

City of Kelowna

Regular Council Meeting

AGENDA



Monday, August 24, 2015
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

5 - 11

Regular PM Meeting - August 10, 2015

3. Public in Attendance

3.1 Kelowna-Kasugai Sister City Association

12 - 25

Annual presentation to Council by the President, Cathy Jennens, and member, Ken Fix.

4. Development Application Reports & Related Bylaws

4.1 1838 Heimlich Road, A15-0004 - Don & Diane Hickey

26 - 44

Mayor to invite the Applicant, or Applicant's Representative, to come forward.

To consider a Staff recommendation NOT to support an application to the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for a 'Non-Farm Use' within the Agricultural Land Reserve (ALR) to allow for a carriage house on the subject property.

4.2 1629-1649 KLO Road, A15-0006 - Western Global Enterprises Inc.

45 - 74

To obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the ALC Act for a 'Non-Farm Use' within the Agricultural Land Reserve (ALR) to allow 700m² of the 7.31 ha (18.06 acres) to be used to sell landscaping products.

4.3	285 Sadler Road, Z15-0032 - Thorsten Tropf	75 - 88
	To rezone the subject property to facilitate development of a second dwelling.	
4.4	285 Sadler Road, BL11132 (Z15-0032) - Thorsten Tropf	89 - 89
	To give Bylaw No. 11132 first reading in order to rezone the subject property to facilitate development of a second dwelling.	
4.5	540 Osprey Avenue, Z15-0005 - 0958123 BC Ltd.	90 - 109
	To rezone the subject property to facilitate a five storey mixed use building.	
4.6	540 Osprey Avenue, BL11133 (Z15-0005) - 958123 BC Ltd.	110 - 110
	To give Bylaw No. 11133 first reading in order to rezone the subject property to facilitate a five storey mixed use building.	
5.	Bylaws for Adoption (Development Related)	
5.1	BL11100 (TA14-0021) - New CD25 Light Industrial-Residential Mixed Use Zone	111 - 116
	To adopt Bylaw No. 11100 in order to create a new CD25 zone.	
5.2	205 Loughheed Road, BL11101 (OCP14-0023) Watermark Ventures Ltd.	117 - 117
	To adopt Bylaw No. 11101 in order to change the future land use designation of the subject property in order to develop a 9 residential unit and 9 industrial unit development.	
5.3	205 Loughheed Road, BL11102 (Z14-0048) - Watermark Ventures Ltd.	118 - 118
	To adopt Bylaw No. 11102 in order to rezone the subject property in order to develop a 9 residential unit and 9 industrial unit development.	
5.4	3699 Highway 97 North, BL11111 (Z15-0028) - University Business Park Ltd.	119 - 119
	To adopt Bylaw No. 11111 in order to rezone the subject property to allow a commercial unit to be used as a retail liquor store.	
5.5	BL11114 (TA15-0006) - New C3rls - Community Commercial (Retail Liquor Sales) and C3lp - Community Commercial (Liquor Primary)	120 - 120
	To adopt Bylaw No. 11114 in order to amend City of Kelowna Zoning Bylaw No. 8000 to create new designations within the C3 - Community Commercial zone.	
5.6	2124 Pandosy Street, BL11124 (HRA15-0001) - F. Devillier Medical Prof. Corp. et al	121 - 141
	To adopt Bylaw No. 11124 in order to authorize the City to enter into a Heritage Revitalization Agreement on the subject property.	

6. Non-Development Reports & Related Bylaws

- 6.1 Principles and Strategies for Financial Strength & Stability** 142 - 163
- To seek Council approval and endorsement of the City of Kelowna Principles and Strategies for Financial Strength & Stability documents.
- 6.2 155 Gray Road, Rutland Health Unit - Lease to Interior Health Authority** 164 - 202
- To authorize the City to enter into a Lease of the Rutland Health Unit with Interior Health Authority for a five (5) year term.
- 6.3 1659 - 1683 Ethel Street -Proposed Road Closure and Land Exchange** 203 - 205
- To dispose of a 378 square meter portion of unconstructed road (laneway) at the rear of 1659-1683 Ethel Street in exchange for additional roadway along Ethel Street.
- 6.4 1659-1683 Ethel Street (Portion of), BL11130 - Road Closure Bylaw** 206 - 207
- To give Bylaw No. 11130 first, second and third readings in order to authorize the City to permanently close and remove the highway dedication of a portion of highway on Ethel Street.

7. Bylaws for Adoption (Non-Development Related)

- 7.1 BL11116 - Amendment No. 1 to Fire and Life Safety Bylaw No. 10760** 208 - 208
- To adopt Bylaw No. 11116 in order to amend Fire and Life Safety Bylaw No. 10760.
- 7.2 BL11117 - Amendment No. 11 to Bylaw Enforcement Bylaw No. 10475** 209 - 209
- To adopt Bylaw No. 11117 in order to amend Bylaw Notice Enforcement Bylaw No. 10475.
- 7.3 BL11125 - Amendment No. 1 to Sanitary Sewer Specified Area No. 18 Bylaw No. 7724 (Caramillo)** 210 - 212
- To adopt Bylaw No. 11125 in order to amend Sanitary Sewer Specified Area No. 18 (Caramillo).
- 7.4 1525 Dickson Avenue, BL11127, Housing Agreement Authorization Bylaw - Dickson Avenue Holdings Ltd.** 213 - 220
- To adopt Bylaw No. 11127 in order to authorize the City to enter into a Housing Agreement with Dickson Avenue Holdings Ltd. on the subject property.

7.5 2127 Ethel Street, BL11128, Housing Agreement Authorization Bylaw - Simple Pursuits Inc.

221 - 228

To adopt Bylaw No. 11128 in order to authorize the City to enter into a Housing Agreement with Simple Pursuits Inc. on the subject property.

8. Mayor and Councillor Items

9. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, August 10, 2015
 Location: Council Chamber
 City Hall, 1435 Water Street

Members Present Deputy Mayor Luke Stack, Councillors Maxine DeHart, Ryan Donn, Gail Given, Tracy Gray, Charlie Hodge, Brad Sieben and Mohini Singh

Members Absent Mayor Colin Basran

Staff Present City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Suburban & Rural Planning Manager, Todd Cashin*; Community Planning Manager, Ryan Smith*; Deputy City Manager, Paul Macklem*; Fire Chief, Jeff Carlisle*; Long Range Policy Planning Manager, James Moore*; Council Recording Secretary, Arlene McClelland

(* denotes partial attendance)

1. Call to Order

Deputy Mayor Stack called the meeting to order at 1:30 p.m.

Deputy Mayor Stack 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 DeHart/Seconded By Councillor Sieben

R598/15/08/10 THAT the Minutes of the Regular Meetings of July 27, 2015 be confirmed as circulated.

Carried

3. Development Application Reports & Related Bylaws

3.1 2015 Belgo Road, A15-0005 - Misao Koga

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

Moved By Councillor Singh/Seconded By Councillor Hodge

R599/15/08/10 THAT Agricultural Land Reserve Appeal A15-0005 for Lot B Section 14 Township 26 ODYD Plan 1845 located at 2015 Belgo Road for a subdivision of agricultural land in the Agricultural Land Reserve, be supported by Municipal Council;

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

Carried

3.2 1285 Graham Road, Z15-0029 - W-Ten Development Ltd.

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

Moved By Councillor Sieben/Seconded By Councillor DeHart

R600/15/08/10 THAT Rezoning Application No. Z15-0029 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 78 Section 22 Township 26 ODYD Plan 19162, located at 1285 Graham Road, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone, be approved by Council;

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

AND FURTHER THAT final adoption of the Rezoning Bylaw be considered subsequent to the requirements of the Development Engineering Branch and Rutland Waterworks District completed to their satisfaction.

Carried

3.3 1285 Graham Road, BL11126 (Z15-0029) - W-Ten Development Ltd.

Moved By Councillor Donn/Seconded By Councillor Hodge

R601/15/08/10 THAT Bylaw No. 11126 be read a first time.

Carried

3.4 1457 Highway 33 East, Z15-0020 - Francesco Guarini

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

Moved By Councillor Gray/Seconded By Councillor Given

R602/15/08/10 THAT Rezoning Application No. Z15-0020 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 2, Section 13, Township 26, ODYD, Plan 23518 Except Plan KAP86904, located at 1457 Highway 33 East, Kelowna, BC from the A1 - Agriculture 1 zone to the RU6 - Two Dwelling Housing zone be considered by Council;

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

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

AND THAT final adoption of the Rezoning Bylaw be considered subsequent to the requirements of the Black Mountain Irrigation District being completed to their satisfaction;

AND FURTHER THAT final adoption of the Rezoning Bylaw be considered subsequent to the requirements of the Ministry of Transportation and Infrastructure being completed to their satisfaction.

Carried

3.5 1457 Highway 33 East, BL11129 (Z15-0020) - Francesco Guarini

Moved By Councillor Gray/Seconded By Councillor Donn

R603/15/08/10 THAT Bylaw No. 11129 be read a first time.

Carried

4. Bylaws for Adoption (Development Related)

4.1 2046 Pandosy Street, BL11041 (Z14-0039) - Jacob Thiessen and Camara Ventures Ltd.

Moved By Councillor Donn/Seconded By Councillor Gray

R604/15/08/10 THAT Bylaw No. 11041 be adopted.

Carried

4.2 BL11056 (OCP15-0002) - Shared Gardens Amendments to the Official Community Plan

Moved By Councillor Donn/Seconded By Councillor Hodge

R605/15/08/10 THAT Bylaw No. 11056 be adopted.

Carried

4.3 BL11096 (TA15-0001) - Multi-Residential Shared and Community Gardens Amendments to the Zoning Bylaw

Moved By Councillor Hodge/Seconded By Councillor Donn

R606/15/08/10 THAT Bylaw No. 11096 be adopted.

Carried

4.4 1655 Leckie Road, BL11069 (LUC15-0001) - SD-39 Ventures Ltd.

Moved By Councillor Hodge/Seconded By Councillor Gray

R607/15/08/10 THAT Bylaw No. 11069 be amended at third reading.

Carried

Moved By Councillor Hodge/Seconded By Councillor Gray

R608/15/08/10 THAT Bylaw No. 11069 be adopted.

Carried

4.5 883 McCurdy Place, BL11104 (Z15-0012) - Hyatt Auto Sales Ltd.

Moved By Councillor Gray/Seconded By Councillor Hodge

R609/15/08/10 THAT Bylaw No. 11104 be adopted.

Carried

5. Non-Development Reports & Related Bylaws

5.1 Quarterly Report Update

Deputy City Manager:

- Displayed a PowerPoint presentation summarizing the City's activities for the second quarter of 2015.

Moved By Councillor Donn/Seconded By Councillor Hodge

R610/15/08/10 THAT Council receives, for information, the Quarterly Report from the Deputy City Manager, dated August 10, 2015.

Carried

5.2 Fire & Life Safety Bylaw and Bylaw Notice Enforcement - Amendments

Fire Chief:

- Summarized the Fire & Life Safety Bylaw and Bylaw Notice Enforcement amendments.

Moved By Councillor Given/Seconded By Councillor DeHart

R611/15/08/10 THAT Council receives, for information, the Report from the Fire Chief dated July 13, 2015 pertaining to text amendments in the Fire and Life Safety Bylaw No. 10760 and Bylaw Notice Enforcement Bylaw No. 10475 for consistency;

AND THAT Council gives reading consideration to Bylaw No. 11116 being Amendment No. 1 to Fire and Life Safety Bylaw No. 10760;

AND FURTHER THAT Council gives reading consideration to Bylaw No. 11117 being Amendment No. 11 to Bylaw Notice Enforcement Bylaw No. 10475.

Carried

5.3 BL11116 - Amendment No. 1 to Fire and Life Safety Bylaw No. 10760

Moved By Councillor Sieben/Seconded By Councillor Singh

R612/15/08/10 THAT Bylaw No. 11116 be read a first, second and third time.

Carried

5.4 BL11117 - Amendment No. 11 to Bylaw Notice Enforcement Bylaw No. 10475

Moved By Councillor Singh/Seconded By Councillor DeHart

R613/15/08/10 THAT Bylaw No. 11117 be read a first, second and third time.

Carried

5.5 1525 Dickson Avenue, Revitalization Tax Exemption Agreement and Housing Agreement - Dickson Avenue Holdings Ltd.

Staff:

- Displayed a PowerPoint presentation summarizing the agreements and responded to questions from Council.

Moved By Councillor Sieben/Seconded By Councillor Hodge

R614/15/08/10 THAT Council approves the City of Kelowna entering into a Revitalization Tax Exemption Agreement with Dickson Avenue Holdings Ltd. for Lot A, District Lot 141, ODYD, Plan EPP48886, located at 1525 Dickson Ave, Kelowna, BC, in the form attached to the Report from the Community Planning Department dated July 27, 2015;

AND THAT the Mayor and City Clerk be authorized to execute the Revitalization Tax Exemption Agreement;

AND THAT Bylaw No. 11127 authorizing a Housing Agreement between the City of Kelowna and Dickson Avenue Holdings Ltd. which requires the owners to designate 90 purpose built rental units for a period of ten years on Lot A, District Lot 141, ODYD, Plan EPP48886, located at 1525 Dickson Ave, Kelowna, BC, be forwarded for reading consideration.

Carried

5.6 1525 Dickson Avenue, BL11127, Housing Agreement Authorization Bylaw - Dickson Avenue Holdings Ltd.

Moved By Councillor Singh/Seconded By Councillor DeHart

R615/15/08/10 THAT Bylaw No. 11127 be read a first, second and third time.

Carried

5.7 2127 Ethel Street, Revitalization Tax Exemption Agreement & Housing Agreement - Simple Pursuits Inc.

Staff:

- Displayed a PowerPoint presentation summarizing the agreements.

Moved By Councillor Singh/Seconded By Councillor DeHart

R616/15/08/10 THAT Council approves the City of Kelowna entering into a Revitalization Tax Exemption Agreement with Simple Pursuits Inc. No. BC 449611 for Lot 1, Section 19, Township 26, ODYD, Plan 29557, located at 2127 Ethel Street, Kelowna, BC, in the form attached to the Report from the Community Planning Department dated July 27, 2015;

AND THAT the Mayor and City Clerk be authorized to execute the Revitalization Tax Exemption Agreement;

AND THAT Bylaw No. 11128, authorizing a Housing Agreement between the City of Kelowna and Simple Pursuits Inc. No. BC 449611, which requires the owners to designate 24 purpose built rental units for a period of ten years on Lot 1, Section 19, Township 26, ODYD, Plan 29557, located at 2127 Ethel Street, Kelowna, BC, be forwarded for reading consideration.

Carried

5.8 2127 Ethel Street, BL11128, Housing Agreement Authorization Bylaw - Simple Pursuits Inc.

Moved By Councillor Singh/Seconded By Councillor DeHart

R617/15/08/10 THAT Bylaw No. 11128 be read a first, second and third time.

Carried

5.9 Fringe Area Planning Agreement

Staff:

- Provided an overview of the agreement and displayed a map of the fringe area.

