02 Any director deemed to be in conflict of interest position shall absent himself from the meeting while the matter is being discussed and voted upon.

PART ELEVEN: BORROWING:

- 11.01 No debenture shall be issued, and no monies shall be borrowed in excess of \$10,000 without the sanction of a special resolution.
- 11.02 The members may by special resolution restrict the borrowing powers of the directors, but any such restriction imposed expires at the next annual general meeting.

PART TWELVE: AUDITOR AND ACCOUNTS:

This part applies only if the Society is required or has resolved to have an Auditor:

- 12.01 The fiscal year of the Society shall be the twelve month period ending the 31st day of May, or such twelve month period as may be set from time to time and approved by the membership.
- 12.02 The auditor may attend general meetings.

- 12.03 If the Society resolves or is required to have their books audited by an auditor, an auditor shall be elected at the annual general meeting. If the Society doesn't retain the services of an auditor, then the Society shall arrange to have the financial statements and the supporting vouchers financially reviewed by an independent person or group.
- 12.04 The board of directors shall designate which directors are authorized to sign financial documents, two of which must be signatories at any given time.
- 12.05 All funds received shall be deposited in the name of Okanagan Mission Senior Centre at a bank or credit union selected by the directors.
- 12.06 The treasurer is authorized to keep a cash float to pay the day to day expenses of the Society's activities. The amount of the float shall be determined by the membership at a general meeting.
- 12.07 Expenses in excess of one thousand dollars are to be brought before a general meeting for approval. This figure may be changed from time to time by the general membership.

PART THIRTEEN: NOTICES TO MEMBERS:

- 13.01 A notice may be given to a member, either personally, or by mail to him at his registered address, or by notice published in the Kelowna Senior Centre Newsletter, or by posting on the Okanagan Mission Activity Centre bulletin board.
- 13.02 A notice sent by mail shall be deemed to have been given on the second day following that upon which the notice was posted.
- 13.03 Notice of a general meeting shall be given to the auditor, if part 12 applies.
- 13.04 No other person is entitled to receive a notice of general meeting.

PART FOURTEEN: BYLAWS:

- 14.01 On being admitted to membership, a member is entitled to receive without charge a copy of the constitution and bylaws of the Society.
- 14.02 These bylaws shall not be altered or added to except by special resolution which requires a majority of not less than 75% of the votes cast to pass.
- 14.03 Proposed amendments shall be submitted to the members at least 14 days in advance of a general meeting at which they shall be on the agenda.

PART FIFTEEN: MINUTES, BOOKS, RECORDS:

- 15.01 The minutes, books, records and any other documents relating to the Society shall be kept on file in the main office of the Society.

PART SIXTEEN: RULES OF ORDER:

- 16.01 Robert's Rules of Order shall be the parliamentary authority for all matters of procedure not specifically covered by these bylaws or by the Society Act or any regulations pursuant thereto or any other applicable or relevant statutory provisions or regulations.

Updated: March 4, 2013

SCHEDULE F - CERTIFICATE OF INSURANCE

This Certificate is issued to:

- The City of Kelowna – c/o 645 Dodd Road Kelowna, BC V1X 5H1
- The City of Kelowna – c/o 1800 Parkinson Way Kelowna BC V1Y 4P9

Insured

| |
|----------|
| Name: |
| Address: |

Broker

| |
|----------|
| Name: |
| Address: |

Location and nature of operation or contract to which this Certificate applies:

| |
|--|
| |
|--|

| Type of Insurance | Company & Policy Number | Policy Dates | | Limits of Liability/Amounts |
|---|-------------------------|--------------|--------|---|
| | | Effective | Expiry | |
| Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor’s Protective; • Personal Injury; • Contingent Employer’s Liability; • Broad Form Property Damage; • Non-Owned Automobile; | | | | Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible |
| Section 2 Automobile Liability | | | | Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive |

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.**
2. **The City of Kelowna is named as an Additional Insured.**
3. **30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**

Print Name

Authorized Signatory

Date

Title

Company Name

THIS SERVICE DELIVERY AGREEMENT made the ____ day of _____, 2013

BETWEEN: CITY OF KELOWNA
A municipal corporation having its offices at
1435 Water Street, in the City of Kelowna,
Province of British Columbia
(Hereinafter known as the "City")

OF THE FIRST PART,

AND: RUTLAND SENIOR CENTRE SOCIETY
C/O June Padley, President
765 Dodd Road
Kelowna, BC V1X 5H1
(Hereinafter known as the "Society")

OF THE SECOND PART,

WHEREAS the City is the registered owner of the Rutland Activity Centre recreation facility situate in the City of Kelowna, Province of British Columbia and legally described as:

Lot 38, Plan 264, Land District 41, ODYD

(Hereinafter called "the Facility");

AND WHEREAS the Society has agreed to provide a wide variety of recreational and educational programs for the residents of Kelowna and district 50 years of age and older that respond to their interests, stimulate their growth and enhance their quality of life as outlined in its constitution and bylaws attached hereto as Schedule E.

AND WHEREAS the City, under the direction of the Recreation & Cultural Services Department, agrees to assist the Society, when requested and/or where required, with the programs and services that are delivered by the Society;

AND WHEREAS the Facility will be operated as a multi-age activity centre, under the direction of the Recreation and Cultural Services Department, at times not allocated for use by the Society;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

1.01 The Rutland Activity Centre:

The Rutland Activity Centre comprises the building as per the floor plans attached hereto as Schedule A. The Society will have exclusive use of the following areas within the facility; billiards room. The Society will have non-exclusive use of the following areas within the Facility; reception area, kitchen, main hall, meeting room #1, meeting room #2, washrooms, hallways, and common spaces. The Society will be allocated exclusive storage space within the Facility for their program equipment and supplies.

2.01 Term of Agreement:

This agreement shall be for a one year term, commencing on the ____ day of _____, 2013.

2.02 **Option to Renew:**

The agreement can be renewed for four (4) terms. The agreement will automatically renew for an additional term upon each anniversary date, unless either party gives written notice at least 90 days prior to the anniversary of the agreement to negotiate changes or give notice of termination of the agreement.

2.03 **Default & Termination:**

If the Society is in breach of any of the terms or obligations of this Agreement, the City may deliver to the Society a notice of default stipulating what the default is and that the default must be rectified within 30 days of the notice. If the Society does not correct the default within the 30 day period following such notice, the City may at its discretion and without prejudice, take all steps considered necessary to rectify the default. At this time the City at its sole discretion may terminate this agreement. If the Society ceases to exist as a non-profit society in good standing in the records of the Registrar of Companies, the City may, in its sole discretion, terminate this Agreement.

3.00 **CITY COVENANTS:** The City covenants with the Society:

3.01 **Administration:**

The City will provide the Society administrative and program support under the direction of the Recreation and Cultural Services Department, primarily by a Community Recreation Coordinator. This includes, but not limited to:

- act as a liaison to other City departments; to communicate the Society's concerns and needs regarding security, janitorial, maintenance and repairs
- meet on a bi-weekly basis with a representative appointed by the Society to discuss operational issues and service delivery concerns
- attend the Society's monthly board of director meetings and AGM
- meet quarterly with a representative appointed by the Board regarding space allocation
- provide the Society a weekly facility schedule
- provide the Society with space in the City's "Active Living Guide for Older Adults" to promote their programs and services as well provide them with copies of the guide
- provide information about the Society on the City's Recreation web-page
- provide the Society with input and guidance when requested and/or where required regarding program delivery

3.02 **Finances:**

The City will contribute up to a maximum of \$1000 per year towards the cost of purchasing shared facility equipment, tables and chairs.

3.03 **Equipment:**

City Facility Equipment

The City will provide and maintain the City Facility Equipment, which will be used by both the Society and the City. Attached hereto as Schedule B

City Program Equipment

The City will be responsible for providing and maintaining all equipment and supplies exclusively used by the City for operating its programs and services. The City is responsible for returning all of its equipment and supplies to their allocated storage space when not in use.

The City will also be responsible for setting up and taking down all equipment required to deliver their programs and services.

3.04 **Facility:**
The City will maintain the Facility, at a standard established by the City, consistent with other City facilities.

The City will assume financial and operational responsibility for:

- janitorial service
- HVAC (heating, ventilation, air conditioning)
- all electrical components
- plumbing
- all structural elements of the Facility (foundation, floors, walls, roof)
- fire extinguishers
- snow removal
- landscaping
- utilities (heat & light, public telephones, water, sewer)
- garbage collection
- building and content insurance

3.05 **Scheduling of Facility Use:**
The City will be responsible for scheduling all Facility use, including both Society and City programs, special events and rentals. Times allocated for use by the Society is attached hereto as Schedule C. Remaining time will be utilized by the City for programs, services and rentals.

On a quarterly basis the City will book the Society programming information into the facility schedule.

- by May 31st the September through December program information
- by August 31st the January through March program information
- by November 30th the April through June program information
- by February 28th the July through August program information

The City may grant the Society additional space outside of their allocated space, as identified in Schedule C. This additional space allocation will only be in effect for that quarter. The Society must make a written request to the City a minimum of fourteen (14) days prior to the commencement of the additional requested facility use. The request will only be granted if space is available.

If the Society does not require all of the space allocated for its use, as identified in Schedule C, the City may utilize that space for its purposes.

At the beginning of each quarter the allocated space in the Facility will revert back to Schedule C.

3.06 **Collection of Fees:**
The City will collect and retain all fees for use of the Facility for City programs, events and rentals.

3.07 **Damage:**
The City will be responsible for damage done to Society Facility Equipment, identified in Schedule D, by programs offered by the City and/or by rental groups.

The City will not be responsible for damage done to Society Program Equipment, which has not been returned to and locked in its allocated storage space, by programs offered by the City and/or by rental groups.

3.08 **Signage:**
The City agrees to provide signage within the facility identifying the Society's presence in the Facility. The City will also provide the Society with a display board that they can post notices and other information.

3.09 **Locking and unlocking:**
The City will be responsible for the locking and unlocking of the Facility, for their usage, and the locking and unlocking of City allocated storage spaces.

- 3.10 **Security:**
The City will be responsible for ensuring that all doors, windows, and other entryways in the Facility can be properly locked and secured, as well as the management of the Facility's security system.
- 4.00 **RUTLAND SENIOR CENTRE SOCIETY COVENANTS:** The Society covenants with the City:
- 4.01 **Administration:**
The Society will be responsible for:
- approving, coordinating and delivering a wide variety of recreational and educational programs for seniors that responds to their interests, stimulates their growth, and enhances their quality of life
- A representative appointed by the Society will:
- meet on a bi-weekly basis with a representative of the City to discuss operational issues and service delivery concerns
 - meet quarterly with a representative appointed by the City regarding space allocation
 - provide the City with information regarding their programs and service for the City's "Active Living Guide for Older Adults"
- The Society will:
- notify the City of any proposed changes to their constitution and bylaws and shall make no further changes to its constitution (Schedule E) without the expressed written consent of the City which the City may withhold for any reason
 - provide the City a copy of their emergency procedures
- 4.02 **Finances:**
The Society will submit an annual financial statement to the City of Kelowna, prepared in accordance to generally accepted accounting principles and laws of the country, certified correct by the treasurer and approved by the Society. The Society will maintain an accurate and complete financial record that accounts for all revenues and expenses, and adheres to the Society's by-laws.
- 4.03 **Society Program Equipment:**
The Society will be responsible for providing and maintaining all equipment and supplies exclusively used by the Society for operating its programs and services. The Society is responsible for returning all of its equipment and supplies to their allocated storage space when not in use. The Society will also be responsible for setting up and taking down all equipment required to deliver their programs and services.
- 4.04 **Facility:**
The Society agrees to meet with City staff regarding janitorial service as needed to provide input and feedback, dates to be mutually agreed upon.
The Society agrees to maintain the Facility in a clean and tidy condition, and will be responsible for removing unreasonable quantities of waste or refuse generated through the delivery of their programs and services.
- 4.05 **Schedule of Facility Use:**
On a quarterly base the Society will provide the City in writing their programming information. This document will indicate the following information: program names, program location, program time (day of the week, dates, and time of day), and any set up and take down time requirements.
- Timeline:
- by May 24th provide the City the September through December program information
 - by August 24th provide the City the January through March program information
 - by November 23rd provide the City the April through June program information
 - by February 21st provide the City the July through August program information
- The Society may request additional space outside of their allocated space, as identified in Schedule C. The Society must submit a request in writing a minimum of fourteen (14) days prior to the commencement of

the additional requested facility use. The request will only be granted if space is available. Any additional space allocation will only be in effect for that quarter.

The Society agrees that if it does not require all the time allocated for its use, as identified in Schedule C, the City may utilize the space for its purposes. The Society will inform the City a minimum of seven (7) days prior to commencement of facility use if it no longer requires that space.

At the beginning of each quarter the allocated space in the Facility will revert back to Schedule C.

The Society agrees not to allocate in whole or in part any portion of the Facility without the prior written consent of the City, which consent may be withheld for any reason. The Society also agrees not to rent or "sub-let" any of its allocated time to any other organization.

4.06 Collection of fees:

The Society shall have the authority to collect and retain membership fees and fees for programs and special events offered by the Society. These funds are to be used for the purposes of the Society and are to be reported as per 4.02.

4.07 Damage:

The Society will be responsible for damage done to City Facility Equipment, identified in Schedule B, by programs offered by the Society.

The Society will not be responsible for damage done to City Program Equipment which has not been returned to and locked in its allocated storage space, by programs offered by the Society.

4.08 Signage:

The Society agrees not to post any notices or signs within the facility other than on their designated display board.

4.09 Unlocking and Locking:

The Society will be responsible for the unlocking and locking of any of the Facility for their usage, and the locking and unlocking of their allocated storage spaces.

4.10 Nuisance and Negligence:

The Society agrees not to do, suffer or permit any act which may in any manner directly or indirectly, cause injury or damage to the property or to any fixtures or appurtenances thereof, including, but not limited to any sidewalk, curb, gutter, road surface and/or landscaped boulevard bordering the property, or which may be or become a nuisance to or interference with anyone who occupies or has access to any part of the property, or which may render the property or any part thereof less desirable or injure the reputation thereof.

4.11 Abide by Laws:

The Society agrees to abide by and comply with, at its own expense, all laws, rules and regulations of every authority which in any manner relates to or affects the business or profession of the Society or the use of the property by the Society and to save harmless the City from all costs, charges or damages to which the City may be put or suffer by reason of any breach by the Society of such law, rule or regulation.