Moved By Councillor Donn/Seconded By Councillor Given

R618/15/08/10 THAT Council approves the Part 26 Cost Sharing Agreement entitled "Planning Services Agreement, January 1, 2016 - December 31, 2020" between the Regional District of Central Okanagan and the City of Kelowna in the form attached to the Report of the Policy & Planning Department dated July 31, 2015;

AND THAT Council authorizes the Mayor and City Clerk to execute the Agreement.

Carried

5.10 Revitalization Tax Exemption - Area 3 Update

Staff:

- Displayed a PowerPoint presentation updating the status of the Tax Incentive Area 3 and responded to questions of Council.

Moved By Councillor Given/Seconded By Councillor Gray

R619/15/08/10 THAT Council receives for information the report from the Policy and Planning Department, dated July 20, 2015 regarding the status of Tax Incentive Area 3 within the revitalization tax exemption program;

AND THAT Council directs staff not to extend the exemptions in Tax Incentive Area 3 beyond the existing 200,000 square foot threshold.

Carried

5.11 Amendment to Sanitary Sewer Spec. Area No. 18 (Caramillo)

Moved By Councillor DeHart/Seconded By Councillor Singh

R620/15/08/10 THAT Council receive the Certificate of Sufficiency dated July 23, 2015 regarding the Local Area Service Petition to add Lot 12, Section 31 & 32, Township 26, ODYD, Plan 20929 located at 589 Clifton Avenue to Sanitary Sewer Specified Area No. 18 (Caramillo);

AND THAT Bylaw No. 11125 being Amendment No. 1 to Sanitary Sewer Specified Area No. 18 (Caramillo) Bylaw No. 7724 be forwarded for reading consideration.

Carried

5.12 BL11125 - Amendment No. 1 to Sanitary Sewer Specified Area No. 18 Bylaw No. 7724 (Caramillo)

Moved By Councillor Singh/Seconded By Councillor DeHart

R621/15/08/10 THAT Bylaw No. 11125 be read a first, second and third time.

Carried

6. Bylaws for Adoption (Non-Development Related)

6.1 BL11115, Name Change Bylaw - Renaming a Portion of Quail Ridge Boulevard to Pier Mac Way

Moved By Councillor Singh/Seconded By Councillor Sieben

R622/15/08/10 THAT Bylaw No. 11115 be adopted.

Carried

7. Mayor and Councillor Items

Councillor Donn:

- Noted the Busker Event being held this Thursday from 7:00 pm - 8:00 pm on Bernard Avenue.

Councillor Gray:

- Spoke to her attendance along with Mayor Basran and Councillor Singh at a Reception with a delegation from Honduras and commented on the potential business opportunities.

Councillor Hodge:

- Represented the Mayor by touring Girl Guides from Kasugai through City Hall.
- Attended the SILGA 2016 Convention Planning meeting last week.

Councillor Sieben:

- Participated in the 6th Annual Basran Charity Golf Tournament which raised approximately \$30,000 for mental health. All proceeds donated to the KGH Foundation.

Councillor Singh:

- Spoke to her attendance along with Councillors DeHart and Gray at the Reception with the Delegation from Honduras.

Councillor DeHart:

- Spoke to her attendance at the Reception with the Delegation from Honduras.
- Spoke to her attendance at the DKA Block Party last Saturday.

Deputy Mayor Stack:

- Spoke to his attendance at the DKA Block Party and last week's "Arts on the Avenue" event.
- Gave a 'shout out' to the Civic Operations staff for the spectacular condition of the gardens at City Hall.

8. Termination

This meeting was declared terminated at 2:59 p.m.

Deputy Mayor

/acm

City Clerk



KELOWNA-KASUGAI SISTER CITY ASSOCIATION



**Past
Present
and Future**

KKSCA MANDATE

- ▶ To promote and enhance the sister city relationship by:
- ▶ planning and coordinating communications between interested groups and individual citizens of the two cities in the areas of:
- ▶ Culture, Education, Commerce, Athletics, Civic Affairs, Environment and Fellowship.



KKSCA MANDATE

- ▶ To plan and co-ordinate reciprocal visits between the citizens of the two cities.



KKSCA PAST

- ▶ Fostered relationships with Kasugai for 35 years.
- ▶ In partnership with the City of Kelowna in the creation and development of Kasugai Gardens in Kelowna and Kelowna Boulevard in Kasugai.
- ▶ Worked with the School District to form sister schools between Kelowna and Kasugai.



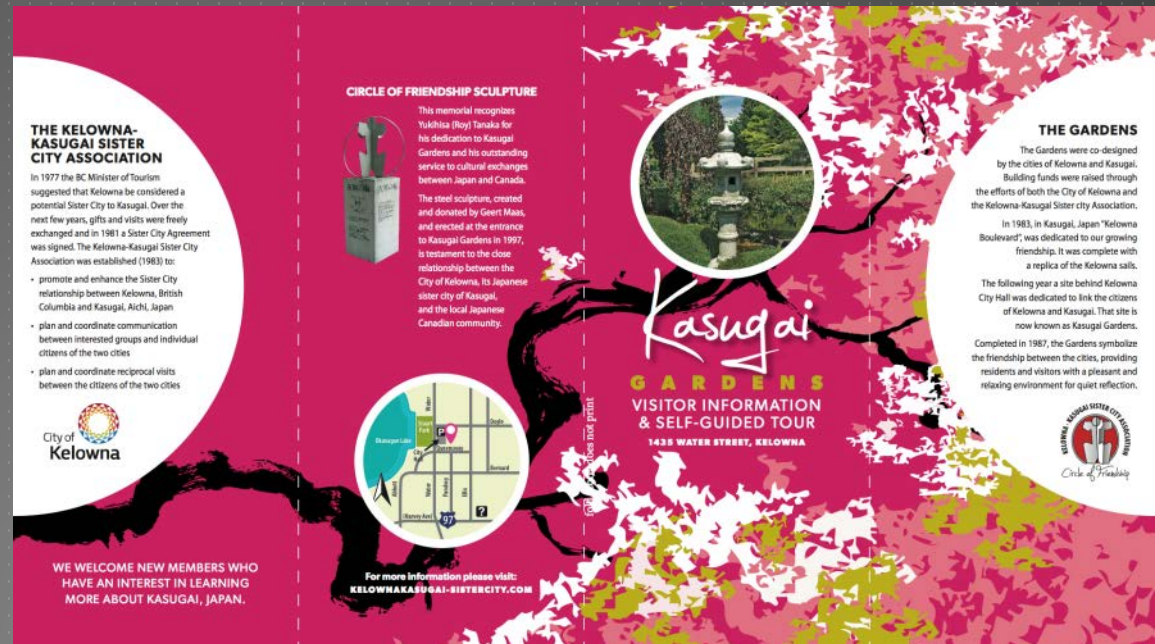
KKSCA 2014-2015

- ▶ Taste of Japan 2014
- ▶ Sent a group of 35 Association members to Kasugai



KKSCA 2014-2015

- ▶ Created and printed self-guiding tour brochures for Kasugai Gardens in partnership with the City of Kelowna



KKSCA 2014-2015

- ▶ Assisted community groups with projects and events that encourage Japanese cultural awareness within our community. (i.e.: The Kendo club, our local taiko group, Asian Heritage Month, Kelowna Girl Guides and Scouts, Lady of the Lake Society).



KKSCA 2014-2015

- ▶ On-going volunteering in partnership with Parks Kelowna for Kasugai Gardens



KKSCA 2014-2015

- Organized and coordinated two official incoming delegations from Kasugai.



KKSCA 2014-2015

- ▶ On-going support between sister schools throughout Kelowna.



TASTE OF JAPAN

- ▶ Hosted for the past 5 years as our yearly fundraiser
- ▶ From conception, attendance has grown in numbers from 260 people to now over 500.



TASTE OF JAPAN

- ▶ Made profits of over \$2500. Matching funds have been graciously received from the City of Kelowna.
- ▶ This year will be held at the Parkinson Recreation Centre on December 6th, 2015



OBJECTIVES FOR 2015-2016

- ▶ To create more awareness to different interest groups of Kelowna about our sister city and how they can become more active in the correspondence and exchanges between our two cities.
- ▶ To help with the Chamber of Commerce group visiting Japan in 2016.

WHY IS IT IMPORTANT TO CONTINUE OUR SISTER CITY RELATIONSHIP WITH KASUGAI

- ▶ Citizens from our community that have had involvement with the Kelowna-Kasugai Sister City Association have had experiences that have had a huge impact not only with their involvement in the community but within their personal lives. Everyone has a story.
- ▶ What's your story?

REPORT TO COUNCIL



Date: August 10, 2015

RIM No. 1210-21

To: City Manager

From: Community Planning Department (MS)

Application: A15-0004

Owner: Don Hickey
Diane Hickey

Address: 1838 Heimlich Rd

Applicant: Don Hickey
Diane Hickey

Subject: Non-Farm Use Application to the Agricultural Land Reserve (Carriage House)

1.0 Recommendation

THAT Agricultural Land Reserve Appeal Application No. A15-0004 for *Lot 4 Section 8 TWP 26 ODYD Plan 22958*, located at *1838 Heimlich Road* for 'Non-Farm Use', pursuant to Section 20 of the *Agricultural Land Commission Act*, NOT be supported by Municipal Council;

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

To consider a Staff recommendation NOT to support an application to the Agricultural Land Commission (ALC) under Section 20(3) of the Agricultural Land Commission Act for a 'Non-Farm Use' within the Agricultural Land Reserve (ALR) to allow for a carriage house on the subject property.

3.0 Community Planning Department

Staff does not support the application as proposed. The OCP Development Permit Guidelines for Farm Protection Areas do not support non-farm uses in the Agricultural Land Reserve unless there is a benefit to agriculture.

The objectives of the Official Community Plan's Farm Protection Development Permit Guidelines include:

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

Provincially, in 2014, the Agricultural Land Reserve (ALR) was split into 2 zones based on geographic area through Bill 24 - *Agricultural Land Commission Amendment Act*¹. The Okanagan Valley is within Zone 1 of the ALR.

The guiding rationale for land use decisions for Zone 1 within the Act remains unchanged from before Bill 24.

The primary principles of the ALC are to preserve agricultural land, encourage farming on ALR land, and to encourage local governments to adopt policies that support farming. The ALC does not support carriage houses on ALR land (see attached). As such, the decision making lens that is applied to land use requests is 'does it result in a net benefit to farming?'.

There are concerns about additional dwellings within properties of the Agricultural Land Reserve. Through the City Bylaw and Ministry of Agriculture offices, the vast majority of complaints regarding normal farming practices is by persons living in agricultural areas that are not farmers.

4.0 Proposal

4.1 Background

The existing carriage house was identified through Bylaw Services as unauthorized use of a portion of an accessory building as a carriage house.

The original Building Permit #34014 defined the space as an office, which is a permitted use as a 'Rural Home Based Business' under Zoning Bylaw No. 8000. In 2010, prior to final occupancy, Building and Permitting staff spoke to the owner regarding a request to install a 220 electrical supply, typically used for a stove or clothes dryer, and informed him that a suite was not permitted in the accessory building.

The space was later converted and used as a carriage house. Currently the owner lives in the carriage house while renovations are being done to the primary dwelling.

4.2 Project Description

The applicants are seeking an approval from the ALC for a 'Non-Farm Use' within the ALR to legalize a carriage house on the subject property.

Should the ALC resolve to allow the use, the application would need to rezone to A1c - Agriculture 1 with Carriage House, in order to be compliant with the City of Kelowna Zoning Bylaw No. 8000.

4.3 Site Context

The subject property is located on Heimlich Road west of Spiers Road and southeast of Mission Creek. The parcel is 0.8 hectares (2 acres). It is zoned A1 - Agriculture, in the ALR and is surrounded by parcels also in the ALR and zoned A1 - Agriculture.

Agricultural Capability

According to the Canada Land Inventory (CLI), the subject property contains primarily Class 5A and Class 4A Agriculture Capability. The modifier 'A' indicates soil moisture deficits, and is considered improvable with irrigation. With improvements (irrigation), the agricultural capability of the property could be improved to predominately Class 3 with some Class 4 at the southeast corner, with a limitation due to wet conditions (see attachment). Class 1 through 3 is considered prime agricultural land with minimum restrictions on crop capability.

¹ RSBC, 2014. Bill 24 – 2014 – Agricultural Land Commission Amendment Act. https://www.leg.bc.ca/40th2nd/1st_read/gov24-1.htm

According to the Soils Classification of BC, the soils on the property are predominately Carlin soils. These are fluvial or fluvioglacial deposits which tend to be silty, medium to moderately fine textured soils. They are suitable for alfalfa, annual vegetable crops, asparagus, cereals, corn and forage crops.

Agricultural Production

Current agricultural production includes approximately .27 hectares (0.6 acres) in horses.

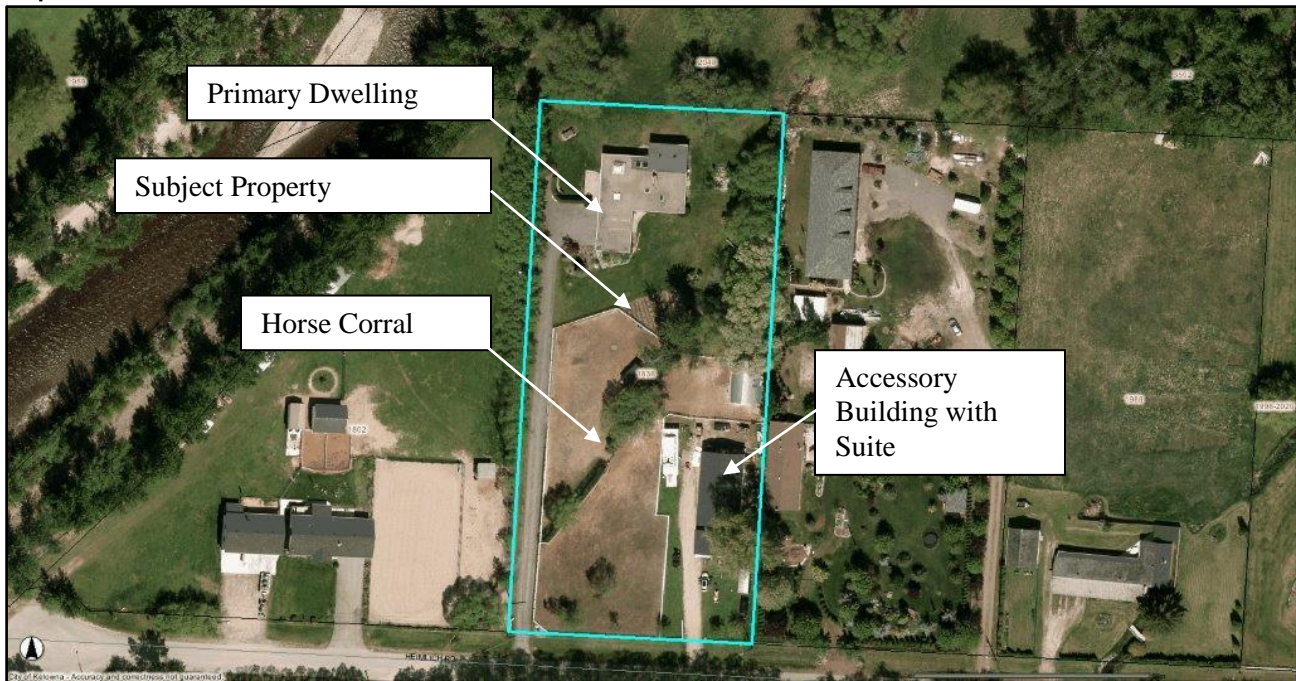
The property is in the ALR surrounded by properties in the ALR. Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	A1 - Agriculture / ALR	Agriculture (hay field)
East	A1 - Agriculture / ALR	Agriculture / Rural Residential
South	A1 - Agriculture / ALR	Agriculture (hayfield)
West	A1 - Agriculture / ALR	Agriculture / Rural Residential

Map 1: Neighbourhood Context



Map 2: 1838 Heimlich Road



Map 3: Agricultural Land Reserve



5.0 Application Chronology

Date of Application Received:
Date Circulation Complete:

March 2, 2015
March 30, 2015

Agricultural Advisory Committee June 11, 2015

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on June 11, 2015 and the following recommendations were passed:

MOVED BY Pete Spencer/SECONDED By Domenic Rampone

THAT the Agricultural Advisory Committee recommends that Council NOT support an application to the Agricultural Land Commission under Section 20(3) of the Agricultural Land Commission Act for a 'Non-Farm Use' within the Agricultural Land Reserve (ALR) to allow for a second dwelling located on the subject property of 1838 Hemlich Road.

CARRIED

Ed Schiller - Opposed

ANECTDOTAL COMMENT:

The Agricultural Advisory Committee did not support the application for a "Non-Farm Use" within the Agricultural Land Reserve as the Committee Members expressed concern that there is no benefit to agriculture.

Report prepared by:

Melanie Steppuhn, Land Use Planner

Reviewed by:

☐

Todd Cashin, Suburban and Rural Planning Manager

Approved for Inclusion:

☐

Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Schedule A - Policies
Schedule B - Technical Comments
ALC Letter to DWK re: Carriage Houses
Interior Health Letter
Subject Property Map
Site Plan
House Plans and Elevations
Site Photos

SCHEDULE A - Policies



Subject: A15-0003 Heimlich Rd 1838 Council - Schedule A.docx

1.1 Kelowna Official Community Plan (OCP)

Future Land Use¹

With respect to lands outside the Permanent Growth Boundary, Chapter 4 of the OCP states:

- Lands outside the permanent growth boundary will not be supported for urban uses.

Farm Protection Development Permit Guidelines²

Farm Protection Development Permit Guidelines include:

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

Objective 5.33 Protect and enhance local agriculture³.

Policy. 1 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.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land⁴.

¹ City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

² City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

³ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

⁴ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

Policy .1 Secondary Suites. Encourage secondary suites on agricultural land to be located within a permitted principal dwelling.

Policy .3 Homeplating. Locate buildings and structures, including farm help housing and farm retail sales area and structures, on agricultural parcels in close proximity to one another and where appropriate, near the existing road frontage. The goal should be to maximize use of existing infrastructure and reduce impacts on productive agricultural lands.

1.2 City of Kelowna Agriculture Plan

ALR Application Criteria⁵. 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.

1.3 Agricultural Land Commission Act (ALCA)

Purposes of the commission - Section 6 of the ALCA

The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

⁵ City of Kelowna Agriculture Plan (1998); p. 130.

SCHEDULE B - Technical Comments



Subject: A15-0003 Heimlich Rd 1838 Council Schedule B.docx

1.1 Agricultural Land Commission

The ALC Act and Regulation do not specifically permit carriage homes as an additional dwelling (see attached letter).

1.2 Bylaw Services

Bylaw complaint received relating to the illegal suite over the shop, SR 257676.

1.3 Ministry of Agriculture

The Ministry of Agriculture does not support the development of carriage houses on ALR lands.

1.4 Building & Permitting Department

The Building & Permitting Department have the following comments:

- Bylaw file should be attached for reference
- Full Plan check for Building Code related issues will be done at time of Building Permit applications. Development Engineering Department.

1.5 Development Engineering

The Development Engineering comments regarding this non-farm use within the Agricultural Land Reserve are as follows:

Domestic water and fire protection

- On-site servicing including the use of existing or proposed wells will be reviewed by the Interior Health Authority and Building & Permitting.

Sanitary Sewer

- This subject parcel is currently not within the City service area. Sanitary sewage is presently handled by an on-site sewage disposal system.
- Existing and proposed on-site servicing will be reviewed by the Interior Health Authority and Building & Permitting.

1.6 Fire Department

Requirements of section 9.10.19 Smoke Alarms of the BCBC 2012 are to be met for this residence. A visible address will be required to be posted from Heimlich.

1.7 Interior Health

Interior Health has noted that food security is not supported by the application (see attached letter).



Agricultural Land Commission
133-4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

January 6, 2015

Reply to the attention of Martin Collins
File: 33621

Jaleen Rousseau, Planner II
District of West Kelowna
2760 Cameron Road
West Kelowna, BC
V1Z 2T6

Re: Carriage Homes within the Agricultural Land Reserve (draft Bylaw No. 0154.14)

Your File: 3360-45

Thank you for the referral received December 18th, 2014 which requested the Agricultural Land Commission's (the ALC's) comments on proposed bylaw amendments that permit carriage homes in several residential and rural zones in West Kelowna.

A carriage home is defined in draft Bylaw No. 0154.14 "as a secondary dwelling which is subordinate to the principal single detached dwelling of a parcel and is located in a secondary structure". The draft bylaw also specifies that a carriage home cannot be constructed if the principal residence is a B & B, or already has a secondary suite, or if the parcel already has a home for farm help.

The ALC advises that it does not support the bylaw amendment to permit carriage homes on parcels in the ALR (essentially the A1 Agriculture Zone). The ALC Act and regulation do not specifically permit carriage homes as an additional dwelling. The ALC believes that carriage homes represent an additional and unnecessary residential intrusion onto farm parcels, and have the effect of increasing the size of the residential footprint on a farm property, eroding farm capability and raising expectations of residential uses on parcels which have been identified and preserved for agricultural uses.

The ALC believes that a carriage home should be determined through an application process and that a zoning amendment should accompany a permitted carriage home. The requirement for an ALR "non-farm use" application and potential rezoning may discourage the development of carriage homes and reduce the overall pressure to increase residential development on ALR parcels.

If you have any further questions about this matter, please contact Martin Collins at 604-660-7021.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Martin Collins, Regional Planner



Interior Health

March 12, 2015

Melanie Steppuhn, BES, BCLA
Land Use Planner
1435 Water Street
Kelowna, BC V1Y 1J4

Dear Ms. Steppuhn,

RE: Application for ALR Exclusion: file #A15-0004, 1838 Heimlich Rd, Kelowna, BC

This is a letter of comment re: Kelowna City Council's consideration of Application for Non-Farm use in the ALR.

Interior Health has an interest in community design and planning as the built environment can support access to healthy food and promote food security. There are many positive health outcomes for a community that is food secure. Healthy eating can prevent and control a number of chronic health conditions, including type 2 diabetes, heart disease, and some forms of cancer. In the interest of food security, and the ability of our citizens to access nutritious and safe food, we suggest the consideration of the following:

- This application does not appear to support food security. The area where the shed and suite are located is on land that could be used to produce food.

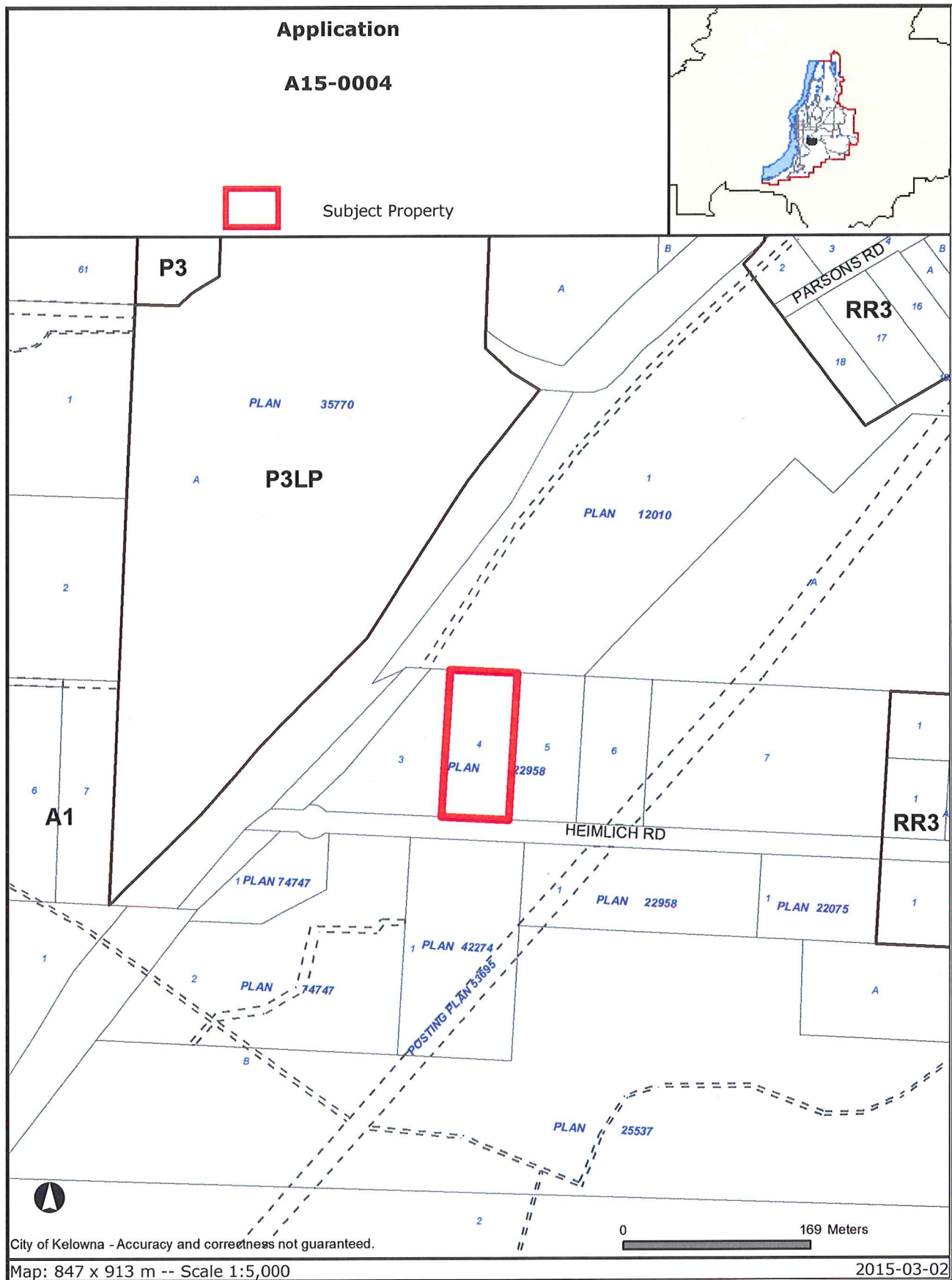
On behalf of the Food Security and Community Nutrition Program, I appreciate the opportunity to provide comment on the aforementioned application.

Kind regards,

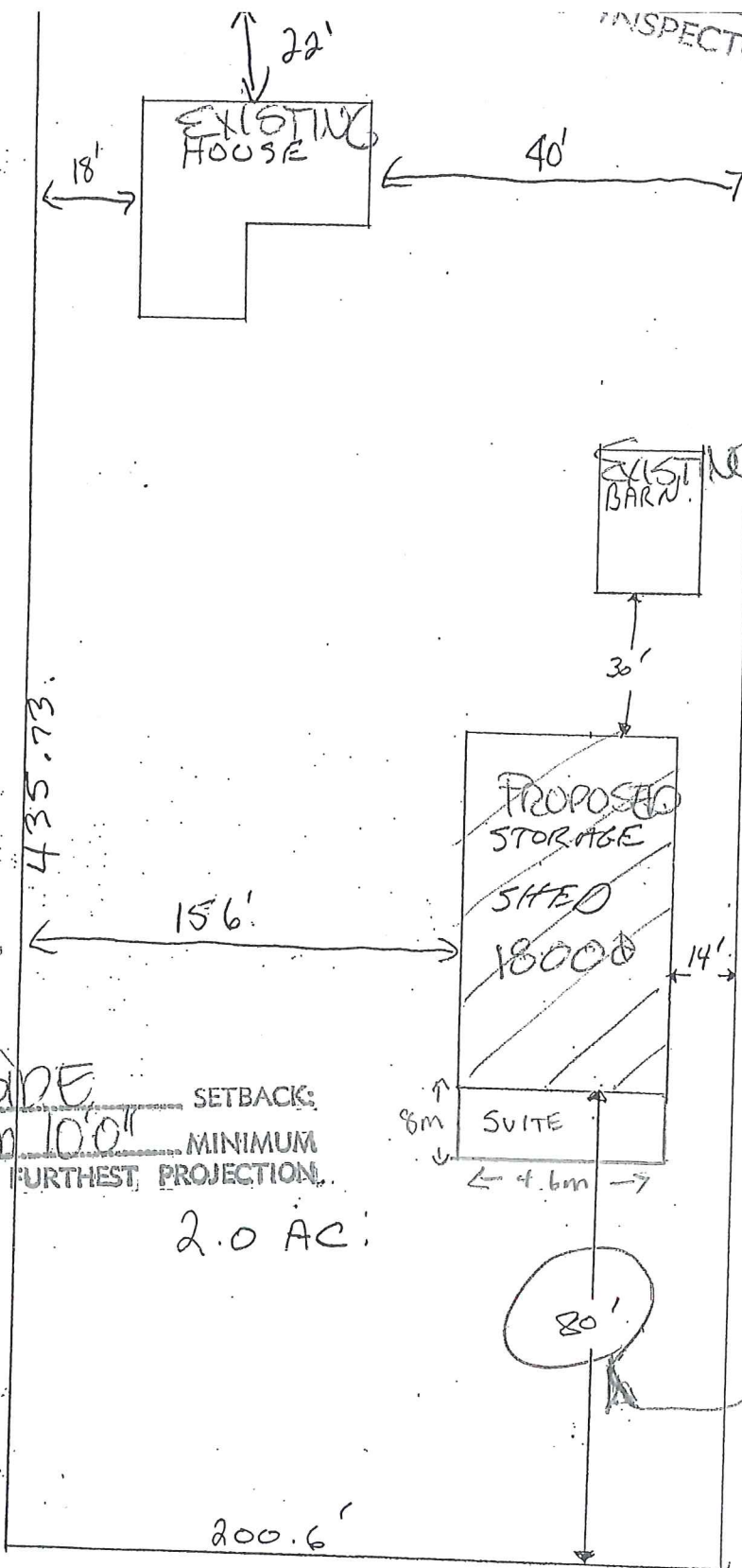
Jill Worboys, RD
Community Nutritionist
Community Integrated Health Services

Bus: (250) 868-7733
Fax: (250) 868-7809
Email: jill.worboys@interiorhealth.ca
Web: interiorhealth.ca

INTERIOR HEALTH
Promotion and Prevention, CIHS
1340 Ellis Street
Kelowna, BC, V1Y 9N1



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.