4.12 General Insurance Provisions:

Without in any way limiting the obligation or liabilities of the Society, the Society shall at its own expense maintain and keep in force during the term of this agreement, the insurance coverage listed in this article. The "deductible or reimbursement" for any policy required under this section shall not exceed Five Thousand Dollars (\$5,000.00) per claim. The Society shall be responsible for all deductible amounts under the policies.

The Society shall at the time this agreement is signed, submit to the City, a certificate as per attached Schedule F, for all insurance policies or certified copies of all insurance policies (if requested) required

under this article and shall also provide to the City from time to time as may be required, satisfactory proof that such policies are still in full force and effect.

Each insurance policy required under this article shall contain an endorsement to provide all named insured with prior notice of changes and cancellations. Such endorsement shall be the following form:

“It is understood and agreed that the City will be provided at least thirty (30) days written notice in advance of cancellation, change or amendment restricting coverage. Notice shall be given or sent by registered mail to all additional insured”.

4.13 **Liability Insurance:**

The Society shall be responsible for a policy of public liability and property damage insurance in an amount of no less than Two Million Dollars (\$2,000,000.00) against liabilities or damages in respect of injuries to persons (including injuries resulting in death) and in respect of damage arising out of the performance of this agreement.

The City shall be an additional insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured there under. In addition, each insurance policy shall include the following “Cross Liability” clause:

“The insurance afforded by this policy shall apply in the same manner as though separate policies were issued, to any action brought against any of the named insured or on behalf of any other named insured.”

4.14 **Director’s and Officer’s Insurance:**

The Society must have Director’s and Officer’s Insurance at the time this agreement is signed, and upon request must be able to provide the City proof that such policy is in full force and effect throughout the life of the agreement.

4.15 **Not to Void Insurance:**

The Society must not do or permit anything to be done which would render any other policy of insurance on the property or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event the Society does anything that would cause an increase in the insurance premiums on the property, the organizer shall pay that amount which represents the increase in the insurance premium by virtue of the Society’s use or occupation of the premises.

4.16 **Hold Harmless:**

The Society shall save and hold harmless the City, its officers, agents, servants and employees from and against all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the performance of this Agreement, whether such claim shall be made by an employee of the Society or by a third party. The Society shall defend any and all such actions and pay all legal charges, costs and other expenses arising there from.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto on the date and year first written above.

Signed in the presence of:

CITY OF KELOWNA By its authorized signatory (ies)

Witness

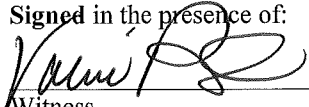
Address

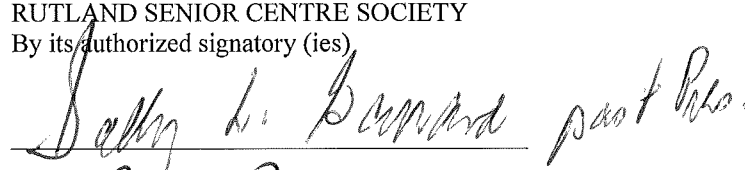
Occupation

Signed in the presence of:

RUTLAND SENIOR CENTRE SOCIETY

By its authorized signatory (ies)


Witness


past Pres.

105-1014 Glenmore Drive
Kelowna BC
Address

Past President 2010-2013

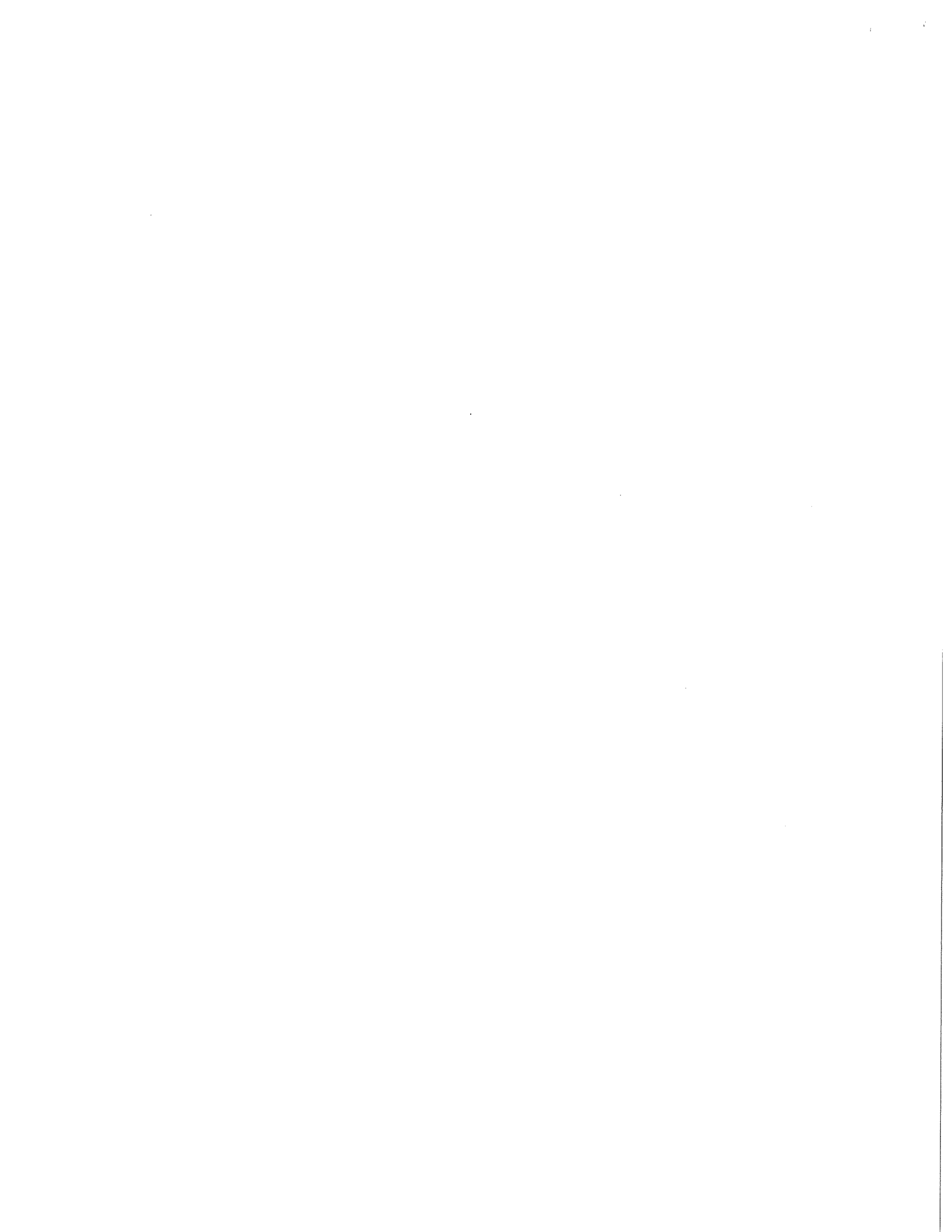
Community Recreation
Occupation

Coordinator

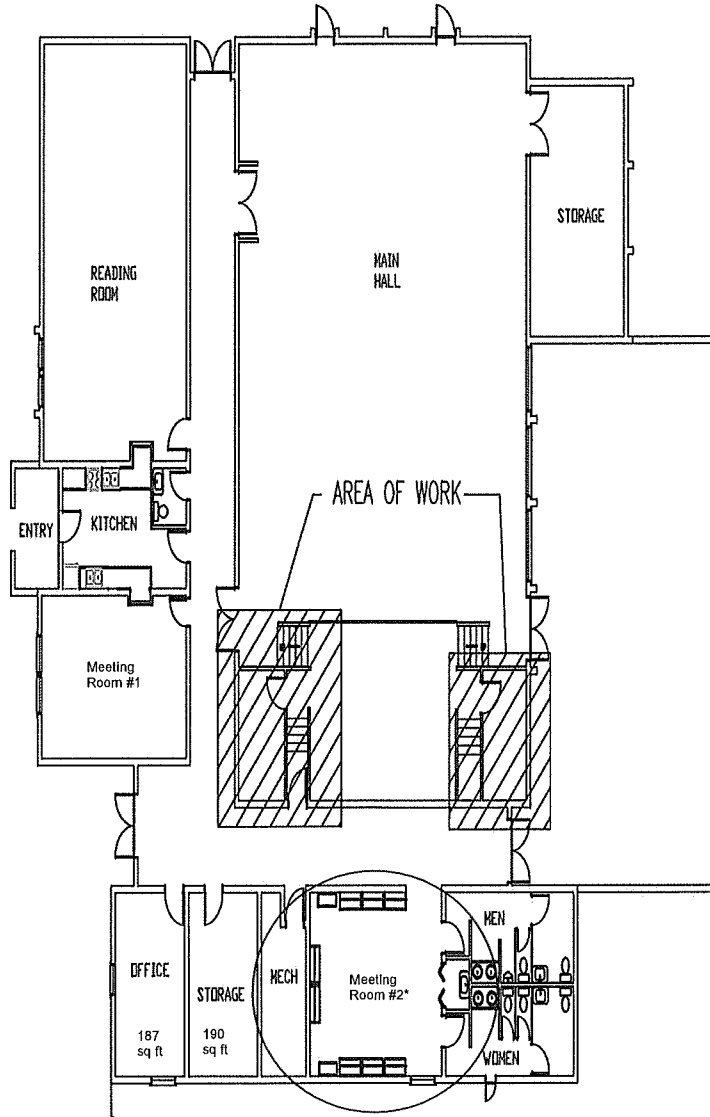
DATE: July 9, 2013.

List of Schedules:

- Schedule A Floor Plan – Rutland Activity Centre
- Schedule B City Facility Equipment
- Schedule C List of Room and Times available for use by the Society
- Schedule D Society Facility Equipment
- Schedule E Society Constitution & Bylaws
- Schedule F Certificate of Insurance



SCHEDULE A - Floor Plan – Rutland Activity Centre

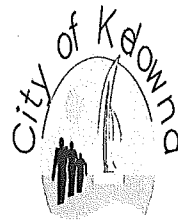


1 KEY PLAN
1/8" = 1'-0"

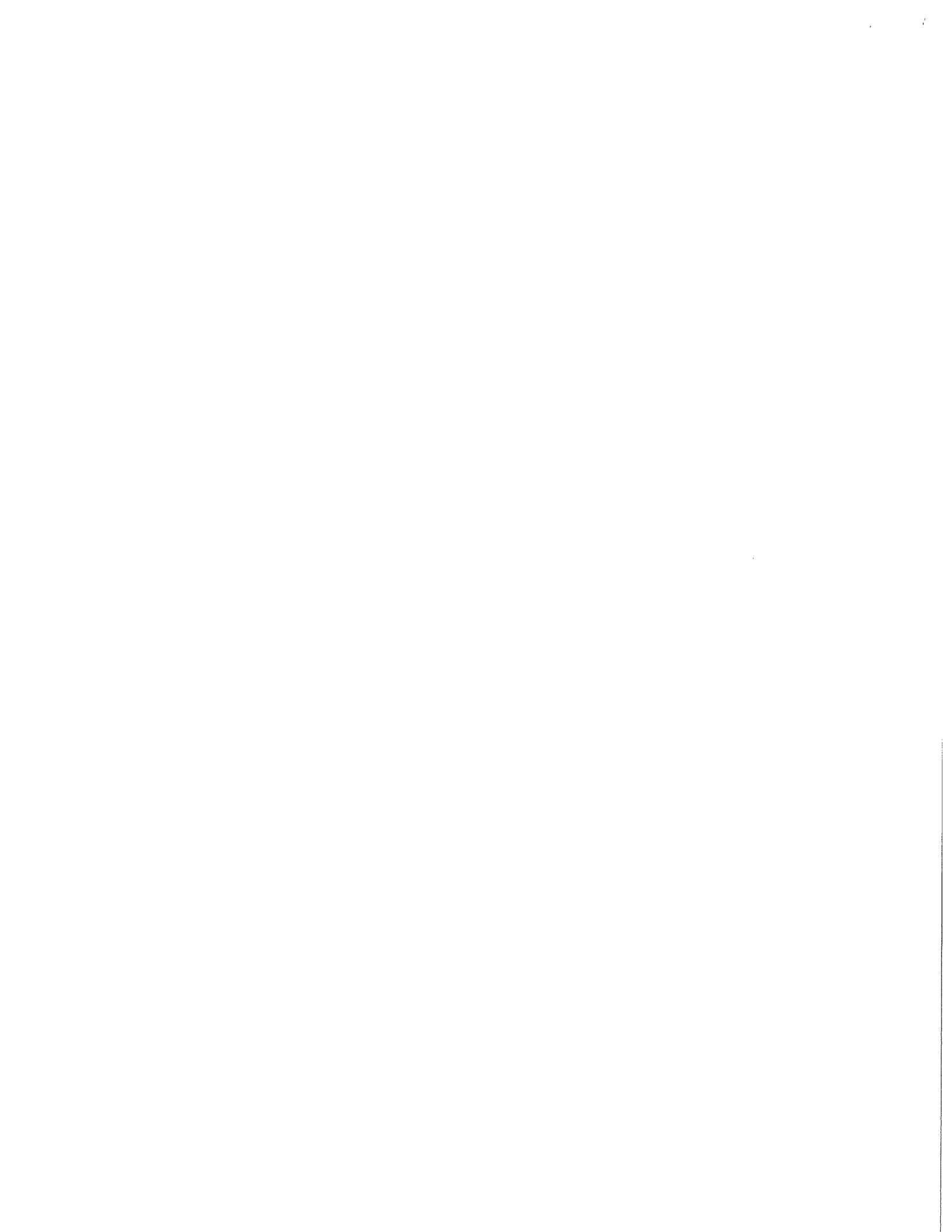
*Meeting Room #2
to be developed
15X16 = 240 sq ft