REAR SETBACK:
3m 10' 0" MINIMUM
TO FURTHEST PROJECTION

SIDE SETBACK:
3m 10' 0" MINIMUM
TO FURTHEST PROJECTION

LOT
PLAN.

SIDE SETBACK:
3m 10' 0" MINIMUM
TO FURTHEST PROJECTION.
2.0 AC.

FRONT SETBACK:
6m 20' 0" MINIMUM
TO FURTHEST PROJECTION

HEIMLICH ROAD.



MAIN FLOOR.

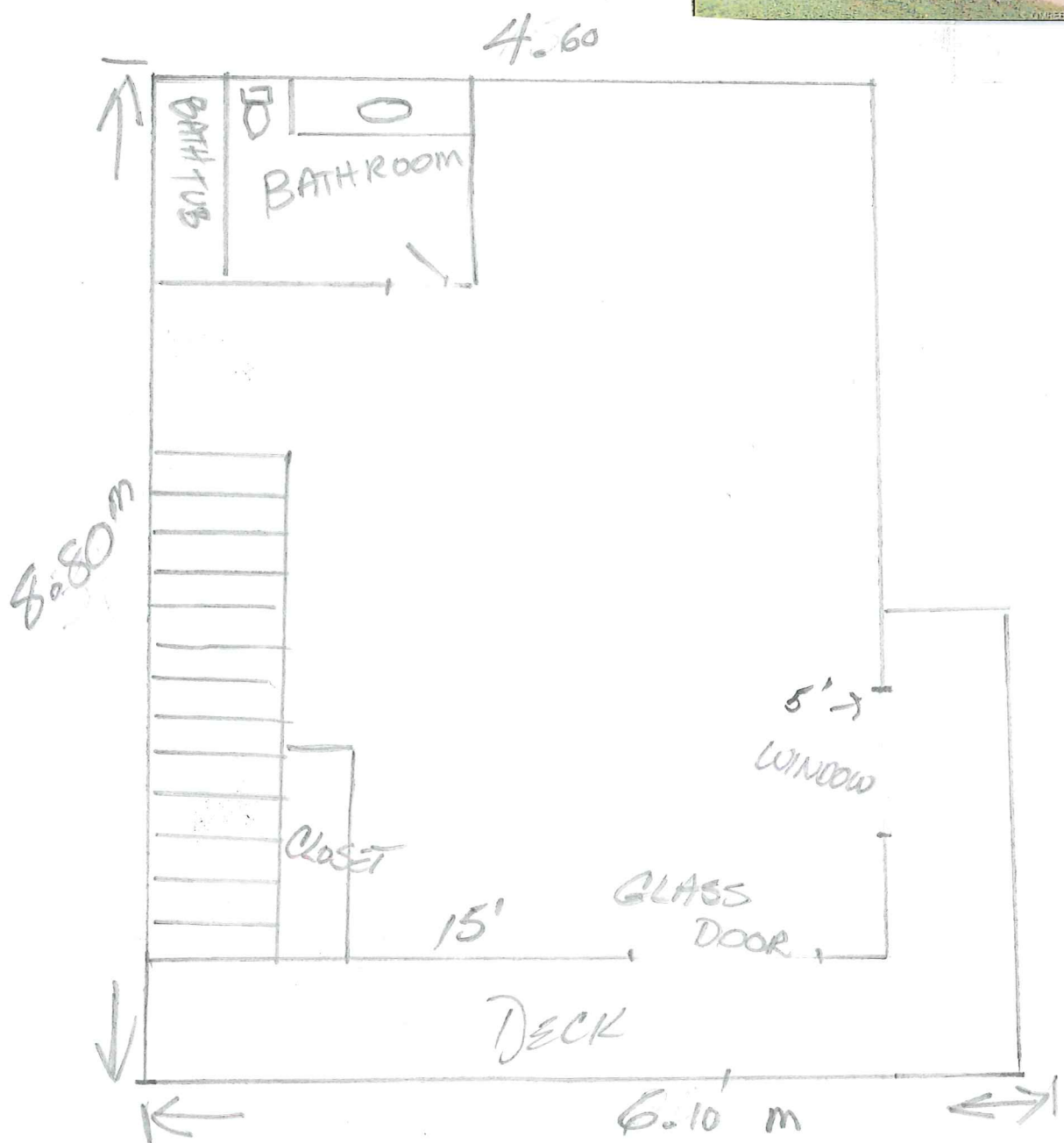
(15')

4.6 m

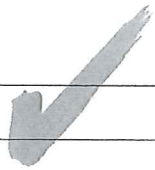


MAIN FLOOR

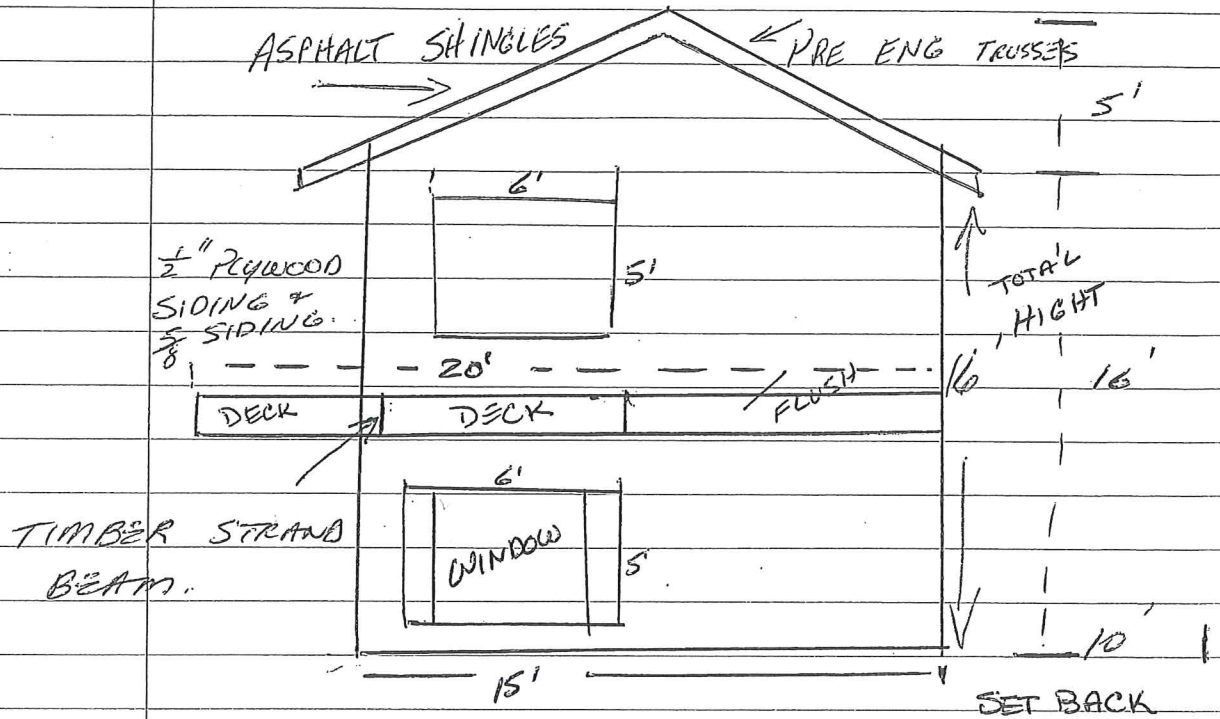
2ND FLOOR



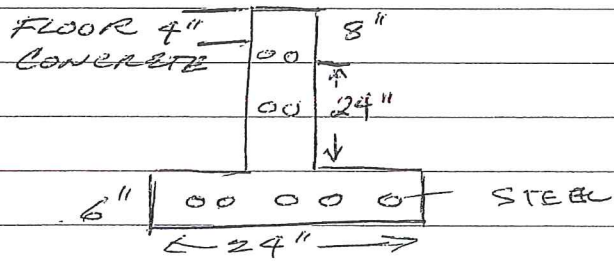


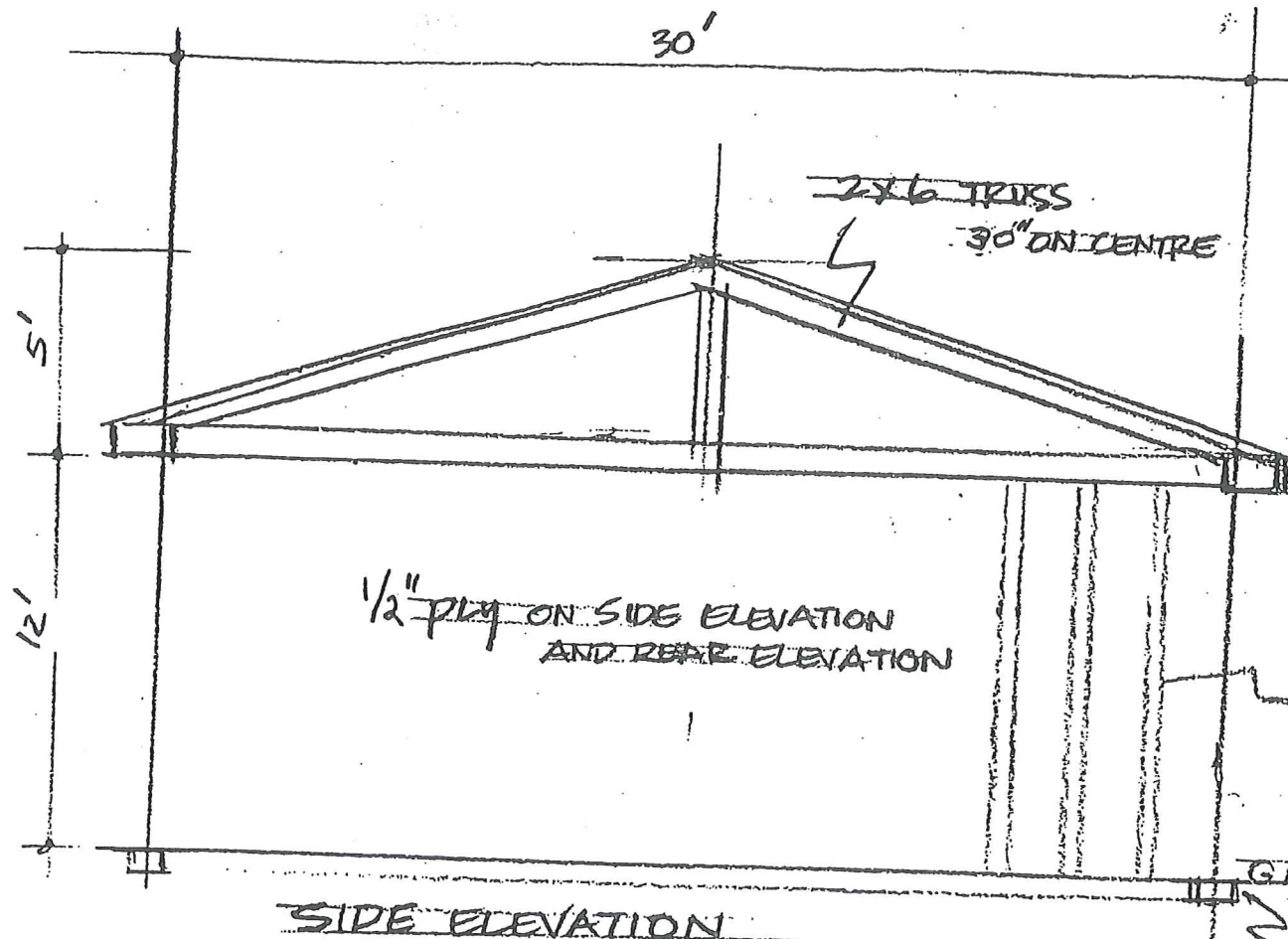


SIDE VIEW

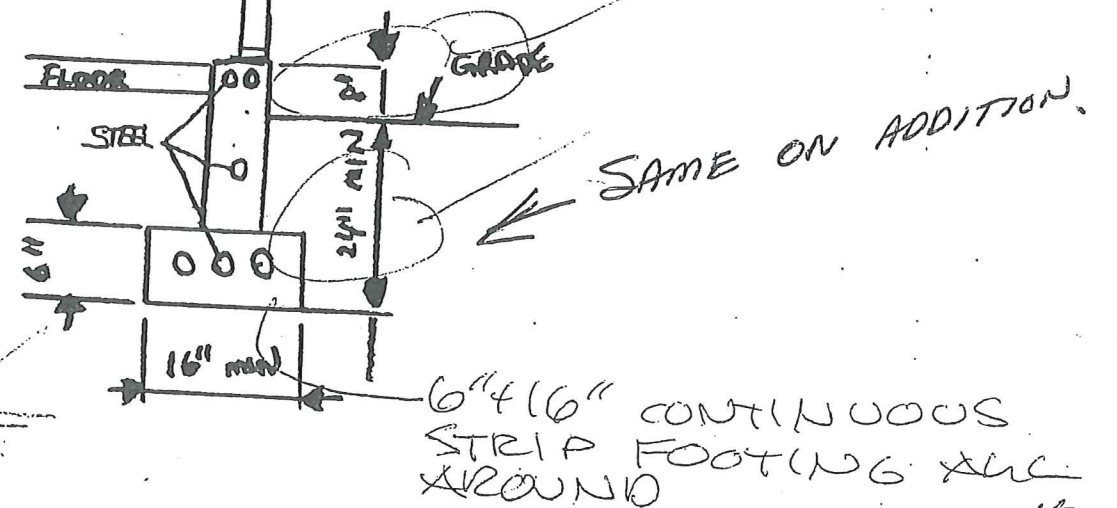


FOOTING.





STORAGE SHED



FRONT VIEW

8" FOOTING

SHINGLE ROOF

ENG TRUSSES
4-12 PITCH
30'

SHINGLE ROOF

1/2" PLYWOOD
SIDING
RANCH BOARDS

OFFICE

GLASS
DOOR
7'

NEW
DOORS

10' OC

3-2x6
LAM POST

3-2x10
LAM. BEAM
#2 DOUGLASS FIR

LAM
BEAM

SCALE 3/16" TO 1' 0"

FRONT ELEVATION

SAME FOOTING 44

REPORT TO COUNCIL



Date: August 24, 2015

RIM No. 1210-21

To: City Manager

From: Community Planning Department (MS)

Application: A15-0006 **Owner:** Western Global Enterprises Inc.

Address: 1629-1649 KLO Road **Applicant:** Better Earth Garden Centre

Subject: Application to the ALC for a Non-Farm Use (Landscaping Centre)

Existing OCP Designation: Resource Protection Area

Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve Appeal Application No. A15-0006 for *Block 57 District Lot 131 ODYD Plan 186, Except Parcels C and D Plan B1813 and Plan KAP78678*, located at 1629 - 1649 KLO Road, for a Non-Farm Use of agricultural land in the Agricultural Land Reserve, pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Municipal Council;

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

To obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the ALC Act for a 'Non-Farm Use' within the Agricultural Land Reserve (ALR) to allow 700m² of the 7.31 ha (18.06 acres) to be used to sell landscaping products.

3.0 Community Planning

Currently, Better Earth Garden Centre (Better Earth) does not comply with the ALC Act or the City of Kelowna Bylaw No. 8000, regarding the retail sales and landscaping products portion of the business. The applicants were made aware of the non-compliance issues in 2014, when complaints from neighbours due to dust and noise were received by the ALC and the City.