PROJECT:
INTERIOR RENOVATIONS
RUTLAND SENIOR CENTER
675 DODD

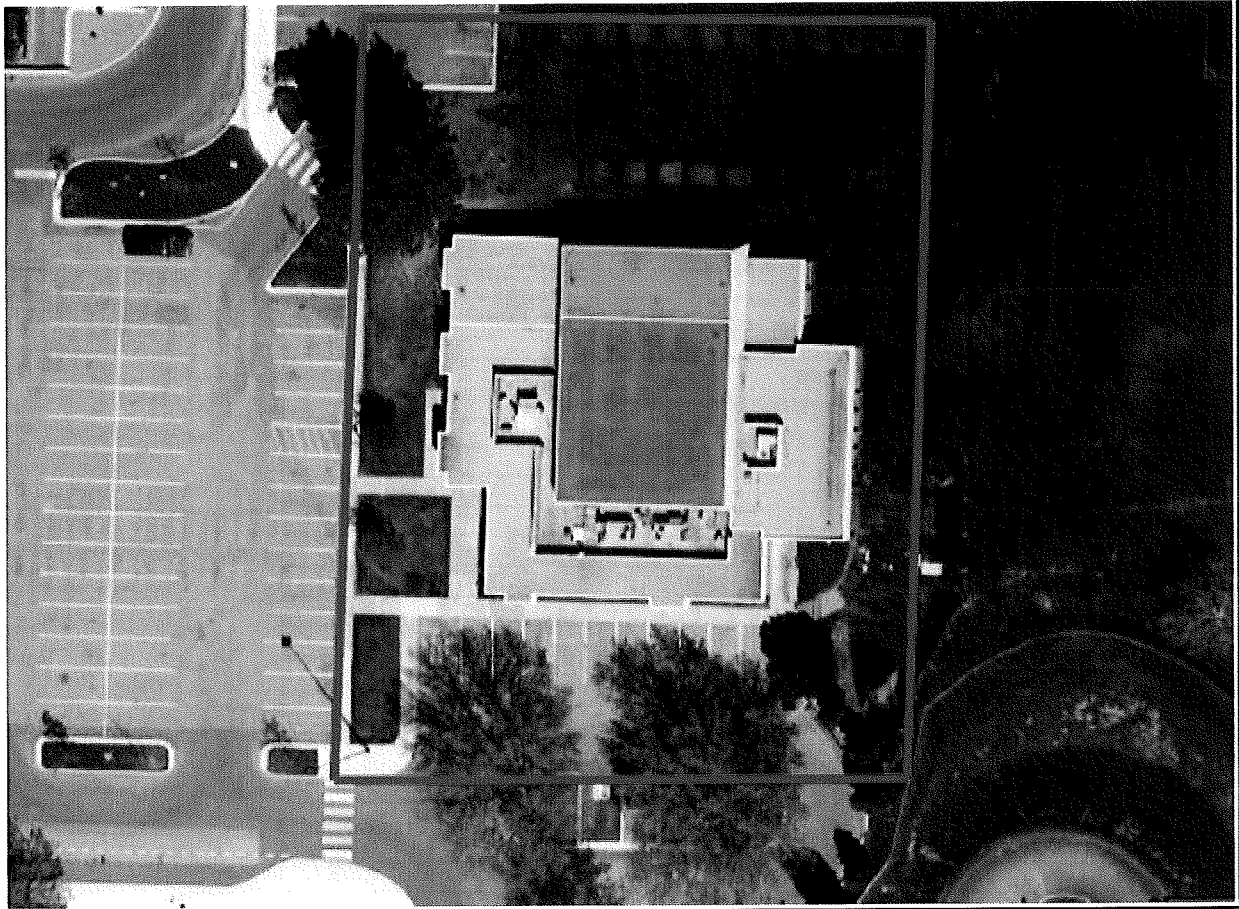
DRAWING TITLE:
Key plan



| | |
|-------------------|---------------|
| DRAWN: GG | DRAWING NO.: |
| DATE: 20110713 | SK-100 |
| PROJ. NO.: | SCALE: |
| 07 | NTS |
| FILE: | |
| 07 | |



SCHEDULE A Con't Ortho Photograph – Rutland Activity Centre



SCHEDULE B – City Facility Equipment

Office

- Desk 1
- Blue office chairs 3
- 4 drawer file cabinet 1
- Desk top dell printer 1
- Large cork board 1
- AED machine 1

Storage Room

- Large Storage Cabinet – 2 sides 6
- Mop 1
- Paint Easles 10
- Boom Box 2
- Yoga Mats 20
- Small Hand weights for fitness 20(sets)
- Yoga Blocks (in 2 blue bins) 10(sets)

Gym

- Fitness Mats 20

Owned Jointly with the Rutland Senior Centre Society

- Card tables 20

SCHEDULE C - RUTLAND ACTIVITY CENTRE

Space Allocated to the Society

| Main Hall | | # hrs |
|--------------------------------------|--|---------------------|
| Sunday | 10:00am – 2:00pm (7:00pm – 10:00pm 3 rd Sunday of Month) | 3 (7) |
| Monday | 7:30am – 10:00pm | 14.5 |
| Tuesday | 7:30am - 6:00pm | 10.5 |
| Wednesday | 7:30am – 4:30pm & 6:00pm – 10:00pm | 13 |
| Thursday | 7:30am - 3:30pm & 6:30pm – 10:00pm | 11.5 |
| Friday | 7:30am – 5:30pm | 10 |
| Saturday | 12:00pm – 11:00pm | 11 |
| Multi Purpose Room | | |
| Sunday | | 0 |
| Monday | 8:00am – 1:00pm | 5 |
| Tuesday | 8:00am – 4:00pm & 7:00pm – 10:00pm | 11 |
| Wednesday | 8:00am – 10:00am & 6:30pm – 10:00pm | 5.5 |
| Thursday | 8:00am - 4:30pm | 8.5 |
| Friday | 8:00am – 4:00pm | 8 |
| Saturday | 6:00pm – 11:00pm | 5 |
| Meeting Room #1/Card Room | | |
| Sunday | | 0 |
| Monday | 8:00am – 4:00pm | 8 |
| Tuesday | 8:00am - 4:00pm | 8 |
| Wednesday | 9:00am – 1:00pm | 4 |
| Thursday | 8:00am - 11:00am | 3 |
| Friday | 8:00am – 4:00pm | 8 |
| Saturday | 12:00pm – 4:00pm | 4 |
| Meeting Room #2 | | |
| Sunday | | 0 |
| Monday | | 0 |
| Tuesday | 9:00am – 3:00pm | 6 |
| Wednesday | 9:00am – 3:00pm | 6 |
| Thursday | 9:00am – 3:00pm | 6 |
| Friday | 9:00am – 3:00pm | 6 |
| Saturday | | 0 |
| Kitchen | | |
| Sunday | 4:30pm – 11:00pm & 8:00am – 1:30pm once/month | 6.5(12) |
| Monday | 8:00am – 1:30pm | 5.5 |
| Tuesday | 8:00am – 1:30pm | 5.5 |
| Wednesday | 8:00am – 1:30pm | 5.5 |
| Thursday | 8:00am – 1:30pm & 5:30pm – 9:00pm | 9 |
| Friday | 8:00am – 1:30pm | 5.5 |
| Saturday | 12:00pm – 5:00pm | 5 |
| Billiard Room (exclusive use) | | |
| Sunday | 8:00am – 5:00pm | 9 |
| Monday | 8:00am – 9:00pm | 13 |
| Tuesday | 8:00am – 9:00pm | 13 |
| Wednesday | 8:00am – 9:00pm | 13 |
| Thursday | 8:00am – 9:00pm | 13 |
| Friday | 8:00am – 9:00pm | 13 |
| Saturday | 8:00am – 5:00pm | 9 |
| Total Number of hours | | 302 (311.50) |

SCHEDULE D – Society Facility Equipment

Equipment

- Sewing Machine 1
- Cash register 1
- Table for Cash Register 1
- Bingo Table for caller 1
- Electric Bingo Number boards 2
- Adding Machine 1
- Electronic number control box 1
- TV Monitors for Bingo 4

Games Room

- 5X10 Pool Table 4
- Snooker Ball set 6
- PVC vertical blinds 3 (sets)
- Upper & Lower Cabinet 1
- Shelving unit 1
- High upholstered chairs 4
- Danby micro-wave 1
- Oak shelving for cups 1
- Small Fridge 1

Stage (Left Room (Bingo))

- Green vinyl chairs 9
- Built in Vacuum system 1
- Microphone stands 3
- Projector screen 1
- Electrical extension cord 2
- Storage Cabinet 1

Electronics

- Extension Microphone cords 4
- Cordless head mike 1
- Channel power mixer 6
- Stereo 1
- Power Bar 1
- 5 Disc player 1

Main Hall

- 8 ft white plastic tables 26
- Draw drapes 2(sets)
- Speakers 2
- Piano & Bench 1
- Trolleys 14

Storage Main Hall

- Card Tables 41
- Card Table Dolly 1
- Aluminum extension ladder 1
- 8ft step ladder 1
- Stacking chairs with arms 120
- Stacking armless chairs 20
- Chair dolly 2

Storage Room left of office

- Fridge 1
- Cash register 1

Hall Area

- 8ft table on wheels 1
- Water cooler 2
- Framed mirror 3X4 1

Office

- Wrap around computer desk 1
- Dell computer 1
- HP printer 1
- File Cabinet 2
- Photo copier 1
- Safe 1
- Microphone with accessories 3

Multi-Purpose Room

- Square resin table 26
- Stacking Chairs 40
- PVC vertical blinds 2 (sets)

Meeting Room

- 20in TV 1
- VCR/DVD/CD 1
- Leather electric chesterfield 1
- Upholstered Chair 8
- Round Folding Table 1
- Square Folding table 2
- Tile folding table 1

Kitchen

- Dish Washer (2 racks) 1
- Stove 1
- Wall Oven 1
- Sliding glass cooler 1
- Kitchen Cabinets all

Quilting

- Sewing Machine 2
- Serger 1
- Large Quilting table 1
- Quilting Machine 1

New Reception Office

- Custom built furniture 3
- High back office chair 1
- Computer & monitor 1
- Printer 1

SCHEDULE E – CONSTITUTION AND BYLAWS

As a follow up to the Annual General Meeting held at Rutland Seniors Centre on Friday June 11, 2010 regarding the Constitution of the Rutland Seniors Centre Society; lawyer Robert Bryshan of Salloum Watts was in attendance to answer questions specific to the Constitution and pertaining to the following Sections of the Constitution:

Part Five: Directors and Officers: Section (5.05 - 5.10)

- Officers are the following: President, First Vice, 2nd Vice, Secretary
- Their term of office for an officer is 1 year with a limit of 3 successive terms
- Directors are five in number
- Directors terms of office are 2 years with a limit of three successive terms (a term is 2 years)
- In the event of a vacancy the Board of Directors shall appoint someone to fill the office until the following AGM
- Acclamation is identified as there is no challenger to the nominated position of office

RUTLAND SENIOR CENTRE SOCIETY

765 Dodd Road
Kelowna, B.C.
V1X 5H1
(250) 765-3723

CONSTITUTION

SECTION 1: NAME:

- 1.01 The name of the Society shall be the RUTLAND SENIOR CENTRE SOCIETY, hereafter referred to as the "Society".

SECTION 2: PURPOSES:

- 2.01 To operate a senior centre for the senior citizens of Kelowna and district.
2.02 To provide a wide variety of recreational and educational programs for seniors that respond to their interests, stimulate their growth and enhance their quality of life.
2.03 To co-operate with the City of Kelowna in any matter concerning the Rutland Senior Centre.
2.04 To enter into contracts with the City of Kelowna, among others, on matters of mutual concern.
2.05 To do all such things as are conducive to the attainment of the above objectives.

SECTION 3: NON-PROFIT STATUS:

- 3.01 The Society shall be carried on without purpose of gain for its members, and no part of any income of the Society shall be payable or otherwise available for personal benefit of the member(s) thereof, and any profits or other accretions to the Society shall be used for promoting its purposes. This provision is unalterable.

SECTION 4: DISSOLUTION OF THE SOCIETY:

- 4.01 Upon wind-up or dissolution of the Society, the assets remaining after the payment of all costs, charges, and expenses properly incurred in the wind-up, including the remuneration of the liquidator, and after payment to employees of the Society of any arrears of salaries or wages, and after payment of any debts of the Society, shall be distributed to a charitable organization(s) in Canada, registered under the provisions of the Income Tax Act, and/or the Parks and Leisure Services Department of the City of Kelowna; such distribution shall be determined by the Board of Directors. This provision is unalterable.

BYLAWS

PART ONE: INTERPRETATION:

- 1.01 "Society Act" means the Society Act of the Province of British Columbia from time to time in force and all amendments to it.
- 1.02 "Directors" means the directors of the Society for the time being.
- 1.03 "Registered Address" of a member means his address as recorded in the register of members.
- 1.04 Words importing the singular include the plural and vice versa; and words importing a male person include a female person and a corporation.
- 1.05 The definitions in the Society Act on the date these bylaws become effective apply to these bylaws.

PART TWO: MEMBERSHIP:

- 2.01 The members of the Society are the applicants for incorporation of the Society, and those persons who subsequently have become members, in accordance with these bylaws and in either case, have not ceased to be members.
- 2.02 A person 50 years of age or older may apply to the directors for membership in the Society and on acceptance by the directors shall become a member.
- 2.03 Every member of the Society shall uphold the constitution and comply with these bylaws.
- 2.04 The amount of the first annual membership dues shall be determined by the directors and after that the annual membership dues shall be determined at the annual general meeting of the Society; provided that the Board of Directors may from time to time waive the payment of dues in cases of financially disadvantaged persons.
- 2.05 A person shall cease to be a member of the Society
 - (a) by delivering his resignation in writing to the Secretary of the Society or by mailing or delivering it to the address of the Society;
 - (b) on his death;
 - (c) upon the dissolution of the Society;
 - (d) on being expelled;
 - (e) upon not having been a member in good standing for twelve consecutive months.
- 2.06
 - (a) A member of the Society may be expelled by a special resolution of the membership passed at a general meeting.
 - (b) The notice of special resolution for expulsion shall be accompanied by a brief statement of the reason or reasons for the proposed expulsion.
 - © The person who is the subject of the proposed resolution for expulsion shall be given an opportunity to be heard at the general meeting before the special resolution is put to a vote.

- 2.07 All members of the Society are in good standing except a member who has failed to pay his current annual membership fee or any other subscription or debt due and owing by him to the Society and he is not in good standing so long as the debt remains unpaid; provided that a member who has paid his or her annual membership fee in any fiscal year shall continue to be in good standing until and including the date of the Annual General Meeting in the following year or until the fifteenth day of February in that year, whichever shall occur the sooner; provided that beginning in the year 2003 a member who has paid his or her annual membership fee for the fiscal year ending May 31, 2003 shall continue in good standing until the date of the Annual General Meeting in June of that year or until the 30th day of June in that year, whichever shall occur the sooner, and so from time to time in each and every subsequent year.
- 2.08 A person who resides in Kelowna and district shall be entitled to visit the Rutland Senior Centre three times in any one calendar year. On the fourth visit a membership shall be required. Members may bring visitors from outside the Okanagan Valley to the Rutland Senior Centre, who shall not have to take out a membership but shall pay participation fees of any activity attended.
- 2.09 Honorary Membership may be granted to any senior according to criteria established by the Board of Directors and adopted at a general meeting. Such honorary members shall have the same privileges and responsibilities as any other member of the Society who became a member of the Society via clause 2.02 of these bylaws.
- 2.10 Memberships shall not be accepted within fourteen days prior to any annual general meeting.
- 2.11 Any membership list maintained by the Society shall not be distributed or sold to any individual or organization except as authorized by the directors.

PART THREE: MEETINGS OF MEMBERS:

- 3.01 General meetings of the Society shall be held at the time and place, in accordance with the Society Act, that the directors decide.
- 3.02 Every general meeting, other than an annual general meeting is an extraordinary general meeting.
- 3.03 The directors may, when they think fit, convene an extraordinary general meeting.
- 3.04 Notice of a general meeting shall specify the place, day and hour of meeting, and, in case of special business, the general nature of that business.
- 3.05 The accidental omission to give notice of a meeting to, or the non-receipt of a notice by, any of the members entitled to receive notice does not invalidate proceedings at that meeting.

- 3.06 The first annual general meeting of the Society shall be held not more than fifteen months after the date of incorporation and after that an annual general meeting shall be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.
- 3.07 NOTWITHSTANDING the provisions of By-Law 3.06 in the year 2003 the annual general meeting shall be held in the month of June and thereafter an annual general meeting shall be held at least once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.
- 3.08 Not less than fourteen days written notice of a general meeting of the Society shall be given to each member entitled to receive such notice. A notice sent by mail shall be deemed to have been given on the second day following that on which the notice is posted.

PART FOUR: PROCEEDINGS AT GENERAL MEETINGS:

- 4.01 No business other than the election of a chairman and the adjournment or termination of the meeting, shall be conducted at a general meeting at a time when a quorum is not present.
- 4.02 A quorum required to conduct business of a general meeting shall be 25 or more voting members.
- 4.03 If at any time during a general meeting there ceases to be a quorum present, business then in progress shall be terminated until there is a quorum present or until the meeting is adjourned or terminated.
- 4.04 Subject to bylaw 4.05, the president of the Society, the first vice president, or in the absence of both, the second vice president, shall preside as chairman of a general meeting.
- 4.05 If at a general meeting
- (a) there is no president, vice-president or other director present within 15 minutes after the time appointed for holding the meeting; or
 - (b) the president and all the other directors present are unwilling to act as chairman, the members present shall choose one of their number to be chairman.
- 4.06 The chairman may not move nor second a resolution or motion.
- 4.07 A resolution requires a seconder.
- 4.08 Except for special resolutions, questions arising at a general meeting shall be decided by a majority of votes.
- 4.09 In case of an equality of votes the chairman shall not have a casting or second vote in addition to the vote to which he shall be entitled as a member, and the proposed resolution shall not pass.
- 4.10 A member in good standing and present at a general meeting of members is entitled to one vote.
- 4.11 Voting shall be by show of hands, or by ballot if agreed to at the meeting by members present.
- 4.12 Voting by proxy is not permitted.

- 4.13 The agenda at an Annual General Meeting shall include the following:
- (a) Confirmation that a quorum is present
 - (b) Call to order
 - (c) Reading minutes of last annual general meeting
 - (d) Financial Report
 - (e) Approval of Budget
 - (f) Correspondence
 - (g) President's Report
 - (h) Committee Reports
 - (i) Election of Auditor
 - (j) Old Business
 - (k) New Business
 - (l) Setting of Membership Dues
 - (m) Election of Officers and Directors
 - (n) Adjournment
- 4.14 Candidates for office, or others, shall not dispense goods and services to members of the Society at or before a general meeting.

PART FIVE: DIRECTORS AND OFFICERS:

- 5.01 The directors may exercise all the powers and do all the acts and things that the Society may exercise and do, and which are not by these bylaws or by statute or otherwise lawfully directed or required to be exercised or done by the Society in general meeting, but subject, nevertheless, to
- (a) all bylaws affecting the Society;
 - (b) these bylaws; and
 - (c) rules, not being inconsistent with these bylaws, which are made from time to time by the Society in general meeting.
- 5.02 The powers of the directors shall be limited to the extent that they shall take none of the following steps without first having obtained the sanction of a special resolution:
- (a) the sale or disposition of any real property;
 - (b) the sale or disposition of any item of personal property of a value in excess of \$10,000; and
 - © the expenditure of any sum of money in excess of \$10,000 for any single purchase whether of real or personal property or for payment of services of any kind whatsoever with the following exceptions:
 - (1) sums in excess of \$10,000 may be expended without the sanction of a special resolution where such sums have been authorized in a budget passed at a general meeting; and
 - (2) in case of an emergency requiring the immediate expenditure of a sum of money in excess of \$10,000 in order to secure or protect or repair a building or part of a building belonging to the Society which would

otherwise be in danger of further damage to it or its contents, the directors may expend such moneys to the extent required without first having obtained the sanction of a special resolution, but in any such case the directors shall make a full report to the next general meeting of the Society stating their reasons for making any such expenditure and accounting fully for the moneys so expended.

- 5.03 No rule, made by the Society in general meeting, invalidates a prior act of the directors that would have been valid if that rule had not been made.
- 5.04 The president shall annually appoint a Nominating Committee of not less than three members, not less than sixty days before the annual general meeting. Nominations with the prior acceptance of the nominee may be accepted from the floor of the annual general meeting.
- 5.05 The Board of Directors shall consist of the four elected officers, immediate past president, and five directors at large who shall be elected at the annual meeting as hereinafter provided.
- 5.06 (a) The officers and directors whose terms shall have expired, shall retire from office at each annual general meeting when their successors shall be elected.
- (b) Separate elections shall be held for each office to be filled.
- © An election may be made by acclamation, otherwise it shall be by ballot.
- (d) If no successor is elected the person previously elected or appointed continues to hold office until his successor has been elected or appointed.
- 5.07 There shall be four officers elected annually:
- (a) President
- (b) First Vice-President
- (c) Second Vice-President
- (d) Secretary
- 5.08 Elected officers shall serve no more than three consecutive terms.
- 5.09 No two members of the same household may hold office at the same time, provided that this clause may be waived by an ordinary resolution passed at the annual general meeting, except that in such case no two members of the same household can together sign cheques.
- 5.10 At the first general meeting of the Society following incorporation there shall be elected three two-year directors at large and two one-year directors at large. The three directors at large receiving the largest number of votes shall be the two-year directors at large and two directors at large receiving the next largest number of votes shall be the one-year directors at large. In the event that there shall be only five nominees, then their five names shall be placed in a hat or other suitable receptacle, and the first three names drawn there from shall be the two-year directors at large, and the remaining two names shall be the one-year directors at large. Thereafter, the directors at large shall retire from office at the annual

- general meetings in which their respective terms of office shall expire, and at those meetings their successors shall be elected for two year terms.
- 5.11 The directors may at any time and from time to time appoint a member as a director to fill a vacancy in the directors, including the office of immediate past president.
- 5.12 A director so appointed holds office only until the conclusion of the next following annual general meeting of the Society, but is eligible for re-election at the meeting.
- 5.13 If a director resigns his office or otherwise ceases to hold office, the remaining directors shall appoint a member to take the place of the former director.
- 5.14 No act or proceeding of the directors is invalid only by reason of there being less than the prescribed number of directors in office.
- 5.15 The members may by special resolution remove a director before the expiration of his term of office, and may elect a successor to complete the term of office.
- 5.16 The directors shall serve without remuneration, and the directors shall not receive directly or indirectly any profits from their position as directors, but may be paid expenses incurred by them in the performance of their duties.
- 5.17 At each annual general meeting a member of the Society shall be elected as Treasurer. He or she shall hold office until the next annual general meeting when he or she shall retire, and at that time, his or her successor shall be elected, or (subject as follows) he or she may be re-elected.
- 5.18 The Treasurer shall not hold that office for more than three consecutive terms; provided that after three consecutive terms, if the Treasurer shall not in the following year hold any office in the Society, or if he or she shall hold some other office in the Society, then he or she shall, after that intervening year, be eligible to be elected again as Treasurer for up to three consecutive terms, and so from time to time.
- 5.19 In the event of a vacancy in the office of Treasurer occurring between annual general meetings, the directors may appoint a member to fill a vacancy in that office. The member so appointed shall hold that office only until the next annual general meeting, but he or she shall be eligible for election at that meeting.
- 5.20 The members may by special resolution remove the Treasurer before the expiration of his term of office, and may elect a successor to complete his term.
- 5.21 The Treasurer shall not be a member of the Board of Directors, and he or she shall not be entitled to vote at their meetings, but he or she shall be expected to attend all meetings of the directors and all general meetings of the Society.
- 5.22 The directors may in any year authorize payment to the Treasurer of a reasonable honorarium in recognition of his or her services to the Society, to be paid either in lump sum or in installments as the directors in their discretion shall determine.

PART SIX: ADVISORS AND ASSOCIATES:

- 6.01 The board of directors may request appointed persons to serve the board as advisors or associates; these will be non-voting participants.
- 6.02 Each activity committee shall be comprised of three people who shall organize and operate their respective activity. They may attend monthly directors' meetings, but shall not have a vote.

PART SEVEN: PROCEEDINGS OF DIRECTORS:

- 7.01 The directors may meet together at the places they think fit to dispatch business, adjourn and otherwise regulate their meetings and proceedings as they see fit.
- 7.02 The directors may from time to time fix the quorum (but in any case it shall be not less than 6) necessary to transact business, and such quorum shall include at least 2 elected officers.
- 7.03 The president shall be the chairman of all meetings of the directors, but if at a meeting the president is not present within 30 minutes after the time appointed for holding the meeting, the first vice president or the second vice president, in that order, shall act as chairman; but if none is present then the directors may choose one of their number to be chairman at that meeting.
- 7.04 The chairman may not move nor second a resolution or motion.
- 7.05 A resolution requires a seconder.
- 7.06 Questions arising at a meeting of the directors and committees of directors shall be decided by a majority of votes.
- 7.07 Voting shall be by show of hands, or by ballot if agreed to at the meeting by members present.
- 7.08 Voting by proxy is not permitted.
- 7.09 The directors may delegate any, but not all, of their powers to committees consisting of a director or directors as they see fit.
- 7.10 A committee so formed in the exercise of the powers so delegated shall conform to any rules imposed on it by the directors, and shall report every act or thing done in exercise of those powers to the earliest meeting of the directors to be held next after it has been done.
- 7.11 A committee shall elect a chairman of its meetings; but if no chairman is elected, or if at a meeting the chairman is not present within 30 minutes after the time appointed for holding the meeting, the directors present who are members of the committee shall choose one of their number to be chairman of the meeting.
- 7.12 In case of an equality of votes the chairman does not have a second or casting vote, and the proposed motion shall not pass.
- 7.13 A director deemed to be in conflict of interest position shall absent himself from the meeting while the matter is being discussed and any vote taken on such matter.

PART EIGHT: DUTIES OF OFFICERS:

- 8.01 The President shall preside at all meetings of the Society and of the directors.
- 8.02 The President is the chief executive officer of the Society and shall supervise the other officers in the execution of their duties.
- 8.03 The President shall be an ex-officio member of all other committees but shall not have voting privileges on these committees.
- 8.04 The First Vice President, or in his absence, the Second Vice President, shall carry out the duties of the President during his absence, or if he is unable or unwilling to preside.
- 8.05 The Secretary shall
 - (a) conduct the correspondence of the Society;
 - (b) issue notices of meetings of the Society and directors;
 - (c) keep minutes of all meetings of the Society and directors;
 - (d) keep custody of all records and documents of the Society except those required to be kept by the treasurer;
 - (e) have custody of the common seal of the Society; and
 - (f) maintain the register of members.
- 8.06 In the absence of the secretary from a meeting, the directors shall appoint another person to act as secretary at the meeting.
- 8.07 The Treasurer shall
 - (a) keep the financial records, including books of account, necessary to comply with the Society Act;
 - (b) render financial statements to the directors, members and others when required;
 - (c) deposit all monies received in the name of the Society at a bank, trust company or credit union selected by the directors; and
 - (d) prepare, in conjunction with the directors, a budget for presentation to the annual general meeting.

PART NINE: FURTHER DUTIES AND POWERS OF THE DIRECTORS:

- 9.01 The board of directors shall assist in the promotion and organization of activities provided by or conducted for the members and/or users of the Society and shall supervise monies raised by these activities.
- 9.02 The board of directors may accept monies, gifts or grants on behalf of activities in connection with the Society. All funds received shall be accounted for in full and be deposited to the credit of the Society.
- 9.03 The board of directors shall have power to regulate the conduct of any activity committee, member or user of the Society if that conduct is considered to be detrimental to the best interests of the Society.
- 9.04 The board of directors shall ensure that all activities of the Society be non-political and non-sectarian.

PART TEN: CONTROL AND MANAGEMENT:

- 10.1 Approval of the annual budget for operation of the Society shall also constitute approval for the board of directors to make such expenditures as are necessary for the day to day operation of the Society.

PART ELEVEN: SEAL:

- 11.1 The directors may provide a common seal for the Society and destroy a seal and substitute a new seal in its place.
- 11.2 The common seal shall be affixed only when authorized by a resolution of the directors and then only in the presence of any two of the officers as specified in the resolution.

PART TWELVE: BORROWING:

- 12.1 Subject as hereinafter provided, in order to carry out the purposes of the Society the directors may, on behalf of and in the name of the Society, raise or secure the payment or repayment of money in the manner they decide and, in particular but without limiting the foregoing, by the issue of debentures.
- 12.2 No debenture shall be issued and no moneys shall be borrowed in excess of \$10,000 without the sanction of a special resolution.
- 12.3 The members may by special resolution restrict the borrowing powers of the directors, but a restriction imposed expires at the next annual general meeting.

PART THIRTEEN: AUDITOR:

This part applies only if the Society is required or has resolved to have an Auditor.

- 13.1 At each annual general meeting the Society shall elect an auditor to hold office until he is re-elected or his successor is elected at the next annual general meeting.
- 13.2 An auditor may be removed by ordinary resolution.
- 13.3 An auditor shall be promptly informed in writing of appointment or removal.
- 13.4 No director and no employee of the Society shall be auditor.
- 13.5 The auditor shall complete an audit or financial review of the accounts of the Society for presentation to the annual general meeting.