In the summer of 2014, they met with City of Kelowna staff to establish a plan to bring their operation into compliance. In the past year, the owners of Better Earth have terminated two sub-leases of other landscaping companies from the property, and removed a significant amount of fill and debris, including wood and concrete waste from a previous tenant (see attached). In addition, a mobile home and a shed that were in disrepair were removed from the property.

Approximately 2400 m² (0.6 acre) in area was cleared of debris and will be restored to alfalfa in the fall, and the tree and nursery shrub component of their business has increased. In addition, they have implemented a dust and weed control plan to address neighbours concerns. The dust control plan includes:

- removal of dust producing activities at the center of the property (to be replaced with alfalfa);
- placement of concrete bins to contain soil products located near KLO Road; and
- posting of signs to slow traffic on site.

For weed control, a program of mowing the perimeter of the property to reduce weeds has been implemented.

In the spring of 2015, the applicants met with City staff to determine if their operation could comply completely within the ALC Act and Regulation. In terms of addressing the ALC Policy #2¹ - Farm Retail Sales in the ALR, the applicants determined that they required more area for non-farm product than was allowed under the Regulation. The policy restricts the area of non-farm retail product to 50% of 300 square metres (i.e. 150 square metres). The applicants were not able to fit their landscaping products into this area, and as such have submitted this non-farm use application.

The City of Kelowna Zoning Bylaw No. 8000 allows 'Greenhouses and Nurseries' in the A1 Agriculture Zone, while 'landscapers landscaping, excavating or soil processing businesses or operations' are specifically excluded in the definition of 'Greenhouses and Nurseries'². Should the ALC resolve to allow the requested use, a text amendment to the A1 - Agriculture zone would be required to allow the use on the property.

4.0 Proposal

4.1 Background

Since 2000, the subject property has been farmed in ground based crops including alfalfa, strawberries, corn and potatoes.

In 2012, the property had been farmed by Better Earth Products, who farmed the property in primarily corn and potatoes. Subsequently, the current owners, Better Earth Garden Centre, took over the lease and initiated a nursery and landscape supply centre. In addition, they sub-leased portions of the property to three other tenants, including other landscaping businesses and a soil screening operation (see attached submission).

In 2014, City of Kelowna Bylaw Enforcement received complaints from neighbours regarding dust and noise from the activities on the property.

On July 15th 2014, ALC Enforcement staff issued a letter to the owners of the property to alert the tenants to cease operations as the non-farm use was unauthorized by the ALC.

The owners of Better Earth Garden Centre (the applicants) met with City staff in the summer of 2014 to better understand the requirements of the ALC Act and Regulation, and to establish a plan to undertake compliance.

¹ ALC, 2003. Activities Designated as Farm Use – Farm Retail Sales in the ALR.

http://www.alc.gov.bc.ca/alc/DownloadAsset?assetId=8CCC181D8D864EE1956A235F975B7C42&filename=policy_2_farm_retail_sales.pdf

² City of Kelowna, 2015. Zoning Bylaw 8000 – Section 2 – Interpretation.

<http://www.kelowna.ca/CityPage/Docs/PDFs/%5CBylaws%5CZoning%20Bylaw%20No.%208000/Section%2002%20-%20Interpretation.pdf?t=034224193>

With this understanding, the applicants terminated the leases of the other tenants, and began to remove berms and debris that were brought in as part of these operations. The applicants removed 1944 cubic metres of material left on the property by previous tenants. They are currently rehabilitating the land to return it to growing alfalfa.

The majority of the site is now used to grow alfalfa. There is also an area for shrub and tree growing and sales, as well as a greenhouse for shrubs and vegetable production at the south of the property.

On March 15, 2015, the ALC rescinded the stop work order due to the efforts of Better Earth Garden Centre to bring the property into compliance.

The applicants have been communicating with neighbours about the changes of the property, including noise, dust and weed control. (See letter, attached).

In June of 2015, the applicants submitted this application to allow 700m² of area for non-farm retail sales, (550m² greater than permitted under the ALC Act).

4.2 Project Description

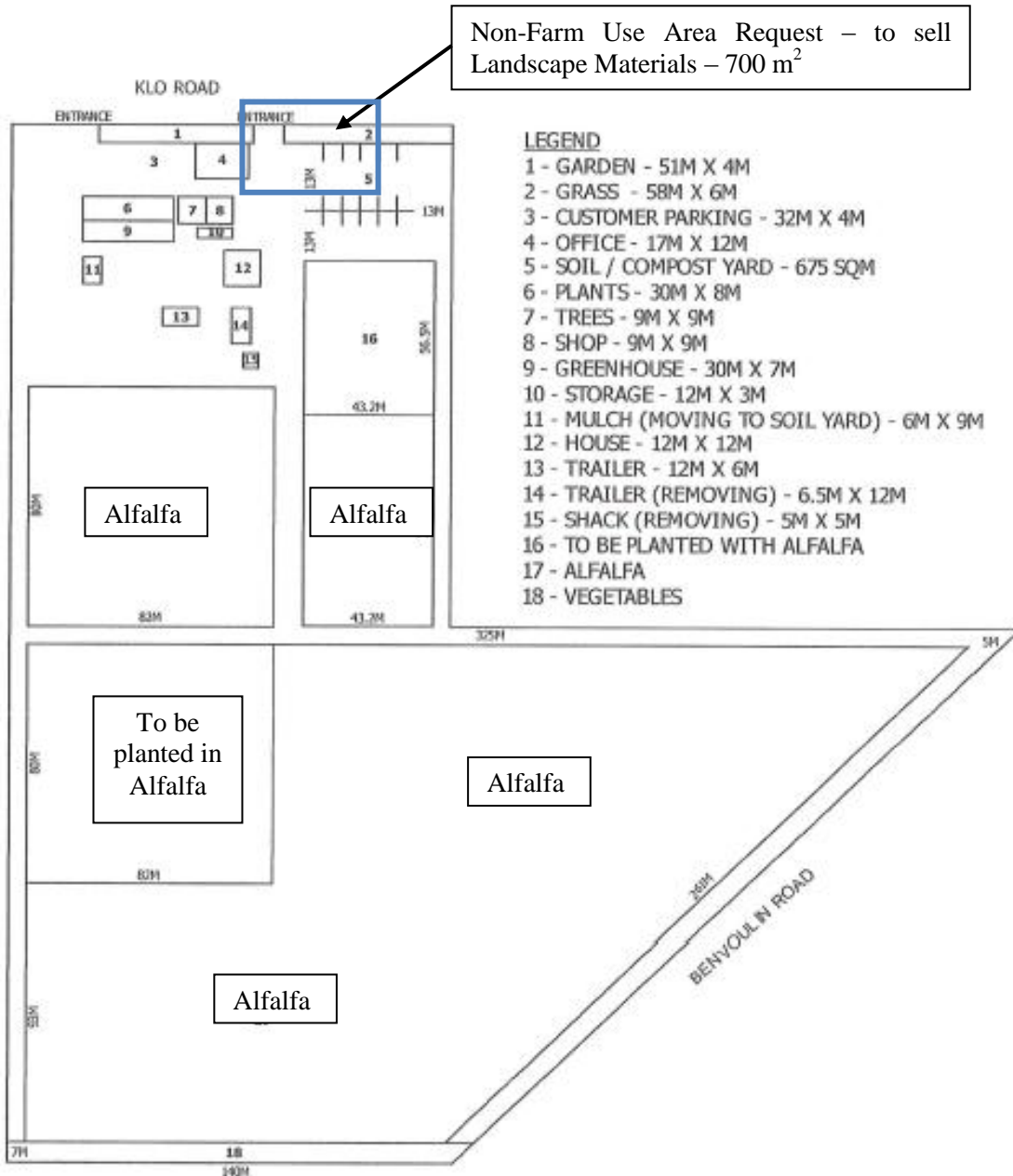
The applicants are requesting a Non-Farm Use to allow 700m² of the 7.31 ha (18.06 acres), to be used to sell landscaping products. This represents an increase over the 150 m² that is permitted in association with the ALC Policy #2 for Farm Retail Sales. The landscaping products are proposed to include:

- Soil products
- Soil additives
- Mulches
- Landscape rock

Note that all the above products would be brought in from off-site. No composting would be sold that is produced on site. The applicants produce a small amount of compost, of which 100% is used to amend their soil for alfalfa production.

Map 1 - Site Plan - Proposed Site Uses

BETTER EARTH GARDEN CENTRE SITE PLAN



4.3 Site Context

The subject property is located in the South Pandosy / KLO Sector of the City and is within the Agricultural Land Reserve. The Future Land Use of the property is Resource Protection Area (REP). It is zoned A1 - Agriculture 1 (Maps 1 - 4, below) and is outside of the Permanent Growth Boundary.

Note that the applicant leases two other properties that are contiguous to the subject property. These are 3350 Benvoulin Road and 3400 Benvoulin Road. These are also shown in the maps below.

Parcel Summary - 1629 - 1649 KLO Road:

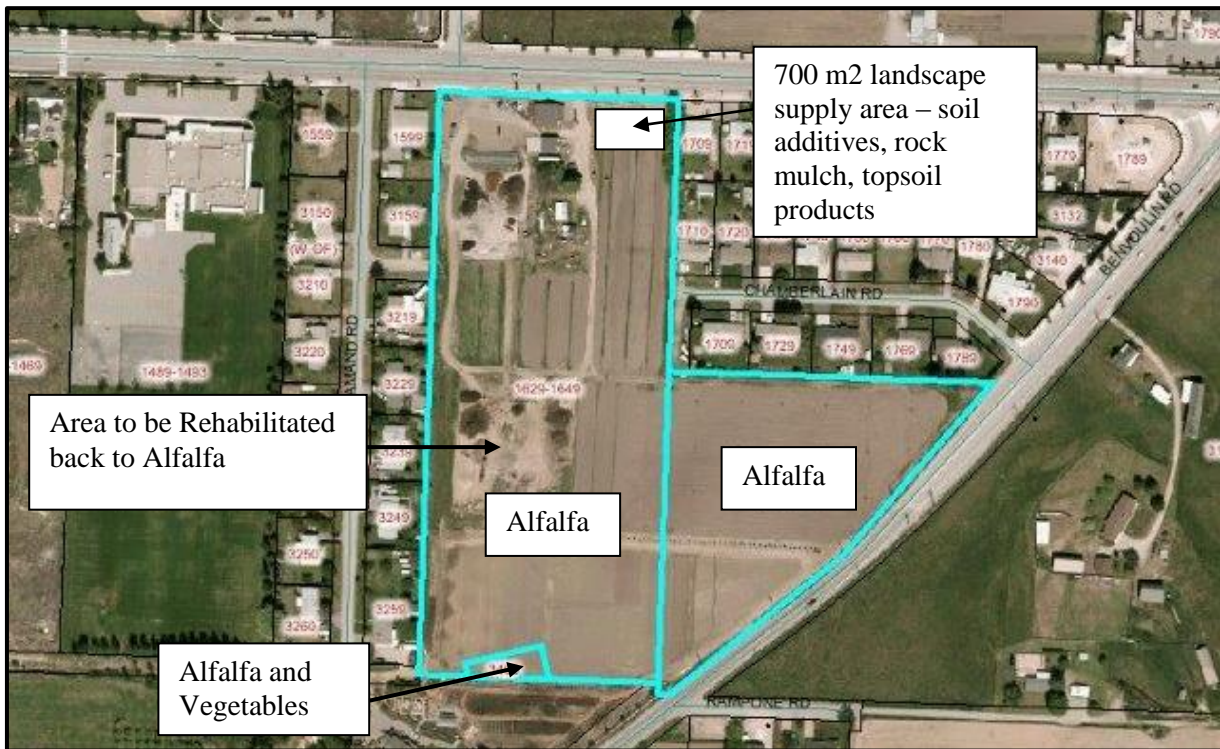
Parcel Size: 5.03 ha (12.4 acres)

Elevation: 348.5 to 349.85 metres above sea level (masl)

Map 2 - Neighbourhood



Map 3 - Subject Property and Leased Properties



Map 4 - Agricultural Land Reserve



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

Table 1: Zoning and Land Use of Adjacent Property

Direction	Zoning	ALR	Land Use
North	RU2 - Urban Residential 3 / RR1 - Rural Residential 1	Yes	Vacant
South	A1 - Agriculture 1	Yes	Agriculture / Rural Residential
East	A1 - Agriculture 1	No / Yes	Rural Residential Agriculture
West	RU1 - Urban Residential 1	No	Urban Residential

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Future Land Use³

With respect to lands outside the Permanent Growth Boundary, Chapter 4 of the OCP states:

- Lands outside the permanent growth boundary will not be supported for urban uses.

Farm Protection Development Permit Guidelines⁴

Farm Protection Development Permit Guidelines include:

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

Objective 5.33 Protect and enhance local agriculture⁵.

Policy. 1 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.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;

³ City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

⁴ City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

⁵ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land⁶.

5.2 City of Kelowna Agriculture Plan

ALR Application Criteria⁷

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.

5.3 Agricultural Land Commission Act (ALCA)

Purposes of the commission - Section 6 of the ALCA

The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Agricultural Land Reserve Use, Subdivision and Procedure Regulation - Farm Retail Sales

Section 2 (2) The following activities are designated as farm use for the purposes of the Act and may be regulated but must not be prohibited by any local government bylaw except a bylaw under section 917 of the Local Government Act :

- (a) farm retail sales if
 - (i) all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or
 - (ii) at least 50% of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m².

6.0 Technical Comments

6.1 Development Engineering Department

Development Engineering has no comments at this point in time with regard to this application. However, a comprehensive report will be provided at the time of development application submission if the Agricultural Land Commission should allow the proposed activity on the subject property.

⁶ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

⁷ City of Kelowna Agriculture Plan (1998); p. 130.

7.0 Application Chronology

Date of Application Received: June 3, 2015

Date All Agency Comments Received: June 26, 2015

Agricultural Advisory Committee July 9, 2015

AAC/Staff Discussion:

- Staff confirmed that the other businesses in the area are also located within the Agricultural Land Reserve.
- Staff confirmed that if the Agricultural Land Commission approves this non-farm use application and in the future, the Applicants wish to expand the area, another application to the Agricultural Land Commission would be required.

Moved By Keith Duhaime/Seconded By Yvonne Herbison

THAT the Agricultural Advisory Committee recommends that Council support an application to the Agricultural Land Commission under Section 20(3) of the *Agricultural Land Commission Act* for a "non-farm use" within the Agricultural Land Reserve for a portion of the property to operate as a landscape centre.

Carried

Jeff Ricketts - Opposed

Report prepared by:

Melanie Steppuhn, Land Use Planner

Reviewed by:

☐

Todd Cashin, Subdivision, Suburban and Rural Planning Manager

Reviewed by
Approved for Inclusion:

☐

Ryan Smith, Community Planning Department Manager

Approved for Inclusion:

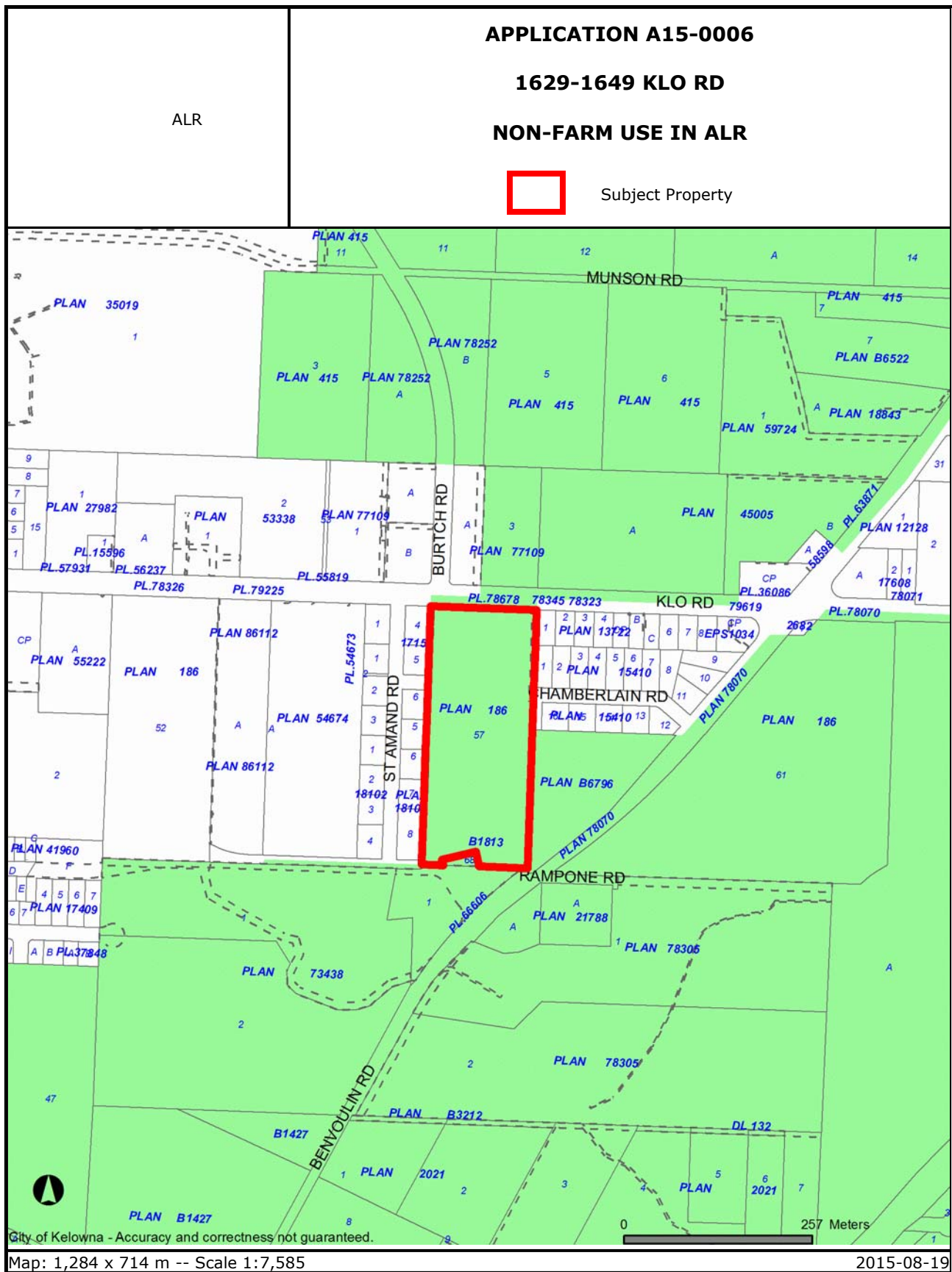
☐

Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

ALR / Subject Property Map

Applicant ALC Act Application for Non-Farm Use Supplementary Information



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.



Agricultural Land Commission Act

Application for Non-Farm Use

Supplementary Information

Alexander Luymes

Krystal Luymes

1629 KLO Rd,

Kelowna, BC

V1W 3P3

P: (250) 861-1881

F: (250) 861-4881

betterearthgardencentre@outlook.com

www.betterearthgardencentre.com

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Back Ground on Better Earth Garden Centre

Better Earth in 2014

At this time there was a soil yard, minimal plant selection and a screening operation on the back end of the property (16 on the site plan). The soil screening operation was terminated immediately. In order to help with leasing costs parts of the property were sub-leased to three other tenants. These tenants had large equipment, trucks and sea cans on site for storage (16 on the site plan).

Throughout the 2014 season, the City of Kelowna and the Agricultural Land Commission received numerous complaints regarding noise and dust coming from the property.

In order to help rectify these issues we asked all three tenants to vacate the property along with their equipment, trucks and sea cans. This completely eliminated traffic on the back half of the property, reducing dust and noise.

As instructed by The City of Kelowna we cleaned the property of garbage and scrap steel that had been left on the property by previous lessees of the property.

In an effort to convert section 16 on the site plan back to agricultural land, we hauled 1944 cubic yards of material left by previous lessees.

Better Earth Current Stage of 2015

The season is scheduled to run from April 1 – October 1 2015. At the beginning of March we ordered a large garbage bin to clean the property even further. This garbage bin was filled with items left on the property by previous tenants and previous lessees. The trash came from underneath a storage trailer (marked 10 on site plan), beside a shack on site (marked 15 on site plan), the back area of the property where tenants were previously (marked as 16 on the site plan) and beside the mobile home (marked as 13 on the site plan) where tenants were previously (not marked on the site plan as it is currently cleaned up and is just dirt.)

We reduced the size of the soil yard as well as reducing the aggregate products we carry. We have also increased the amount of plants on site (see inventory attached). These plants are currently for sale and in the greenhouse marked as 6 & 9 on the site plan. There will be more plants purchased to grow within the greenhouse. There is also an area where trees are for sale as marked by 7 on the site plan.

During the second weekend of March Alex Luymes went around to the neighbours on Saint Amand Rd, K.L.O. Rd and Chamberlain Rd with a letter introducing ourselves and our plans for the property. We also mentioned in the letter that we were intending to clean up the property and as a result a large garbage bin and heavy equipment would be on site. Attached to the letter was a copy of Alex's business card in the event they have any questions or concerns. The back of the business card also offers 10% off any landscape products they need in order to build rapport with

the neighbours. (Please see attached) Alex received positive feedback from most of the neighbours, except one who was worried about the dust. Alex did his best to let the neighbour know we will be reducing the size of the soil yard and there will be no traffic along any of the dirt roads heading to the back of the property. The neighbour did not seem satisfied with this and will continue to be a concern going forward. Many of the neighbours expressed gratitude for the 10% discount as they will need plants and soil for their yards.

Once the cleanup was complete we had numerous neighbours come over to Alex while he was working and state how pleased they were with the condition of the property.

Better Earth Plans for 2015 and beyond

Clean up of property

In order to continue cleaning up the property we will be demolishing a mobile home and wooden shack on site as they are no longer needed and are in poor condition. They are listed as 14 & 15 on the site plan and it does state on the plan that these are to be demolished.

The back of the property listed on the site plan as 16 has been reverted back to agricultural land to be used for more alfalfa production. In the last two months since beginning this process we have removed all remaining concrete, wood and excess soil to prepare the area for planting. Irrigation will need to be piped in to this area and then we will be spreading seed.

Business Intent

We are hoping to take Better Earth Garden Centre to a level that matches Art Knapp or Byland's Garden Centre. Our purpose is to provide products for homeowners and landscapers to fully complete their projects. In order for our customers to do this we plan to carry a variety of plants, trees, shrubs, soils, mulches and landscape rock.

Agricultural Land Commission Act Application for Use of Land in the ALR for Non-farm Purposes

Proposal

Better Earth is requesting non-farm use for 700m² of the 7.31 Ha property (less than 1% of the property) in order to carry mulches, soils and landscape rock to complement our nursery business. As per photos attached the land has not been actively farmed since 2000 and we are hoping to change that. Should this be approved the land will be used to farm trees, shrubs and plants to sell at Better Earth.

There will be no other changes to the property. We are proposing this change as the 150m² allowed in the Act makes it difficult for us to carry enough products to meet the needs of customers. In the event we were to reduce or no longer have soils, mulches and rock, customers will likely go to another garden centre or nursery to meet their needs in one store.

List of products we intend to carry:

Soils

- Turf Blend
- Garden Blend

Soil Additives

- Eco-Boost
- Fertilizer
- Ogo Grow
- Glen Grow

Mulches

- Black Coarse Mulch
- Black Fine Mulch
- Red Fir Coarse Mulch
- Red Fir Fine Mulch

Landscape Rock

- Round Rock: ½", 1", 2", 2-6"
- Crushed Rock: crusher chip, 1", 2", 2-6"

Current Use of Land

Attached is a current site plan of the land. As per the site plan a majority of the land is currently being used to grow alfalfa (section 17 on the site map). Pieces of section 17 on the map may be converted over time from alfalfa to trees or shrubs to be sold from Better Earth Garden Centre.

The front of the property is used as Better Earth Garden Centre. As per the site plan there is currently customer parking, a greenhouse, plant display, tree display, office and soil/mulch yard.

There is a shop on site that is used for storage and any repairs needed on machinery and farm equipment. There is a storage unit on site containing storage for greenhouse materials which is painted the same color as the shop and retail store to look esthetically pleasing. There is also a small house that is rented as well as a mobile home.

There is also an old mobile home and small shack used for storage that will be removed as they are no longer necessary and are in poor condition. They are listed on the site plan to be removed.

Ever Present Obstacles

Dust

Currently we are watering the road around the products to help reduce dust. We have also purchased signs asking drivers to drive 10 km/h to help reduce dust (see picture attached). We have also created four cement block bins for our 150 m² area to help reduce dust, minimize space and keep the area neat and tidy. The back of the property listed on the site plan as 16 was used for lessees to store equipment and products for their businesses and as mentioned previously it has been returned to its original state for alfalfa growth. This has dramatically reduced dust in the area as there is no traffic passed the soil yard unless it is to aid in the production of alfalfa.

In the event this non-farm use application is approved our future plan is to empty the soil area in order to spread crushed rock. We will also continue to add concrete bins to reduce dust, minimize space and keep the area neat and tidy.

Weeds

We now have a ride on lawn mower, weed eater and blower on site to help combat the weeds that affect our neighbouring properties. We have created a schedule where one half of the property is completed one week and the other half the following week.

Noise

The back of the property listed on the site plan as 16 was used for lessees to store equipment and products for their businesses and as mentioned previously it has been returned to its original state for alfalfa growth. This will greatly reduce noise as trucks will not be heading to the back of the property at any given time.

We have also reduced store hours from Monday to Sunday 8am – 5pm to Monday to Saturday 8am – 4pm which reduces noise for the neighbours during dinner and on Sundays.

Costs

Costs we are incurring in the near future:

- Remove a trailer and small shack on site:
 - Excavator rental: \$125 per hour
 - Dump fees: \$65 per tonne
 - Truck Rental: \$110 per hour
- Alfalfa re-seed of bare dirt areas listed on site plan
 - Alfalfa seed: \$249.99 + taxes
 - Irrigation: \$7,344 + taxes
 - materials: \$1,500 per acre, 2.22 acres to be irrigated = \$3,330 + taxes
 - labour: 40 hours per acre, 2.22 acres to be irrigated = 88.8 hours @ \$30 per hour = \$2,664 + taxes
 - Equipment: bobcat trencher attachment \$450 per week or \$150 per day. 88.8 hours = 2 weeks, 3 days = \$1,350 + taxes

Costs we will incur in the event this application is approved:

- Place crush on the roadway in between products in soil/mulch yard
 - Crush: 130 yards @ \$11 per yard = \$1,430 + taxes
 - Trucking: 6 truck & pups carry 22 yards @ \$130 per hour for 1.5 hour trips = \$1,170 + taxes
- Place concrete bins in soil/mulch yard
 - Concrete blocks: 180 blocks @ \$90 each = \$16,200 + taxes
 - Trucking: 30 loads (6 blocks per truck) @ \$110 per hour for 1.5 hour trips = \$4,950 + taxes
- Remove alfalfa to plant trees and shrubs
 - Approximate cost: \$20,000 per acre. We received this estimate from a local farmer. This cost would include removing the existing alfalfa, rototilling the soil, adding nutrient rich soil to existing soil to facilitate tree and shrub growth, review/repair existing irrigation and purchase and plant trees and shrubs.

Uses on Adjacent Lots

Please see Map of Surrounding Areas Attached

North

Directly north of the property is vacant land that is currently for sale.

East

East of the property is a residential area on Chamberlain Rd.

South

South of the property is more agricultural land.

West

West of the property is a residential area on St. Amand St.

Attachments

Receipt from BFI for Garbage Removal from site

4-150 CAMPION STREET
KELOWNA, BC V1X7S8
ATTN: CUSTOMER SERVICE DEPT.
(250) 765-0565

634-0000475951 03/31/15 634-009904-0000

ONLINE/PHONE/OVER THE COUNTER PAYMENTS ARE
ACCEPTED AT MOST MAJOR BANKS. SEARCH FOR BFI
CANADA INC & USE YOUR 13 DIGIT ACCT#.
QUESTIONS? CALL 1-855-765-0565

008093 000000986

BETTER EARTH LANDSCAPE
PO BOX 25035 MISSION PARK
KELOWNA, BC V1W 3Y7

83

(0001) BETTER EARTH LANDSCAPE - TEMP 1629 KLO ROAD KELOWNA, BC

SERVICE GROUP 001 QTY 1.00 Roll Off Temporary 40.00YD Waste

03/13/15 RO Delivery W/O #:89490	1.00	160.00	160.00
03/21/15 RO Dump & Remove W/O #:90063	1.00	180.00	180.00
03/21/15 Waste 1154810			293.02
03/31/15 Basic Container Charge 3/19/2015-3/21/2015	3.00	10.00	30.00
03/31/15 BC GST 866808298RT0007 on \$663.02			33.15

SITE TOTAL

696.17

BC GST 866808298RT0007

33.15

TOTAL TAXES

33.15

PAYD M/C 3/ - 1800.00
4/13 - 3196.17

CURRENT	30 DAYS	60 DAYS	90+ DAYS
196.17	0.00	0.00	0.00

UPON RECEIPT

696.17

634-0000475951 03/31/15
634-009904-0000 196.17

4-150 CAMPION STREET
KELOWNA, BC V1X7S8

BETTER EARTH LANDSCAPE
PO BOX 25035 MISSION PARK
KELOWNA, BC V1W3Y7

BFI CANADA INC
4-150 CAMPION STREET
KELOWNA, BC V1X7S8

BTP8340402 1-9093-000000986

Plant Inventory

Name	#	Size
	Plants	
Maiden Grass	50	1 Gallon
Flame Grass	50	1 Gallon
Karl Foerster Grass	334	1 Gallon
Fountain Grass	169	2 Gallon
Red Switch Grass	106	1 Gallon
Fountain Grass - Karley Rose	49	1 Gallon
Corkscrew Rush	49	2 Gallon
Day Lillies	114	1 Gallon
Lavender	54	1 Gallon
Geranium	71	1 Gallon
Amethyst in Snow	52	1 Gallon
Seedums - Autumn Joy	118	2 Gallon
Seedums - Purple Emperor	62	2 Gallon
Seedums - Dragon Blood	161	2 Gallon
Bee Balms	50	2 Gallon
Echinacea	15	2 Gallon
Campsis - Trumpet Vine	26	3 Gallon
Astilbe - False Spire	25	2 Gallon
Wooly Thyme	129	1 Gallon
Royal Candles	20	2 Gallon
Phlox	26	2 Gallon
Butterfly Bush	14	2 Gallon
Diablo Nine Bark	35	3 Gallon
Purple Smoke Bush	12	3 Gallon
Weigela - Variegated	15	3 Gallon
Weigela - Red Prince	26	3 Gallon
Snow Mound Spirea	25	3 Gallon
Rose Glow Barberry	50	1 Gallon
Miscellaneous (50% off)	98	1 Gallon
68		2 Gallon
20		3 Gallon
Miscellaneous Evergreens		20
Plant Totals		2113
	Trees	
Emeralds		30
Excelsa		14
Yews		30
Japanese Maples		20
Boxwood		59
Tree Totals		153
Grand Total		2266

Letter to Neighbours

Better Earth Garden Centre
1629 KLO Rd
Kelowna, BC V1W 3P3
(250) 861-1881

March 14, 2015

Dear Neighbours,

We are writing to inform you of our intentions on the neighbouring property. We are aware there were some concerns last year and would like to remain transparent this year with regards to the property and business located on said property. Better Earth Landscape Supply will run from the front of the property with a small landscape supply yard and a greenhouse. Our goal this year is to reduce traffic on the property, therefore reducing dust and noise. We will also not be partaking in composting activities this year and will actively be managing overgrowth and weeds on the property. We will actively be planting trees, plants and shrubs on the agricultural land to be sold in the store in the future.