PART FOURTEEN: FINANCES:

- 14.1 In the year 2002 the fiscal year of the Society shall be for a period of seventeen (17) months beginning on the 1st day of January, 2002 and ending the 31st day of May, 2003 and thereafter the fiscal year of the Society shall be for a period of twelve (12) months ending the 31st day of May in each year or such other such twelve (12) month period as may be set from time to time and approved by the membership.
- 14.2 The board of directors shall establish a schedule of activity fees, excluding membership fees, as required.
- 14.3 Funds received from each activity, along with receipts for any expenditures, shall be submitted along with remaining funds for deposit.
- 14.4 The authorized signatories for the bank account or accounts of the Society shall be any two of the president, the first vice-president and second vice-president, or any one of them together with either of the secretary or treasurer; except that in such case no two members of the same household can together sign cheques.
- 14.5 The elected officers of the Society and/or the Treasurer shall have the right to make expenditures under \$100 without calling a meeting of the directors.
- 14.6 The elected officers of the Society shall have the right to make expenditures over \$100 in any emergency without calling a meeting of the directors.
- 14.7 At the first meeting of the directors after the elected officers and/or the Treasurer shall have made expenditures either under \$100 pursuant to By-Law 14.5, or over \$100 pursuant to By-Law 14.6, or both, the elected officers shall report such expenditures, with appropriate particulars, to the meeting.

PART FIFTEEN: NOTICES TO MEMBERS:

- 15.1 A notice may be given to a member either personally, or by mail to him at his registered address, or by notice published in the Kelowna Senior Centre Newsletter.
- 15.2 A notice sent by mail shall be deemed to have been given on the second day following that on which the notice is posted, and in proving that notice has been given it is sufficient to prove the notice was properly addressed and put in a Canadian post office receptacle.
- 15.3 Notice of a general meeting shall be given to the auditor if Part 13 applies.
- 15.4 No other person is entitled to receive a notice of general meeting.

PART SIXTEEN: BYLAWS:

- 16.1 On being admitted to membership, a member is entitled to receive without charge a copy of the constitution and bylaws of the Society.
- 16.2 These bylaws shall not be altered except by a special resolution which requires a majority of not less than 75% of the votes cast.
- 16.3 Proposed amendments shall be submitted to the members at least two weeks in advance of the general meeting at which they shall be on the agenda.

PART SEVENTEEN: MINUTES, BOOKS, RECORDS:

- 17.1 The minutes, books, records and any other documents relating to the Society shall be kept on file in the main office of the Society.

PART EIGHTEEN: RULES OF ORDER:

- 18.1 Robert's Rules of Order shall be the parliamentary authority for all matters of procedure not specifically covered by these bylaws or by the Society Act or any regulations pursuant thereto or any other applicable or relevant statutory provisions or regulations.

October 28, 2004

SCHEDULE F - CERTIFICATE OF INSURANCE

This Certificate is issued to:

- The City of Kelowna – c/o 645 Dodd Road Kelowna, BC V1X 5H1
- The City of Kelowna – c/o 1800 Parkinson Way Kelowna BC V1Y 4P9

Insured

| |
|----------|
| Name: |
| Address: |

Broker

| |
|----------|
| Name: |
| Address: |

Location and nature of operation or contract to which this Certificate applies:

| |
|--|
| |
|--|

| Type of Insurance | Company & Policy Number | Policy Dates | | Limits of Liability/Amounts |
|---|-------------------------|--------------|--------|--|
| | | Effective | Expiry | |
| Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor’s Protective; • Personal Injury; • Contingent Employer’s Liability; • Broad Form Property Damage; • Non-Owned Automobile; | | | | Bodily Injury and Property Damage \$ 2,000,000 Inclusive \$ _____ Aggregate \$ _____ Deductible |
| Section 2 Automobile Liability | | | | Bodily Injury and Property Damage \$ 2,000,000 Inclusive |

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

| | | |
|------------|----------------------|------|
| Print Name | Authorized Signatory | Date |
| Title | Company Name | |

Report to Council



Date: August 26, 2013
Rim No. 1340-10
To: City Manager
From: Planner Specialist, Urban Design
Subject: Draft City Park Concept Plan

Recommendation:

THAT Council receive for information, the report from the Planner Specialist, Urban Design regarding community response to a draft concept design for City Park;

AND THAT Council direct staff to continue to work with Tourism Kelowna to address public concerns regarding the Pavilion as proposed in the attached Draft Concept Plan, by exploring ways to reduce the size of the building as well as its associated impacts;

AND THAT staff report back to Council regarding the outcome of the above exercise and to receive further direction regarding next steps.

Purpose:

To provide Council with a summary of the feedback received in response to the recent draft of the City Park Concept Plan and to receive direction from Council regarding next steps.

Background:

In 2012, Council directed staff to prepare a concept plan for City Park (Attachment A - Subject Area). This project was initiated in response to the need to consider aging Park infrastructure so that provision of that infrastructure can be optimized to meet the long-term needs of a growing community. Council also directed staff to determine a preferred location for a building that would include community amenities as well as accommodate a Visitor Services Centre and administrative offices for Tourism Kelowna.

Through the first half of 2013, staff worked with Perry + Associates, a landscape architecture firm with an extensive background in park design. The process included an issues and opportunities identification session with key Downtown stakeholders. It also included civic engagement via the City website. This pilot project allowed members of the community an opportunity for input early in the process.

Staff carefully reviewed and considered the ideas and comments that were received online. The Plan that had been initially posted for online comment was revised in response to those

comments (Attachment B - Draft Concept Plan) and an Open House was held to receive community feedback. The updated Draft Concept Plan was also posted online for a second and final round of community engagement. The Open House was held on June 27, 2013 and the online forum ran from June 27, 2013 to July 15, 2013.

In addition to the information received online and from the Open House, Mayor and Council as well as staff received correspondence after the online discussion closed. A summary of all comments received is included as Attachment D of this report.

Draft Concept Plan

The feedback received from the online civic engagement initiated in March, 2013 indicated that inappropriate social behavior within the Park is a deterrent to the public's use of the Park. The feedback also indicated a strong preference for more opportunities for active, as opposed to passive use of the Park.

Subsequent to the online engagement, the project consultant, in conjunction with staff made adjustments to the initial draft to broaden the scope of possible Park activities. A specific attempt was made to 1) allow for active uses that would draw people to the Park over more hours of the day and year, and 2) to provide a more even distribution of activities throughout the Park.

This strategy is intended to eliminate existing areas of the Park that are considered to be isolated and lacking the public surveillance necessary to make them feel safe for extended periods of use. The changes were a direct response to the feedback received online, and consistent with what was perceived as the community's desire for parks that promote healthy, active lifestyles.

A key idea underlying the Park Plan is the creation of sub-areas or concentrations of similar or related activities which are then connected by a comprehensive circulation system (Attachment C - Circulation and Zoning). Currently, the principal circulation route is along the waterfront. There is little opportunity or incentive for Park visitors to move through the Park's interior spaces. The proposed Plan would therefore not only provide an incentive to move away from the waterfront, but also a higher sense of personal safety in visiting all areas of the Park and the ability to do so via an extensive network of all-weather paths serving both pedestrians and bicyclists.

The third component of an enhanced circulation system would be a vehicular route beginning at the Lawrence Avenue intersection and exiting at the Leon Avenue intersection. In addition to supplementing the pedestrian and bicyclist surveillance by allowing motorists to conveniently move through the Park, the vehicular path would allow visitors with restricted mobility to easily access the Park's amenities. Because parking would be integrated into the vehicular route, the existing parking lot could be downsized or eliminated, thereby freeing prime space for active uses.

Amenity Building

A building referred to as the "Pavilion", in reference to the structure in the Park that was destroyed by fire in 2011, would be provided as a public amenity. The building would house a flexible meeting room to be administered by the City's Active Living and Culture staff for community use. The building would also include public washrooms and leasable commercial

space including a Visitor Services Centre and administrative offices for Tourism Kelowna as the building's major, long-term tenant.

Sufficient parking to serve the building's anticipated occupant load would be provided adjacent to the building. This parking would be in addition to the number of parking stalls currently provided within the Park that has been preserved in the Concept Plan.

Because the principal vehicle access to the Park could only be from the Lawrence Avenue intersection, Veendam Way and Gardens would need to be relocated. Staff are working with the Veendam Sister City Association on a plan to relocate Veendam Way and its associated vegetation to a new location that would continue to provide a direct connection between Abbott Street and the Cenotaph if the Draft Concept Plan were to be approved.

Lawn Bowling Facility

The lawn bowling facility is not shown on the Plan. However, the Plan is conceptual and the facility could be located within the area identified as the Central Active Zone, pending the outcome of further staff discussions with the Kelowna Lawn Bowling Club as the operator of the facility.

The reasons the facility is not shown in the Draft Concept Plan are:

- the facility is deemed to have low levels of use relative to other possible activities that would see the lawn bowling site used over more hours of the day and year and that would potentially achieve a greater public benefit;
- other City-owned sites could be considered that would possibly better meet the long-term needs of the facility to increase its membership.

Next Steps

Significant public feedback has been received regarding concerns with the proposed Visitor Services Centre and its associated vehicular impacts on the Park. In order to address this public concern, staff would work with Tourism Kelowna to assess the feasibility of reducing the Visitor Centre's size and the associated impacts on the Park. This would likely lead to two possible outcomes:

- 1) If a reduced building footprint proves to be technically and financially feasible, it would likely trigger refinements to the overall Concept Plan. Pending the outcome of that exercise, staff would report back to Council and Council could then direct staff to revise the Draft City Park Concept Plan accordingly, including any further public consultation.
- 2) If a reduction in the size of the Visitor Centre and associated vehicular impacts cannot be achieved, staff would report back to Council and Council could then direct staff to explore the feasibility of alternate locations for a Tourism Kelowna facility within Downtown. Staff anticipate this direction would also trigger refinements to the City Park Concept Plan, including further public consultation.

Staff expect a feasibility exercise to take 3-4 weeks pending availability of Tourism Kelowna for discussions. This schedule would also provide adequate time for continued discussions with Park stakeholders including the Lawn Bowling Club and Veendam Sister City Association.

Financial/Budgetary Considerations:

There is currently no funding in the 2020 Capital Plan to implement the changes identified in the Draft City Park Concept Plan. It is anticipated that a combination of partnerships with other agencies, grants, and redirection of other capital funding would be required if any of the identified changes were to be undertaken.

Internal Circulation:

Civic Operations
Communications
Active Living & Culture

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Communications Comments:
Alternate Recommendation:

Submitted by:

P. McCormick, Planner Specialist, Urban Design

Approved for inclusion:



J. Vos, General Manager Community Sustainability

Appendix A: Subject Area
Appendix B: Draft Concept Plan
Appendix C: Draft Concept Plan - Circulation and Zoning
Appendix D: Summary of Public Engagement and Feedback

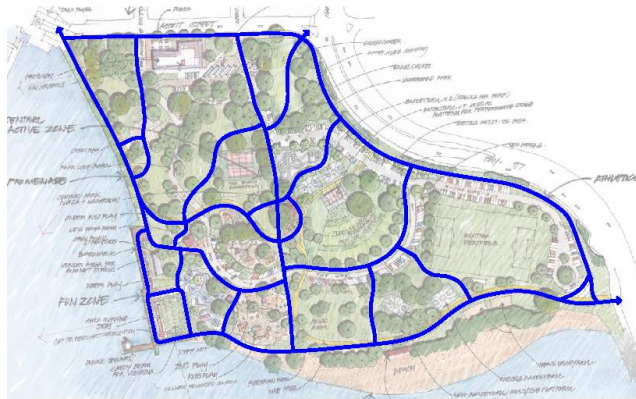
cc:

Active Living & Culture Divisional Director
Civic Operations Divisional Director
Communications & Information Services Divisional Director
Community Planning & Real Estate Divisional Director
General Manager Community Sustainability

APPENDIX A: Subject Area



APPENDIX C: Draft Concept Plan - Circulation and Zoning



Pedestrian Circulation



Bicycle Circulation



Vehicle Circulation



Park Zones

● Washroom Location

● Washroom Location

APPENDIX D: Summary of Community Engagement and Feedback

February 5, 2013 - Stakeholder Workshop

- Identify/confirm issues and agree upon guiding principles

March 14 - April 25, 2013 -My City Park Online Engagement

- 2700 visitors
- 180 Ideas posted
- 245 comments on the Ideas

Top five Ideas supported by participants:

- a safer park for individuals and families
- additional picnic areas
- more active uses
- a farmers' market
- improved pedestrian/cyclist circulation

June 27, 2013 - Open House Feedback

- held at entrance to City Park adjacent to the Sails Plaza
- 125 - 150 attendees
- 19 exit surveys completed
 - 9 supported the plan in general
 - 7 were not supportive
 - 3 were unsure

Highlights of the survey comments: the picnic area and a diving tower were particularly supported; opposition to a tourism facility, removal of the lawn bowling facility, and excessive paving/roads/parking were also noteworthy

- Attendees' general concerns (orally communicated to staff and the consultant)
 - Loss of lawn bowling facility
 - Tourism Centre/Park Pavilion (RV parking/traffic coming into the Park)
 - Scenic drive/access road through Park
 - Impact on Veendam Way
 - Removal of green space
 - The Fun Zone (diving board/boardwalk) was well-received, as well as the expanded picnic area
 - Questions on timing of implementation

June 27 to July 15, 2013 - Virtual Open House Feedback

- 1700 visitors
- 500 YouTube views
- 133 online surveys completed

Online survey results:

1. Was the information presented clearly to help you make an informed opinion?
 - 108 agreed or strongly agreed (81%)
 - 23 disagreed or strongly disagreed (17%)
 - 2 didn't know (1.5%)
2. Quality of life in our parks means different things to different people. Generally, are you supportive of the Concept Plan?
 - Yes : 67 (50%)
 - No : 20 (15%)
 - Unsure : 16 (12%)
 - Skipped/no response: (23%)
3. Tell us up to three highlights of the Plan you like the best.
 - Fun Zone (aquatic/diving area, children's area, picnic area)
 - Bike path separated from pedestrian pathway
 - Separation of conflicting Park uses
 - Increased number of washroom facilities
 - Tourism Centre (8)
 - Scenic road (6)
 - Pavilion/ multi-use facility (5)
 - Market stalls (5)
4. Tell us up to three highlights you like the least.
 - Tourism building (55)
 - Safety issues associated with access road and/or conflicting uses (56)
 - Loss of green space to accommodate building (25)
 - Loss of rose garden, impact on Cenotaph and relocation of Veendam Way (17)
 - Concerns re: vehicles turning into Park in a pedestrian-oriented area (15)
 - Should be on highway (13)
 - Lack of parking to accommodate Tourist Centre (5)
 - Parking/RVs (5)
 - Loss of lawn bowling facility (51)
 - Cost of implementation (6)
 - Vendors/commercial spaces (6)
 - Perceived exclusion of seniors (3)

July 15 to August 19, 2013 - Emails & Letters to the City

- Against the plan or specifically targeting the Tourism facility (69); in favour (2; including a letter of support from the Downtown Kelowna Association)

Other letters received: Veendam Sister City Association suggesting an alteration to the plan to relocate Veendam Way and Gardens.