We will be cleaning up the property this weekend and throughout next week and wanted to inform you as there will be a large garbage dumpster and excavator on site to assist in this clean up. We will also be spreading compost on the agricultural land to assist with growth and will be tearing down dirt berms in the back to restore the property to agricultural status.

We welcome any suggestions, comments or concerns you may have and look forward to getting to know all of you. Please find attached a business card with a 10% discount on any product you purchase from Better Earth Landscape Supply.

Thank you,

ALuymes

Alex Luymes
Owner
(250) 826-3175

KLuymes

Krystal Luymes
Owner
(250) 826-3176

CC: Agricultural Land Commission: Ron MacLeod, Compliance and Enforcement Officer
Ministry of Agriculture: Carl Withler, Regional Agrologist
City of Kelowna: Todd Cashin, Manager/Deputy Approving Officer
City of Kelowna: Laurie Lundman, Bylaw Officer
City of Kelowna: Melanie Stepphun, Land use planner
Regional District of Central Okanagan: Kim Mussenden, Bylaw Enforcement Officer

Current Photos of Better Earth Garden Centre



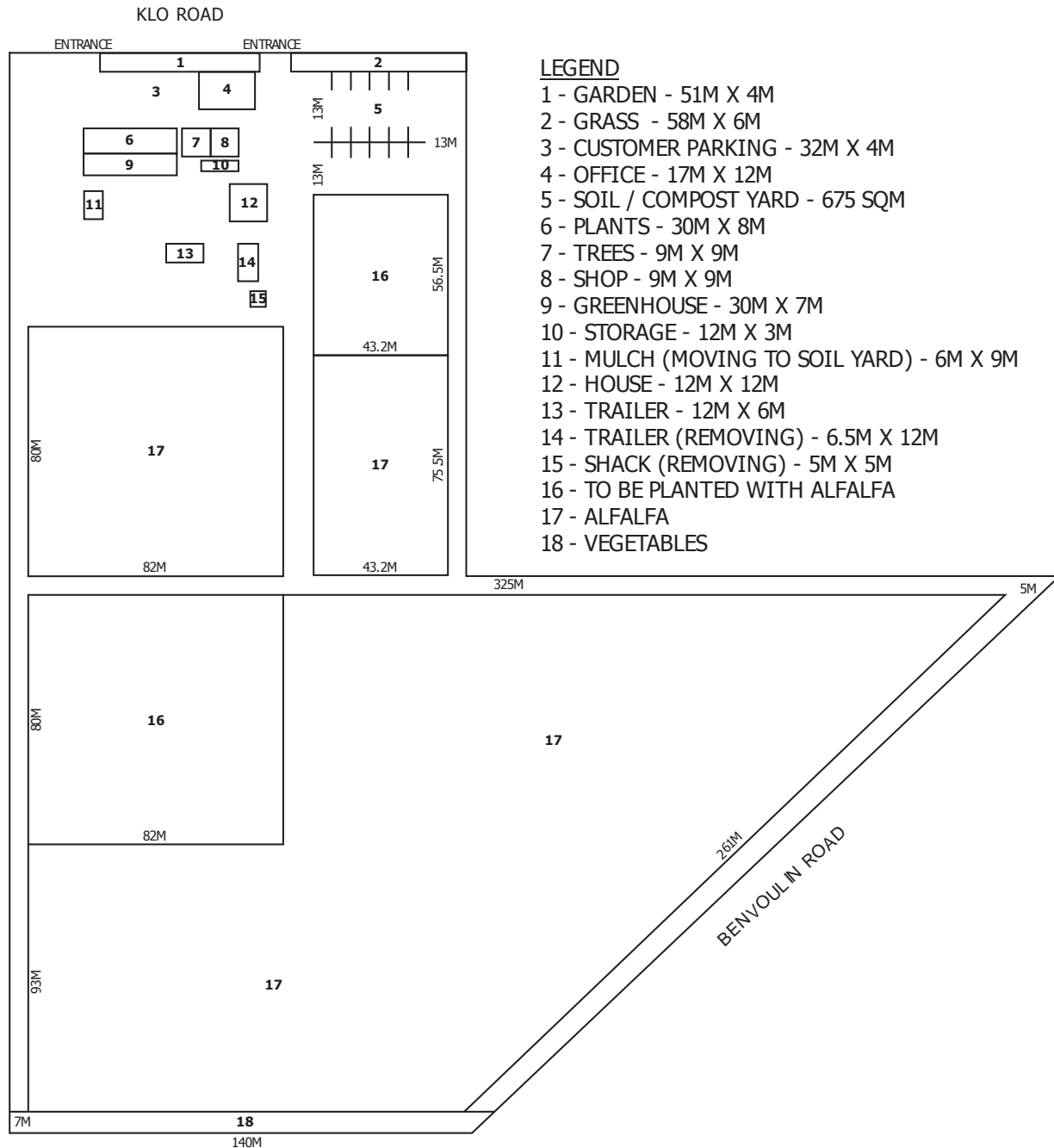








BETTER EARTH GARDEN CENTRE SITE PLAN



Map of Surrounding Areas

Aerial View 2012

(Most recent photo available - The property looks much different now)