July 15 to August 19, 2013 - Phone calls received (by the Project Manager & the Mayor's Office)

7 phone calls - 5 callers specifically voiced disapproval of a Visitor Services Centre in the Park; 4 of the callers were opposed to any redevelopment of City Park

Advertising/Social Media

Ad placement - Capital News - City in Action

- October 1, 2012 (City Council Highlights)
- March 25, 2013
- April 5, 2013
- June 21, 2013

e-Bulletins

- March 18, 2013
- June 25, 2013
- July 5, 2013

Facebook & Twitter

- 3 Facebook posts that were viewed by 525 people
- 3 Tweets sent out via Twitter to 7,600 followers, which included 6 retweets

Castanet Ad (Kelowna News 1, 2, and Weather Page)

- July 8 - July 15: 630 click thru's

Other Media

- Downtown Kelowna Association (Insider e-Bulletin)
- Bernard Avenue Revitalization Update - profiled City Park Concept Plan
- 1150am x 3, CBC x 2 (Project Manager interviews)

| | | | |
|----------------|----------------|---|---|
| Mar 27, 2013 | CBC radio west | http://www.cbc.ca/player/Radio/Local+Shows/British+Columbia/Radio+West/ID/2362259767/ | Positive - (interview with Project Manager) |
| March 15, 2013 | Daily Courier | | Neutral - Input sought for city park |

| | | | |
|----------------|----------------|---|--|
| March 14, 2013 | AM1150 | | Neutral - looking for input |
| March 14, 2013 | Castanet | | Neutral - residents asked for ideas on city park |
| April 11, 2013 | Daily Courier | | Neutral - online open house a success |
| April 11, 2013 | AM1150 | | Neutral - feedback on park positive |
| April 12, 2013 | Castanet | | Neutral - engagement, City has lots to say on park plan |
| May 17, 2013 | Cap News | http://www.kelownacapnews.com/news/207930191.html | Positive - social media and engagement |
| May 23, 2013 | Cap news | | Negative - Opinion - respect park as green space (Judie Steeves) |
| June 14, 2013 | Daily Courier | | Negative - let lawn bowlers stay (Jon Manchester) |
| June 21, 2013 | HQ Kelowna | | Neutral - Open House details |
| June 25, 2013 | HQ Kelowna | | Neutral - Open house details |
| June 27, 2013 | CBC radio west | | Neutral - plan released, give feedback |
| June 27, 2013 | Global BC | | Neutral - park places unveiled |
| July 5, 2013 | Daily Courier | | Neutral - feedback on park plan invited |
| July 5, 2013 | Castanet | http://www.castanet.net/news/Kelowna/94637/Plan-for-new-City-Park-updated | Neutral - Concept design |
| July 5, 2013 | AM1150 | | Neutral - Plan could see landmark relocated |
| July 10, 2013 | Daily Courier | | Negative - Letter to the Editor <i>City park plan relegates seniors to second-class citizens</i> |
| July 10, 2013 | Daily Courier | | Negative - Letter to the Editor <i>More building in city park will only make it worse</i> |
| July 13, 2013 | Cap News | | Negative - Opinion - air your concerns (Judie Steeves) |
| July 16, 2013 | Daily Courier | http://www.kelownadailycourier.ca/opinions/dont-ruin-city-park- | Negative - Opinion - don't ruin park (Jon Manchester) |

| | | | |
|----------------|--|---|--|
| | | 71713.html | |
| July 16, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Sad to hear of lawn bowling's possible fate</i> |
| July 18, 2013 | Cap News/ Daily Courier/ Castanet | http://www.kelownacapnews.com/opinion/letters/215878501.html | Negative - Opinion - <i>No more pavement (Sharon Shepherd)</i> |
| July 19, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Keep hands off park</i> |
| July 21, 2013 | Daily Courier | | Negative - Opinion - <i>Park poor place for office (Jon Manchester)</i> |
| July 22, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Keep hands off Kelowna City Park</i> |
| July 23, 2013 | Daily Courier | | Negative - Letter to the Editor <i>City Cruel to Seniors</i> |
| July 25, 2013 | Daily Courier | | Negative - <i>Leave the park alone (Don Plant)</i> |
| July 25, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Centre shouldn't be in park</i> |
| July 25, 2013 | Capital News | | Negative - Letter to the Editor <i>Don't locate major tourist info centre in park</i> |
| July 26, 2013 | Daily Courier | | Negative - Letter to the Editor <i>No to office in park</i> |
| July 28, 2013 | Daily Courier | | Positive - Letter to the Editor <i>Something needs to change to get transients out of park</i> |
| July 30, 2013 | Capital News | | Negative - Letter to the Editor <i>Tourist buses not welcome in City Park</i> |
| July 30, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Green parks are best parks, yesterday and today</i> |
| July 31, 2013 | AM 1150 | | Neutral - Office building in city park defended |
| July 31, 2013 | Daily Courier | | Negative - Letter to the Editor <i>A park proposal for tourism centre</i> |
| August 1, 2013 | CBC Daybreak | http://www.cbc.ca/daybreak/2013/08/01/exploring-the-stately-game-of-lawn-bowling/ | Negative - Exploring the Stately Game of Lawn Bowling |

| | | | |
|-----------------|---------------|----------|--|
| August 1, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Public input needed on park plan</i> |
| August 4, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Writer wonders if it's a done deal</i> |
| August 4, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Parks for people, not tourist booths</i> |
| August 5, 2013 | Infotel | | Neutral - Finding the right spot for Kelowna's tourism centre |
| August 7, 2013 | Castanet | | Negative - Letter <i>City park tourist centre</i> |
| August 12, 2013 | Capital News | | Negative - Opinion <i>City Park historical photo sparks floral conversation</i> |
| August 12, 2013 | Daily Courier | | Negative - Letter to the Editor <i>Outraged over plan for offices in City Park</i> |
| August 15, 2013 | Castanet | | Negative - Opinion <i>Tourist centres becoming obsolete</i> |
| | | | |
| Negative | Neutral | Positive | |
| 26 | 19 | 3 | |

CITY PARK DRAFT CONCEPT PLAN

Report to Council

August 26, 2013









Pedestrian Circulation



Bicycle Circulation



CITY PARK DRAFT CONCEPT PLAN

Report to Council

August 26, 2013



Report to Council



Date: August 20, 2013
Rim No. 1140-50
To: City Manager
From: R. Forbes, Manager, Property Management
Subject: Report to Council - Lease to Okanagan Symphony
Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approves the City entering into a five (5) year Lease Agreement, with the Okanagan Symphony Orchestra Society, at the Knowles House at 865 Bernard Avenue for the purpose of office and storage space, with the option to renew for an additional five (5) year term at the City's sole discretion, in the form attached to the Report of the Manager, Property Management, dated August 20, 2013, subject to the Okanagan Symphony Orchestra Society obtaining a building / home inspection with results that are satisfactory to them;

AND THAT the Mayor and City Clerk be authorized to execute the Lease Agreement.

Purpose:

To obtain Council endorsement of a five (5) year lease to Okanagan Symphony Orchestra Society for the use of the Knowles House.

Background:

The Knowles House, located at 865 Bernard Avenue, was recently occupied by the Alzheimer Society and became vacant in December 2012. The home was built in 1907. There has been an addition to the house that is in poor condition and needs to be removed. The house requires renovations to return the building to its original form and character. Rental revenue has been placed in a reserve to fund the renovations to the 106 year-old building, and continued revenue contributions will ensure funding for the restoration.

The Okanagan Symphony Orchestra ("OSO") is currently renting second floor space on Springfield Road and seeking a larger space that would accommodate their office functions and storage space for the larger instruments. The wheelchair ramp at Knowles House would assist patrons and volunteers with mobility issues to access the office with greater ease, and also allow movement of the larger instruments to and from storage. The door to the building at the end of the wheelchair ramp will have to be changed to a larger door to accommodate the movement of the instruments. The Urban Planning branch has identified that a Heritage Alteration Permit would not be required for this work.

As part of the due diligence on behalf of the OSO a home inspection will be performed. The City acknowledges that it is the City's responsibility to pay for remediation work identified in the home inspection. The City and the OSO must mutually agree on the required remediation.

The OSO has indicated that proximity to Knowles Park opens up programming opportunities for small concerts in the park.

Financial/Budgetary Considerations

The proposed rental rate is \$10,680.00 per annum plus GST for the first year of the term, and \$13,680.00 per annum for the remainder of the term. The rent reduction in the first year recognizes the minor interior renovations required by the OSO and the need for continued outside storage space while the renovations are underway. OSO will be responsible for all utilities and property taxes associated with the lease.

An option to renew at the City's sole discretion is offered for a further five (5) year term. A rent review will be conducted at that time to ensure market rent is achieved.

Internal Circulation:

Director, Financial Services
Planner, Policy & Planning
Manager, Urban Planning

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Communications Comments:
Alternate Recommendation:

In light of the above, the Real Estate department requests Council's endorsement of this Lease.

Submitted by: R. Forbes, Manager, Property Management

Approved for inclusion: D. Edstrom, Director, Real Estate

Attachment:

1. Lease
2. Condition Subject

cc: K. Grayston, Director, Financial Services
L. Sanbrooks, Planner, Policy & Planning
D. Noble, Manager, Urban Planning

COMMERCIAL FACILITY LEASE

BETWEEN:

CITY OF KELOWNA, a municipal corporation having
Offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "Landlord")

OF THE FIRST PART

AND:

OKANAGAN SYMPHONY ORCHESTRA SOCIETY
#239 - 1889 Springfield Road, Kelowna, B.C. V1Y 5V5

(the "Tenant")

OF THE SECOND PART

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2. Premises
3. Term
4. Rent
5. Tenant's Covenants
6. Landlord's Covenants
7. Repair, Damage and Destruction
8. Taxes and Other Costs
9. Utilities and Additional Services
10. Licenses, Assignments and Subletting

11. Fixtures and Improvements
12. Insurance and Liability
13. Environmental Matters
14. Subordination, Attornment, Registration, and Certificates
15. Occurrence of Default
16. Tenant's Default, Remedies of Landlord and Surrender
17. Miscellaneous

THIS LEASE, dated the 1st day of September 2013, is made and entered into by the Landlord and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

Basic Terms:

- (a) Landlord:
Address of Landlord: CITY OF KELOWNA
City Hall, 1435 Water Street
Kelowna, B.C. V1Y 1J4
Fax: 250-862-3349
Email: rforbes@kelowna.ca
- (b) Tenant:
Address of Tenant: Okanagan Symphony Orchestra Society
#239-1880 Springfield Road
Kelowna, B.C. V1Y 5V5
- (c) Premises: Knowles House, 865 Bernard Ave, Kelowna, BC
A Portion of Lot A, DL 138 KAP67329
(see Schedule A)
- (d) License Area: The Tenant shall have access to the License
Area as shown on Schedule A
(see Schedule A)
- (e) Initial Term: Five (5) years
Commencement Date: October 1, 2013
- (f) Renewal Term (if any): One (1) Term of Five (5) years
at the City's sole discretion
- (g) Annual Base Rent + Tax: Year 1 - \$10,680 + GST
Years 2-5 - \$13,680 + GST
- (h) Property Taxes: Tenant to pay unless approved under
Permissive Tax Exemption Bylaw
- (i) Utilities: Tenant to pay
- (j) Permitted Use: To occupy the premises for the purpose of
office, meeting and storage space

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

| SCHEDULE | SUBJECT |
|----------|--|
| A | Site Plan of Premises and License Area |
| B | Definitions |
| C | Landlord & Tenant Responsibility Checklist |
| D | Certificate of Insurance |

1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

2. PREMISES AND LICENSE AREA

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Premises.

[The Landlord furthermore grants a license (the "License") to the Tenant to use the [parking area and/or landscaped area and/or surrounding property and/or other suitable description] outlined as the License Area in Schedule A, for purposes necessarily related to the permitted use of the Premises.]

3. TERM

3.1 Term

The Term of this Lease, and the related License, shall be for the initial term of Five (5) years, beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

3.2 Option to Renew

The Landlord covenants with the Tenant that if:

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 12 months prior to the expiration of the initial Term of Five (5) years; and
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) the Tenant has duly and regularly throughout the initial Term of Five (5) years observed and performed the covenants and conditions herein contained

then the Landlord, at its sole discretion, may grant to the Tenant at the Tenant's expense a renewal lease of the Premises and License Area for One (1) Renewal Term of Five (5) years upon the same terms and conditions, excluding Annual Base Rent and Additional Rent as are herein contained. There are no further rights of renewal.

4. RENT

4.1 Rent

The Tenant shall yield and pay to the Landlord, in the manner outlined in clause 4.2, at the office of the Landlord's accounts payable division, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Lease Year.

(b) Additional Rent

In addition, but subject to any operating costs the Landlord expressly agrees to pay for its own account, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and the License Area including all applicable real estate taxes and other charges.

4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

In addition, the Tenant is responsible for all operating costs of whatever nature or kind in connection with the Premises and the License Area including all applicable real estate taxes and other charges.

(c) Payment Format

The Tenant agrees to pay the Annual Base rent via Bank Transfer or post-dated cheques on a monthly basis.

4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

4.4 Waiver of Offset

The Tenant hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Tenant or on its behalf.

4.5 Application of Payments

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

4.6 Net Lease

The Tenant Acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease, shall pay all charges, impositions, and costs of every nature and kind relating to the Premises and License Area whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

5. TENANT'S COVENANTS

5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and License Area and commence to carry on business in all or substantially all of the Premises and License Area no later than 30 days after the Commencement Date, to use the Premises and License Area only for the purpose set out in clause 1(j) herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises or License Area including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord or anyone else; any other use or manner of use which, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises and License Area anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises or License Area to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Landlord.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises and License Area, the condition of the Leasehold Improvements, trade fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises or License Area necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Landlord's original construction of the Premises.

(h) Overholding

That if the Tenant shall continue to occupy the Premises and License Area after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

- (i) Signs
Not to display, place, or affix any sign except in accordance with the regulations of the Landlord.
- (j) Inspection and Access
To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises and License Area for the purpose of inspection or making repairs, alterations, or improvements to the Premises or License Area as the Landlord may deem necessary or desirable, or as the Landlord may be required to make by law. The Landlord shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The Landlord shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.
- (k) Showing Premises
To permit the Landlord and its authorized agents and employees to show the Premises and License Area to prospective tenants during the normal business hours of the last three months of the Term.
- (l) Conduct of Business:
The Tenant shall operate the Premises in accordance with the terms set out in Section 1(j). The Tenant will not permit the sale of tobacco products from the Premises or License Area.
- (m) Heritage Restoration and/or Renovation
The Knowles House is a registered property on Kelowna's Heritage Registry. In the future, the Landlord will be restoring/renovating the rear portion of the house. This may cause some inconvenience to the Tenant. The Tenant hereby acknowledges that during the restoration/renovation there may be noise and service interruptions.
- (n) Lease Suspension and / or Abatement
If during the planning of the restoration and/or renovation the Landlord deems that the Premises must be unoccupied for a period of time due to safety, noise, or any other concerns, the Landlord will give the Tenant three (3) months notice to vacate the property until such time as the Landlord receives an occupancy permit and deems it safe for the Tenant to resume occupancy. The Landlord will not be responsible for providing any space nor funding for space for the Tenant during this time. At the same time, the Tenant will not be responsible for any Rent or Utilities during this period.

In the event that the Tenant's business operations (ie: power, heat, water, sewer or communication) are interrupted longer than 48 hours and are attributable to the Landlord's heritage renovation / repair activities, rent will abate on a per diem basis.

(o) Lease Cancellation

If during the period contemplated in Section 5.1(m) Lease Suspension, the Tenant finds a suitable alternate location and does not wish to return to the Knowles House, they may terminate this Lease without penalty by providing the Landlord two (2) months notice.

(p) Kelowna South-Central Association of Neighbourhoods Society (KSAN) Meeting Space

The Tenant shall allow KSAN free use of the meeting room space on a monthly basis in the Knowles House on a mutually agreed to schedule for the purpose of a monthly meeting of the Society. It is understood that due to renovations, KSAN will be unable to conduct monthly meetings. OSO will advise when renovations are concluded at which time KSAN may resume monthly meetings.

6. LANDLORD'S COVENANTS

6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises and License Area for the Term hereby granted, without any interruption or disturbance from the Landlord or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Landlord.

(b) Heritage Restoration/Renovation

The Knowles House requires some restoration and/or renovation. The scope of the work will be determined by the Landlord in order to preserve and protect the Knowles House to the appropriate heritage standard. If the restoration / renovation takes place during the Term of this lease, then the Landlord shall inform the Tenant of the scope of the work and will attempt to minimize disruption to the Tenant's business.

(c) Landscaping

The Landlord will be responsible for landscaping and cutting grass on the Premises and License Area.

7. REPAIR, DAMAGE, AND DESTRUCTION

7.1 Landlord's Repairs

The Landlord covenants with the Tenant that the major building components will be maintained in a good and reasonable state of repair, consistent with the general standards of structures of similar age and character in Kelowna. This includes the main structure, roof and mechanical systems.

7.2 Tenant's Repairs

The Tenant covenants with the Landlord:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises and License Area including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (b) that the Landlord may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises and License Area in a good and reasonable state of repair, allowing for reasonable wear and tear.

7.3 Abatement and Termination

It is agreed between the Landlord and the Tenant that in the event of damage to the Premises or License Area:

- (a) if the damage is such that the Premises or License Area or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
 - (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises or License Area are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises or License Area not reasonably capable of use and occupancy; and
 - (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises or License Area is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and
- (b) if the Premises or License Area are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the Landlord or Tenant may at its option, exercisable by written notice to the Tenant or Landlord, given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and License Area to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid

to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises or License Area having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities for which the Landlord is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord.

8. TAXES AND OTHER COSTS

8.1 Tenant Tax Obligation

The Tenant covenants with the Landlord:

- (a) to pay when due, all Property Taxes, business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Leased Premises by the Landlord, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Leased Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Landlord or which may be removed by the Tenant;
- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises; and

8.2 Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Lease.

9. UTILITIES AND ADDITIONAL SERVICES

9.1 Utilities

The Tenant shall be responsible for all aspects of, including payment of costs related to, utilities and services of whatever nature or kind required in connection with the Premises and License Area and the conduct by the Tenant of the Tenant's business as described herein including without limitation, water, telephone, sewer, hydro, power, heating, air conditioning and garbage disposal.

10. LICENSES, ASSIGNMENTS, AND SUBLETTING

10.1 General

It is understood and agreed that the Tenant may not assign this Lease, or sublease the Premises or License Area, to another party.

11. FIXTURES AND IMPROVEMENTS

11.1 Installation of Fixtures and Improvements

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises or License Area, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises or License Area shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Premises or License Area, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Tenant as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then

or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

11.4 Removal of Fixtures and Improvements

All Leasehold Improvements in or upon the Premises and License Area shall immediately upon affixation be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by the Tenant from the Premises or License Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Landlord shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in Section 12.2 (b) unless otherwise agreed in writing by the Landlord.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or License Area by the installation and removal.

11.5 Alterations by Landlord

The Landlord reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Landlord will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises and License Area, but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the Landlord.

12. INSURANCE AND LIABILITY

12.1 Landlord's Insurance

The Landlord shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Premises and all improvements and installations made by the Landlord in the Premises or License Area, except to the extent hereinafter specified, in respect of perils and to amounts and on terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Premises, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the Landlord, and whose written opinion shall be conclusive. Upon the request of the Tenant from time to time the Landlord will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Premises. The Landlord may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.

12.2 Tenant's Insurance

The Tenant shall take out and keep in force during the Term:

- (a) comprehensive general liability (including bodily injury, death and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises or the License Area and the Tenant's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the Landlord as a named insured and shall protect the Landlord in respect of claims by the Tenant as if the Landlord were separately insured, shall include a cross liability clause and have a deductible of not more than \$5,000 per occurrence or claim; and
- (b) insurance in such amounts as may be reasonably required by the Landlord in respect of fire and other such perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Tenant's trade fixtures and the furniture and equipment of the Tenant and (except as to Insured Damage) all Leasehold Improvements in the Premises, and which insurance shall include the Landlord as a named insured as the Landlord's interest may appear with respect to the insured Leasehold Improvements and provided that any proceeds recoverable in the event of loss to Leasehold Improvements;

and if the Landlord shall require the same from time to time, then also:

- (c) tenant's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and
- (d) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass; and
- (e) motor vehicle insurance for all motor vehicles used by the Tenant in the conduct of its business shall have a minimum public liability and third party property damage insurance coverage of at least \$2,000,000.

All insurance required to be maintained by the Tenant hereunder shall be on terms and with insurers to which the Landlord has no reasonable objection and shall provide that such insurers shall provide to the Landlord 30 days' prior written notice of cancellation or material alteration of such terms.

The Tenant shall furnish to the Landlord the completed certificate as set out in Schedule D or other evidence acceptable to the Landlord as to the insurance within 14 days of the execution of this agreement. Failure to provide such documents shall constitute default resulting in termination of this agreement. The Tenant shall also furnish to the Landlord certificates of other evidence acceptable to the Landlord as to the insurance from time to time required to be effected by the Tenant and its renewal or continuation in force, either by means of a certified copy of the policy or policies which, in the case of comprehensive general liability insurance, shall provide such information as the Landlord reasonably requires. If the Tenant shall fail to take out, renew and keep in force such insurance the Landlord may do so as the agent of the Tenant and the Tenant shall repay to the Landlord any amounts paid by the Landlord as premiums forthwith upon demand.

12.3 Limitation of Landlord's Liability

The Tenant agrees that:

- (a) the Landlord shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees, or licensees or any other person in, on, or about the Premises, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event shall the Landlord be liable:
 - (i) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, sub-surface, or other part or parts of the Premises of property, or from the streets, lanes, and other properties adjacent thereto;
 - (ii) for any damage, injury, or death caused by anything done or omitted by the Tenant or any of its servants or agents or by any other person;
 - (iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Landlord in effect from time to time or of any lease by another tenant or premises in the same building or on the same property or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
 - (iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Premises or the property;
 - (v) for the failure to do anything required to be done by the Landlord.
- (b) The Tenant releases and discharges the Landlord from any and all action, causes of action, claims, damages, demands, expenses, and liabilities which the Tenant now or hereafter may have, suffer, or incur which arise from any matter for which the Landlord is not liable under sub-clause 12.3(a), notwithstanding that negligence or other conduct of the Landlord or anyone for whose conduct the Landlord is responsible may have caused or contributed to such matter.

12.4 Indemnity of Landlord

The Tenant agrees to indemnify and save harmless the Landlord in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, sub-tenant, agent, employee, contractor, invitee, or licensee of the Tenant, and in respect of all costs, expenses, and liabilities incurred by the Landlord in connection with or arising out of all such claims including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease. This indemnity shall survive the expiry or termination of this Lease.

13. ENVIRONMENTAL MATTERS

(a) Definitions

For the purposes of this Section and Agreement, the following terms shall have the following meanings:

(i) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;

(ii) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);

(iii) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and

(iv) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

(b) Tenant's Representations and Warranties

The Tenant represents and warrants to the City, and acknowledges that the City is relying on such representations and warranties in entering into this Agreement, that as of the date of this Agreement:

(i) except as disclosed to the City in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and

(ii) except as disclosed to and approved in writing by the City, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 6.01 of this Agreement.

(c) Condition of Premises

The Tenant acknowledges and agrees that the City has made no representations or warranties with respect to the environmental condition of the Premises and is leasing the Premises to the Tenant under this Agreement on an "as is, where is" basis with respect to their environmental

condition. Prior to taking possession of the Premises under this Agreement, the Tenant has performed such investigations of the Premises as it considered appropriate and is satisfied as to their environmental condition.

(d) Use of Contaminants

The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the City, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

(e) Compliance with Environmental Laws

The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.

(f) Evidence of Compliance

The Tenant shall promptly provide to the City a copy of any environmental site investigation, assessment, audit or report relating to the Premises conducted by or for the Tenant at any time before, during or after the Term (or any renewal thereof). The Tenant shall, at its own cost at the City's request from time to time, obtain from an independent environmental consultant approved by the City an environmental site investigation of the Premises or an environmental audit of the operations at the Premises, the scope of which shall be satisfactory to the City and shall include any additional investigations that the environmental consultant may recommend. The Tenant shall, at the City's request from time to time, provide the City with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the City.

(g) Confidentiality of Environmental Reports

The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the City, which consent may be unreasonably withheld.

(h) Records

The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the City at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.

(i) Access by City

Without relieving the Tenant of any of its obligations under this Agreement, the Tenant shall, at such reasonable times as the City requires, permit the City to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the City deems necessary for the safety and preservation of the Premises.

(j) Authorizations

The Tenant shall promptly provide to the City on request such written authorizations as the City may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.

(k) Notices

The Tenant shall promptly notify the City in writing of:

(i) any Release of a Contaminant or any other occurrence or condition at the Premises, or any adjacent property which could subject the Tenant, the City or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;

(ii) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and

(iii) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

(iv) the Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the City to notify the regulatory authorities.

(l) Removal of Contaminants

Prior to the expiry or earlier termination of this Agreement or at any time if requested by the City or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants, and remediate any contamination of the Premises, or any adjacent property resulting from Contaminants, in either case brought onto, used at or Released from the Premises by the Tenant or any person for whom it is in law responsible. [For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for [commercial/industrial] purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence.] The Tenant shall provide to the City full information with respect to any remedial work performed pursuant to this section and shall comply with the City's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the City to

The Tenant agrees with the Landlord that:

(a) Sale or Financing of Building

The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Tenant agrees to attorn to and become the tenant of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

(b) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

(c) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(d) Assignment by Landlord

In the event of the sale by the Landlord of the Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

15. OCCURRENCE OF DEFAULT

15.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by

reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises and License Area.

15.2 No Admission

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

15.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

16. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER

16.1 Remediating by Landlord, Non-payment, and Interest

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general law, and the event of default is not remedied within the respective time period for doing so, the Landlord:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises and License Area to do any work or other things therein, and in such event all expenses of the Landlord in remediating or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent; and
- (c) shall be entitled to be reimbursed by the Tenant, and the Tenant shall forthwith pay the Landlord, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Landlord in connection with the default or in efforts to enforce any of the rights, or to seek any of the remedies, to which the Landlord is or may be entitled hereunder.

16.2 Remedies Cumulative

The Landlord and the Tenant may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant or the Landlord, as the case may be, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord or the Tenant, as the case may be, by statute or the general law.

16.3 Right of Re-entry on Default

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant notice requiring such payment; or
- (b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant notice thereof; or
- (c) if without the written consent of the Landlord the Premises and License Area shall be used by any other persons than the Tenant or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- (e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or
- (f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Premises from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises or License Area by the Tenant or any assignee, sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises or License Area and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or

- (h) if the Landlord shall have become entitled to Terminate this Lease or to re-enter the Premises or License Area under any provision hereof;

then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises and License Area or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises and License Area, and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

16.4 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises and License Area under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises and License Area to the Landlord in accordance with clause 16.9.

16.5 Right of Termination - No Default

In the event that the Landlord requires the use of the Premises for whatever reason, the Landlord shall have the right to terminate this Lease after giving the Tenant One Hundred Twenty (120) days written notice of the Landlord's intention to terminate. The Tenant shall have the reciprocal right to terminate the lease upon One Hundred Twenty (120) days written notice to the Landlord.

16.6 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises and License Area or if this Lease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the Landlord's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and License Area in good order, and the expenses of repairing the Premises and preparing them for re-letting.

16.7 Waiver of Distress and Bankruptcy

The Tenant waives the benefit of any present or future statute taking away or limiting the Landlord's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Tenant will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the owner or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Tenant agrees that it will not, without the Landlords' consent, repudiate or disclaim this Lease in any bankruptcy, insolvency, re-organization, or other proceeding or court application, and if required by the Landlord, waives in favour of the Landlord the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

16.8 Re-letting and Sale of Personalty

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and License Area and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises and License Area upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

16.9 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises and License Area in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises and License Area, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.4, and subject to reasonable wear and tear. At the same time the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises and License Area, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Premises.

17. MISCELLANEOUS

17.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in sub-clause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises. Every such notice shall be

deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

17.2 Extraneous Agreements

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease, the Premises or License Area save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant, and no verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

17.3 Time of Essence

Time shall be of the essence in this Lease.

17.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

17.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

17.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Lease, and notwithstanding any statutory provision to the contrary, the obligations and liability of the Tenant hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

17.7 Waiver

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of

Rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

17.8 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

17.9 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

17.10 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises and License Area shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be completed by the Landlord prior to the Commencement Date of the Term and the Premises and License Area were in good order and satisfactory condition for the commencement of the work and business of the Tenant.

17.11 Deposit

If the Landlord is holding any deposit in connection with this Lease, then unless the Landlord agreed in writing to different arrangements at the time the Landlord received the deposit, the deposit shall be held by the Landlord on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

17.12 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the Landlord may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises and License Area and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the Landlord the apportioned Rent and all other amounts which may be due to the Landlord up to the date of termination, and clause 16.9 shall apply. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of

this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award to the Tenant, the Landlord shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.


17.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Landlord of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the Landlord in the presence of:

| | |
|--|------------|
| The City of Kelowna, by its Authorized) | |
| Signatories:) | _____ |
|) | Witness |
| _____) | |
| Mayor) | _____ |
|) | Address |
| _____) | |
| City Clerk) | _____ |
|) | Occupation |

| | |
|---|------------|
| The Okanagan Symphony Orchestra) | |
| Society by it Authorized Signatories:) | _____ |
|) | Witness |
| ) | |
| _____) | _____ |
|) | Address |
| _____) | |
|) | _____ |
|) | Occupation |

PLAN OF THE LEASED PREMISE AND LICENSE AREA

A Portion of Lot A, DL 138 KAP67329



DEFINITIONS

In this Lease the following expressions shall have the following meanings:

“Additional Rent” means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant.

“Annual Base Rent” means the annual Rent set out in sub-clause 1.1(g) and payable by the Tenant as set forth in clause 4.2.

“Basic Terms” means those terms set out in clause 1.1.

“Commencement Date” means the date the term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

“Goods and Services Tax” or “GST” means and includes any and all sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

“Insured Damage” means that part of any damage occurring to any portion of the Premises for which the Landlord is responsible, of which the entire cost of repair is actually recoverable by the Landlord under a policy of insurance in respect of fire and other perils from time to time effected by the Landlord, or, if and to the extent that the Landlord has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Landlord effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

“Land” means that parcel of land on Bernard Avenue in the City of Kelowna, British Columbia, more particularly described as Lot A, DL 138, KAP67329.

“Lease Year” means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

“Leasehold Improvements” means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Tenant, and the Landlord or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

“License Area” means the parking lot and landscaped area adjacent to the Premises, as set out in sub-clause 1.1(c) and shown on Schedule A.

“Premises” means the Knowles House at 865 Bernard Avenue, Kelowna, BC as set out in sub-clause 1.1(c) and shown on Schedule A.

“Prime Rate” means the rate of interest declared from time to time by the main branch, Bank of Montreal, Kelowna, British Columbia, to the Landlord as the annual rate of interest.

“Rent” means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for Good and Services Tax payable by the Tenant.

“Taxes” means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

“Tax Cost” for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

Tenant’s Share” means the proportion of Taxes attributed to the Premises.

“Term” means the Term of this Lease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.

SCHEDULE C

| Tenant Responsibility Checklist Okanagan Symphony Orchestra Society | Provided by the City, Cost borne by the City | Provided by the City, Cost borne by the Tenant | Provided by the Tenant, Cost borne by the City | Provided by the Tenant, cost borne by the tenant | Does not apply |
|--|---|--|---|--|----------------------|
| Boiler operating permits | | | | | X |
| Electrical field safety representative | | | | | X |
| Electrical operating permit | | | | | X |
| Electrical system preventative maintenance | | | | X | |
| Electrical system repairs | X | | | | |
| Electrical/lights - lamp & tube replacement | | | | X | |
| Elevator equipment repairs | | | | | X |
| Elevator maintenance contract | | | | | X |
| Elevator operating permits | | | | | X |
| Emergency lighting testing & repairs | | | | X | |
| Exterior doors, windows, facades, etc. | | | | X | |
| Fire alarm system repairs | X | | | | |
| Fire alarm system testing & inspection contracts | | | | X | |
| Fire extinguisher monthly & annual inspections | | | | X | |
| Fire safety plan and fire drills | | | | X | |
| Fire sprinkler system repairs | | | | | X |
| Fire sprinkler system testing and inspection contracts | | | | X | |
| Furnishings (maintain & replace) | | | | X | |
| Garbage removal | | | | X | |
| HVAC preventative maintenance | | | | X | |
| HVAC repairs | X | | | | |
| Insurance - automotive | | | | X | |
| Insurance - liability | | | | X | |
| Insurance - property, building | X | | | | |
| Insurance - tenant owned furnishings & fixtures | | | | X | |
| Insurance - tenant owned operation equipment, computers, & furnishings | | | | X | |
| Interior walls, flooring, doors, ceilings, etc. | | | | X | |
| Internet | | | | X | |
| Janitorial services & supplies | | | | X | |
| Kitchen Exhaust Hood preventative maintenance | | | | | X |

| | | | | | |
|---|---|--|--|---|---|
| Kitchen Exhaust Hood repairs | | | | | X |
| Kitchen Hood Fire suppression system preventative maintenance | | | | | X |
| Kitchen Hood Fire suppression repairs | | | | | X |
| Kitchen Hood Fire suppression testing | | | | | X |
| Landscape maintenance | X | | | | |
| Licenses & permits | | | | X | |
| Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc. | X | | | | |
| Pest control | | | | X | |
| Plumbing system preventative maintenance | | | | X | |
| Plumbing system repairs | X | | | | |
| Recycling program | | | | X | |
| Roof inspection & maintenance | X | | | | |
| Roof repairs | X | | | | |
| Security system | | | | X | |
| Signage | | | | X | |
| Snow removal | X | | | | |
| Taxes | | | | X | |
| Telephone | | | | X | |
| Tenant improvements | | | | X | |
| Tenant improvements - Maintenance | | | | X | |
| Tree removal | X | | | | |
| Utilities - electricity | | | | X | |
| Utilities - natural gas | | | | X | |
| Utilities - propane | | | | | X |
| Utilities - water, sewer | | | | X | |
| Vandalism (exterior) | X | | | | |
| Vandalism (interior) | | | | X | |
| Window Cleaning | | | | X | |
| Window Cleaning (interior) | | | | X | |

Appendix "A,B,C,D,E" contains a list of equipment specific to the building in question. The tenant, as per the lease agreement, must provide a detailed maintenance program to the City.

Document Revision History:

| Revision | | | |
|----------|-------------|------------|------|
| 1 | Description | Revised by | Date |
| | | | |
| | | | |

August 21, 2013

Agreement between the City of Kelowna and the Okanagan Symphony Orchestra Society (OSO).

Subject Condition

The City is offering to lease the Knowles House to the OSO subject to the OSO obtaining a building / home inspection with results that are satisfactory to the OSO on or before the 13th day of September, 2013.

The City and the OSO must mutually agree on the remediation required. The City will be responsible to pay for all remediation that is mutually agreed upon in order for the OSO to assume occupancy.

Failure by the OSO to obtain a building / home inspection by the above noted time may result in the City canceling the offer to lease at the City's sole discretion.

Failure by the City and the OSO to agree on the remediation required in order for the OSO to assume occupancy may result in either party withdrawing from the agreement without penalty.



Scott Wilson
Executive Director
Okanagan Symphony Orchestra Society



Ron Forbes
Property Manager
City of Kelowna

Report to Council



Date: August 20, 2013
Rim No. 1140-50
To: City Manager
From: R. Forbes, Manager, Property Management
Subject: Council Report Kelowna Youth and Family Services 2013 Lease

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approves the City entering into a five (5) year Lease Modification Agreement, with Terra Landscaping and Bobcat Services Ltd. with the option to renew for an additional five (5) year term, in the form attached to the Report of the Manager, Property Management, dated August 20, 2013;

AND THAT the Mayor and City Clerk be authorized to execute the agreement.

Purpose:

That Council approves the Lease Modification Agreement with Terra Landscaping and Bobcat Services Ltd. for the lease of Suite #301 at 260 Harvey Avenue.

Background:

Kelowna Youth and Family Services (KYFS) is a program of the RCMP. The agency provides preventative counseling service for parents, children and/or youth up to 17 years; assistance to parents experiencing difficulties with child behaviour in family, community or involvement with the law; improving relationships, communication and parenting skills.

KYFS have been operating out of Suite #100 - 260 Harvey Avenue. They have been seeking better accommodations for next year when their current lease expires. Discussion with their existing landlord resulted with the possibility of moving from Suite #100 to Suite #301. The landlord is offering the space at the same rental rate that has been charged for the past five (5) years, renovate the space to the tenants specifications and move the furniture when the renovations are completed.

The rent rate being charged is comparable with other rental rates being charged downtown.

The new space will meet the needs of KYFS for the next five (5) years.

Considerations not applicable to this report:

Internal Circulation

Legal/Statutory Authority:

Existing Policy

Financial/Budgetary Considerations

Personnel Implications

External Agency/Public Comments

Communications Comments

Alternate Recommendation

Legal/Statutory Procedural Requirements:

Submitted by: R. Forbes, Manager, Property Management

Approved for inclusion: D. Edstrom, Director, Real Estate

cc: S. Leatherdale, Director, Human Resources
K. Grayston, Director, Financial Services

Attachment:

1. Map

Subject Property



Lease Modification Agreement

Commerce Centre - Kelowna

June 17, 2013

City of Kelowna,
1435 Water Street,
Kelowna, BC
V1Y 1J4

Attention: Ron Forbes, Facilities Manager

Dear Ron,

Re: Lease commencing on June 1, 1994, as subsequently transferred and amended and now expiring on November 30, 2014, between Terra Landscaping and Bobcat Services Ltd. (the Landlord) and the City of Kelowna (the Tenant) for the premises at #100-260 Harvey Ave, Kelowna, BC

The landlord wished to extend the following proposal to amend and extend the above noted lease. The amended lease will be for the premises of Suite # 301 on the third floor at 260 Harvey Ave. Kelowna BC

All terms of the lease shall remain the same, save and except for the following:

- 1. The Premise:** The Premise will be changed from suite 100 – 260 Harvey Ave., Kelowna BC, to suite 301 - 260 Harvey Ave., Kelowna BC
- 2. New Term:** The Term of the lease will be from September 1st 2013 to August 31st, 2018 (the “New Term”)
- 3. The Base Rent:** The Base Rent payable by the Tenant in respect of the premises shall be \$15.00 per square foot of the rentable area (1495 sq ft) for the five years of the New Term (the “Base Rent”) Rents are payable monthly on the first day of each and every month during the New Term.
- 4. Additional Rents:** The Tenant will continue to pay its Proportionate Share of Operating Costs and Taxes during the new term and in accordance with the lease. The Proportionate Share will be increased by 178 sq ft to allow for the increase of floor square footage from 1317 to 1495. Also the shared cost of the elevator will become part of the Tenants Additional Rents. It is understood that the additional

square footage cost in the Base Rent and the Additional Rents will not exceed \$2000.00 during the calendar year 2013.

5. **Tenant Improvements:** The cost of the Tenant Improvements that include the partitioning of two spaces into two offices on the northwest corner of the suite and also the removal and rebuilding of a wall on the north east corner of the suite to enlarge two of the existing offices and the re-carpeting of the entire suite (1495 sq ft) and reasonable painting relating to the improvements and electrical work will be borne by the Landlord.
6. **Moving:** The cost of moving all equipment, furniture and chattels shall be born by the Tenant. The Landlord may if agreeable to the tenant, make the arrangements to have this work done and invoice the tenant the direct cost of the work in January 2014.
7. **Telephone and Internet connections:** The cost to disconnect and reconnect telephone and internet will be borne by the tenant.
8. **Lease Modification Agreement:** This lease modification agreement shall represent a Modified Agreement, implementing the terms of this proposal and any further modifications as may be requested by the tenant's solicitor and agreed to by the landlord's solicitor, both parties acting reasonably. No other instruments shall be required. All capitalized terms not otherwise defined in this Proposal will have the meaning ascribed to them in the Lease. All terms and conditions of the Lease shall remain in full force and effect, unchanged and unmodified, except in accordance with this proposal.
9. **Option to Extend the Term:** Provided that the tenant is not in default under any of the terms of the Lease, The Tenant shall have only one further option of extending the Term of the Lease for an additional period of up to five (5) years (the "Extended Term") by notice in writing given to the Landlord six (6) months prior to the expiry of the New Term, on the same terms and conditions set forth in the Lease, save and except for this right of extension and except that the net rent reserved during the Extended Term shall be the market rate for the Leased premises. The "market Rate" referred to above shall be the annual net rental rate for comparable space in comparable buildings in the area as of the date upon which the Tenant provides the foregoing notice to the Landlord, having regard to rents then, or as near as possible thereto, being contracted to be paid, under leases of similar premises to the Leases Premises in the area, by tenants with a covenant similar to that of the Tenant for the terms similar to the Extended Term. If the Landlord and the Tenant cannot agree on the said market rent within ninety (90) days of the Landlord's receipt of the Tenant's written notice, then the said market rent shall be determined in accordance with the provisions of the Arbitration Act.

- 9. Inducements and Other Consideration:** Any inducements, free rent, Landlord's work or any other consideration included in the original Lease Agreement or any subsequent lease extension shall not form part of this Proposal.
- 10. Acceptance by the Tenant not to be Delayed:** Subject to the approval of the City Council, the Tenant covenants to provide acceptance within a reasonable period of time and not to unnecessarily or unreasonably delay, putting the Tenant in an overholding situation, as defined in the Lease, If the Tenant overholds for three months past the expiry of the Lease, the Landlord shall have the right to market the space, secure another tenant and provide the City with notice of termination effective 30 days from the date of notice.
- 12. Right to market premise:** The landlord reserves the right to market and show the premise at #100 – 260 Harvey Ave Kelowna, BC immediately upon acceptance of this Lease Modification Agreement by the City of Kelowna.

I/We accept the terms and conditions of the Lease Modification Agreement as outlined herein.

Dated this 20th day of August, 2013

Terra Landscaping and Bobcat Services Ltd. (Landlord)

Landlord

Dated this _____ day of _____, 2013

City of Kelowna

Authorized Signatory

Authorized Signatory