Street Map

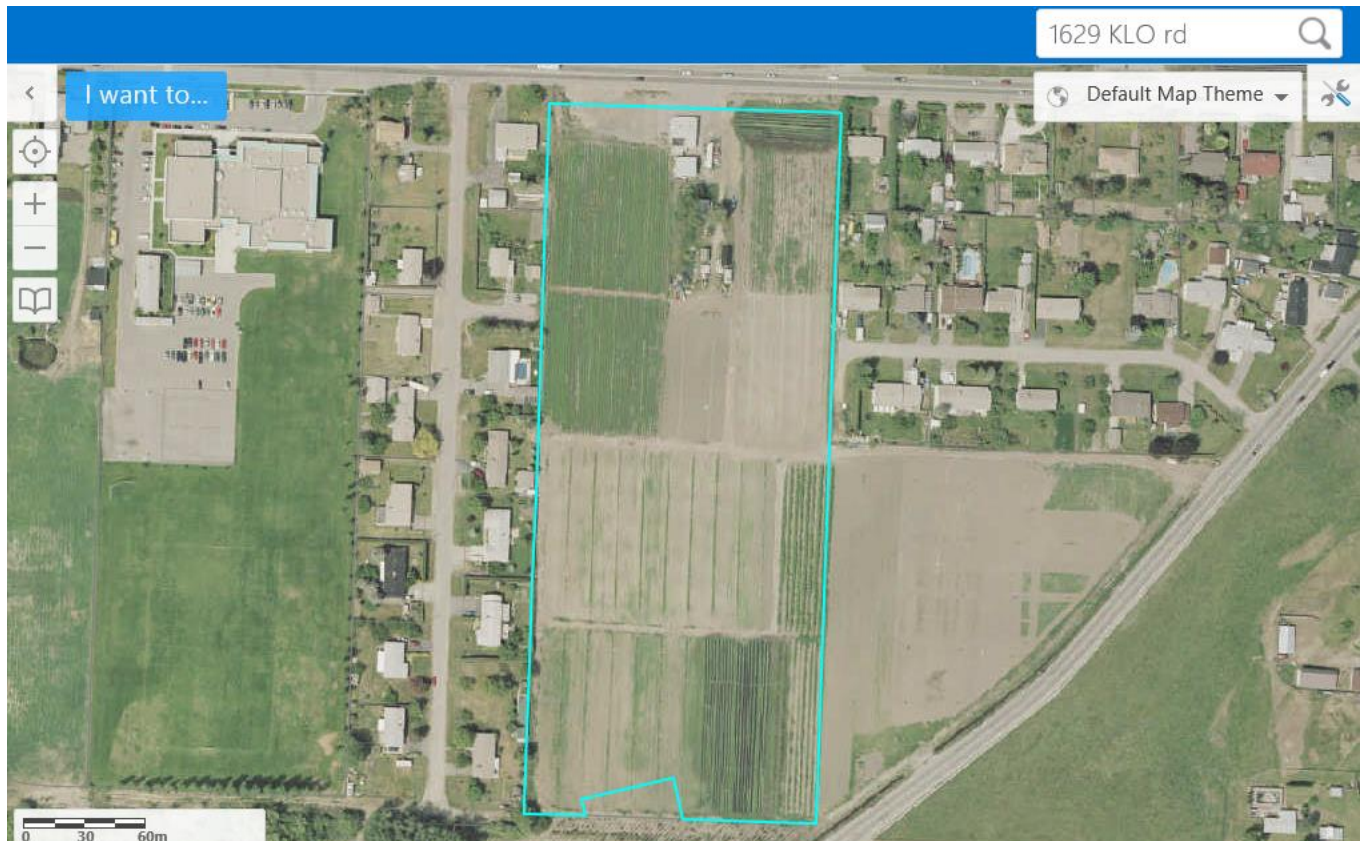


Aerial Maps of Property 2000-2009

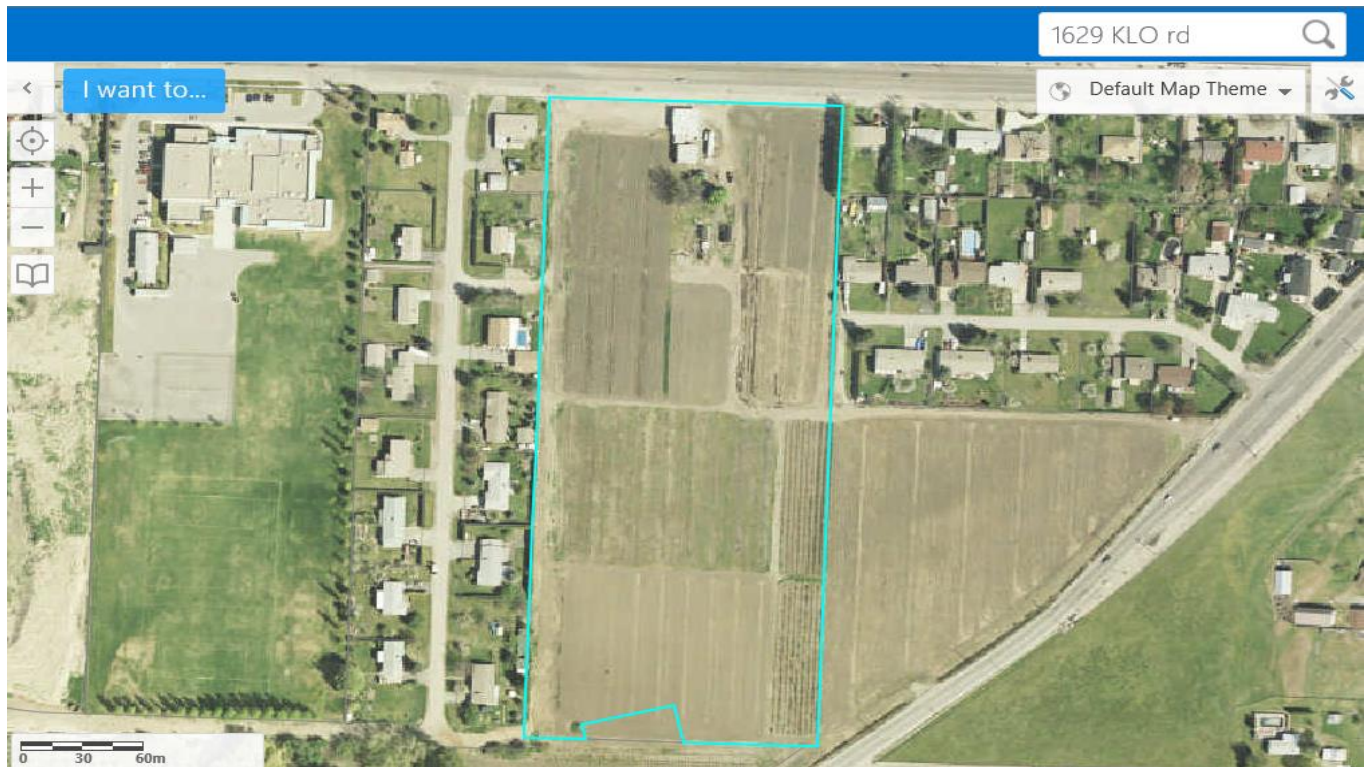
2000



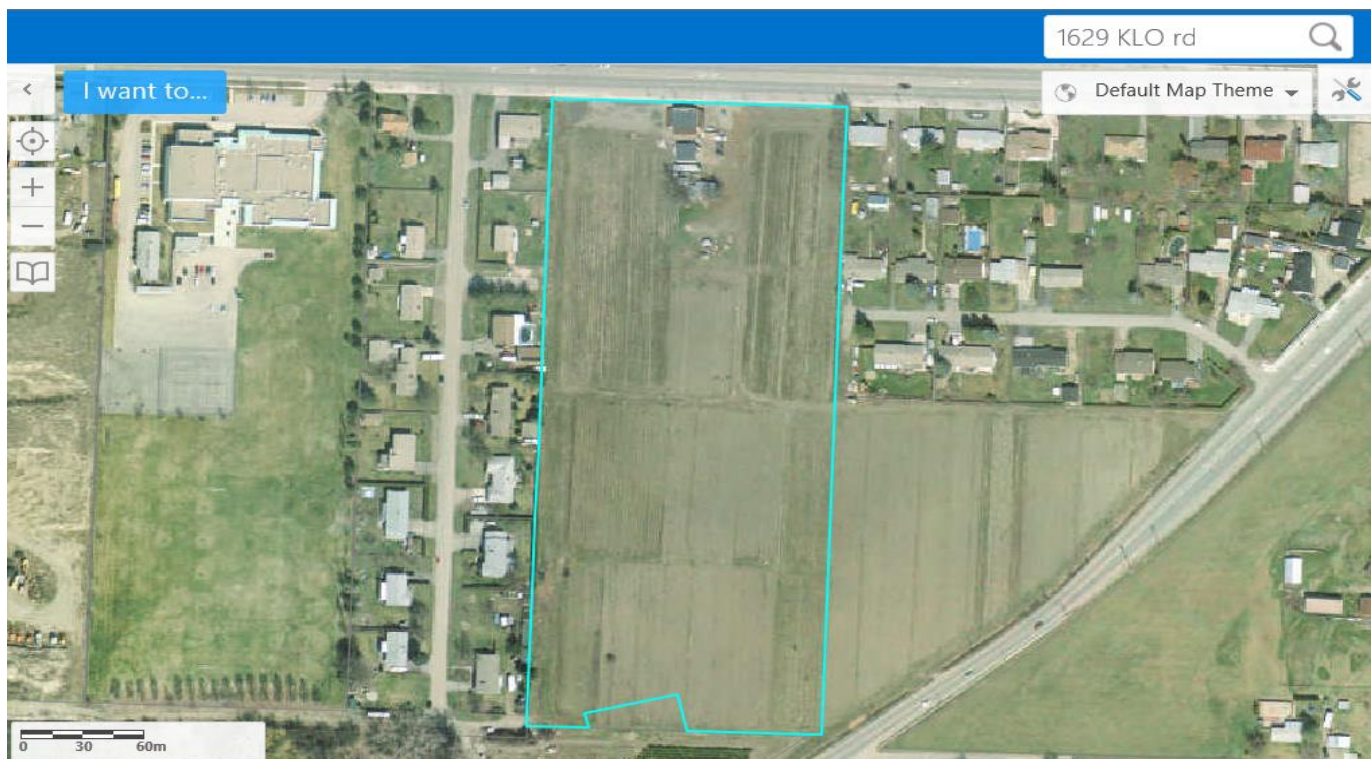
2003



2006



2009



REPORT TO COUNCIL



Date: August 24, 2015
RIM No. 1250-30
To: City Manager
From: Community Planning Department (LB)
Application: Z15-0032 **Owner:** Thorsten Tropf
Address: 285 Sadler Road **Applicant:** Novation Design Studio
Subject: Rezoning Application
Existing OCP Designation: S2RES - Single / Two Unit Residential
Existing Zone: RU1 - Large Lot Housing
Proposed Zone: RU6 - Two Dwelling Housing

1.0 Recommendation

THAT Rezoning Application No. Z15-0032 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 26, Township 26, ODYD< Plan 8519, located at 285 Sadler Road, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU6 - Large Lot Housing zone be considered by Council;

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

AND THAT final adoption of the Rezoning Bylaw be considered subsequent to the outstanding conditions of approval as set out in Schedule "A" attached to the Report from the Community Planning Department dated August 24, 2015;

AND THAT final adoption of the Rezoning Bylaw be considered subsequent to the requirements of the Ministry of Transportation and Infrastructure being completed to their satisfaction;

AND FURTHER THAT final adoption of the Rezoning Bylaw be considered subsequent to the requirements of Rutland Waterworks District being completed to their satisfaction.

2.0 Purpose

To rezone the subject property to facilitate development of a second dwelling.

3.0 Community Planning

Community Planning Staff supports the request to rezone the subject property from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone to facilitate the development of a second dwelling. The existing house on the north side of the property will be retained and a

second house of similar size and style is to be built on the south side of the property. The property is within the Rutland Urban Centre and the application is consistent with policies that encourage additional density while maintaining the residential character of the neighbourhood.

There is a lane right-of-way to the east of the property. However, the lane is unconstructed and the existing driveway access from Sadler Road will be retained.

In conjunction with the Rezoning application, the applicant submitted a Development Permit application for the form and character of the proposed second dwelling. Should Council choose to support the rezoning request, Staff will continue to work with the applicant to issue the Development Permit in accordance with the Intensive Residential - Carriage House / Two Dwelling Housing guidelines.

In accordance with Council Policy No. 367, the applicant completed neighbourhood consultation by contacting neighbouring properties within 50 m. No concerns were identified through this process. At the time of writing, Staff has not been contacted with any questions or concerns.

4.0 Proposal

4.1 Site Context

The subject property is located on the east side of Sadler Road between Mugford Road and Highway 33 in the Rutland Sector. The Future Land Use designation for the property is S2RES - Single / Two Unit Residential and it is within the Permanent Growth Boundary as well as the Rutland Urban Centre. The surrounding area is characterized by single dwelling housing with Rutland's commercial centre to the southwest and Rutland Centennial Park and several institutional uses to the west.

Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1 - Large Lot Housing	Single dwelling housing
East	RU1 - Large Lot Housing	Single dwelling housing
South	RU1 - Large Lot Housing	Single dwelling housing
West	RU1 - Large Lot Housing	Single dwelling housing

Subject Property Map: 285 Sadler Road



4.2 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RU6 ZONE REQUIREMENTS	PROPOSAL
Existing Lot Regulations		
Minimum Lot Area	700 m ²	1,010.8 m ²
Minimum Lot Width	18.0 m	27.5 m
Minimum Lot Depth	30.0 m	36.7 m
Development Regulations		
Maximum Site Coverage (buildings)	40%	34.0%
Maximum Site Coverage (buildings, driveways and parking)	50%	49.7%
Maximum Height	9.5 m	4.1 m
Minimum Front Yard	4.5 m	8.8 m
Minimum Side Yard (south)	2.0 m	2.0 m
Minimum Side Yard (north)	2.0 m	2.0 m
Minimum Rear Yard	6.0 m	12.3 m
Minimum Distance between Dwellings	4.5 m	4.5 m
Other Regulations		
Minimum Parking Requirements	4 stalls	4 stalls
Minimum Private Open Space	30 m ² per dwelling	Meets requirements

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.

Sensitive Infill.² Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighbourhood with respect to building design, height and siting.

6.0 Technical Comments

6.1 Building & Permitting Department

- Development Cost Charges (DCCs) are required to be paid prior to issuance of any Building Permits.
- Full Plan check for Building Code related issues will be done at time of Building Permit applications.

¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.22.6 (Development Process Chapter).

6.2 Development Engineering Department

- See attached memorandum, dated July 17, 2015.

6.3 Ministry of Transportation and Infrastructure

- Preliminary approval is granted for the rezoning for one year.

7.0 Application Chronology

Date of Application Received: June 10, 2015

Date Public Consultation Completed: June 18, 2015

Report prepared by:

Laura Bentley, Planner

Reviewed by:

☐

Lindsey Ganczar, Planning Supervisor

Approved for Inclusion:

☐

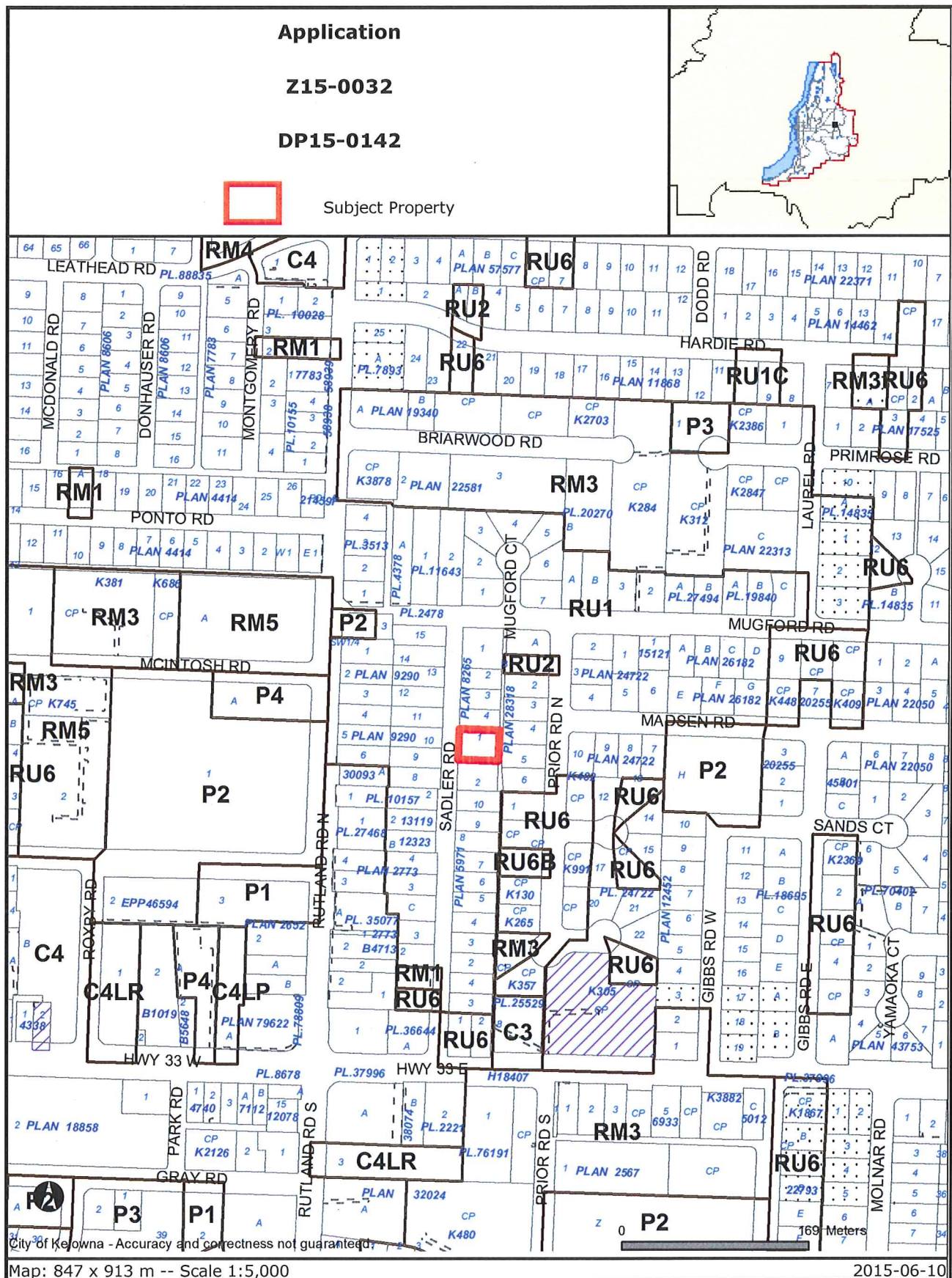
Ryan Smith, Community Planning Department Manager

Attachments:

Subject Property Map

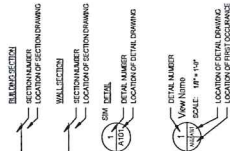
Conceptual Site Plan and Elevation Drawings

Schedule A: City of Kelowna Memorandum



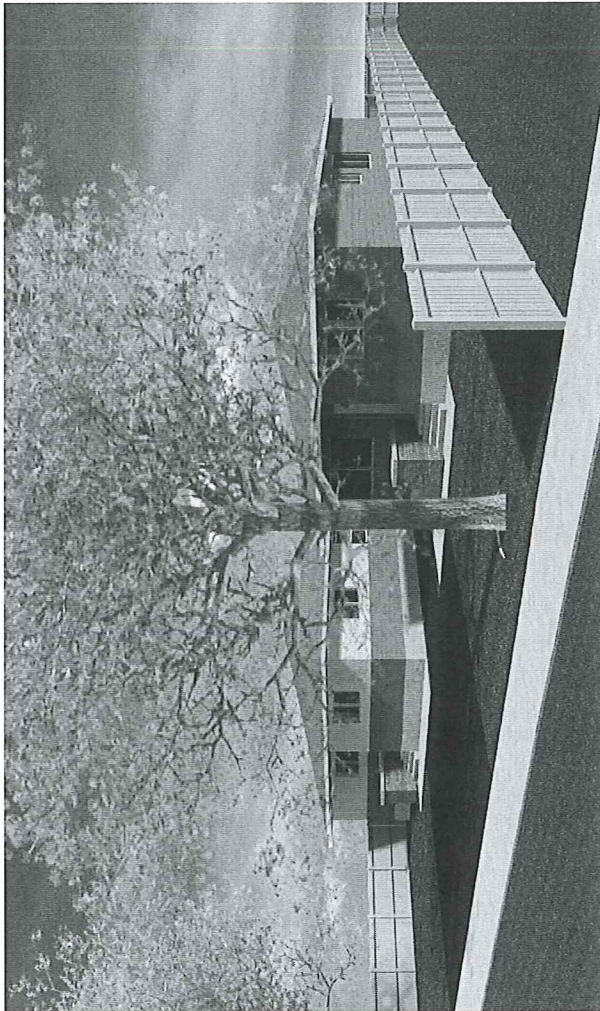
Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.

- GENERAL
1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES.
 2. IN THE CASE OF DISCREPANCY, THE ARCHITECT IS TO BE ADVISED BEFORE WORK COMMENCEMENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES.
 3. REFER TO MECHANICAL DRAWINGS FOR FURNITURE, EQUIPMENT, ELECTRICAL PANEL, LOCATION AND SPECIFICATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE AND FEDERAL AUTHORITIES.
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- CONSTRUCTION REQUIREMENTS
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Door Tags
Window Tags
Assembly Tags

PROJECT INFORMATION AND DRAWINGS INDEX
LANDSCAPE PLAN
GARAGE FLOOR PLAN
EXTERIOR ELEVATIONS
EXTERIOR ELEVATIONS



NOVATION
100-1000 LAKEMORE DR. SUITE 100
KELOWNIA, B.C. V1Y 1Y1

THE CLIENTS
NOT COMPLETED
A CONTROLLED DOCUMENT
This is the first issue of the document.
Approved for release. Review process
Approved for release. Review process
Approved for release. Review process
Approved for release. Review process
Approved for release. Review process

NOVATION
100-1000 LAKEMORE DR. SUITE 100
KELOWNIA, B.C. V1Y 1Y1

NOVATION
100-1000 LAKEMORE DR. SUITE 100
KELOWNIA, B.C. V1Y 1Y1

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KELOWNIA, B.C. V1Y 1Y1

NOVATION
100-1000 LAKEMORE DR. SUITE 100
KELOWNIA, B.C. V1Y 1Y1

ISSUED FOR DEVELOPMENT PERMIT

ISSUED FOR DEVELOPMENT PERMIT



<input type="checkbox"/>	NOT certified. Revisions may be made without notice.
<input type="checkbox"/>	A CONTROLLED document. Revisions will be advised.
<input type="checkbox"/>	The first issue of the document.
<input type="checkbox"/>	A complete revision. Remove previous issues from use.
<input type="checkbox"/>	A partial revision. Remove previous issues of corresponding sheets / pages from use.
<input type="checkbox"/>	Not for Construction.

(2)	2005/04	Issued For EO
(3)	2005/04	Issued For EEC/MRG
(4)	State	Description



NOVATION
101-1865 DILLWORTH DR., SUITE 520
BETHESDA, MD 20814

Project 020
Sader Road House

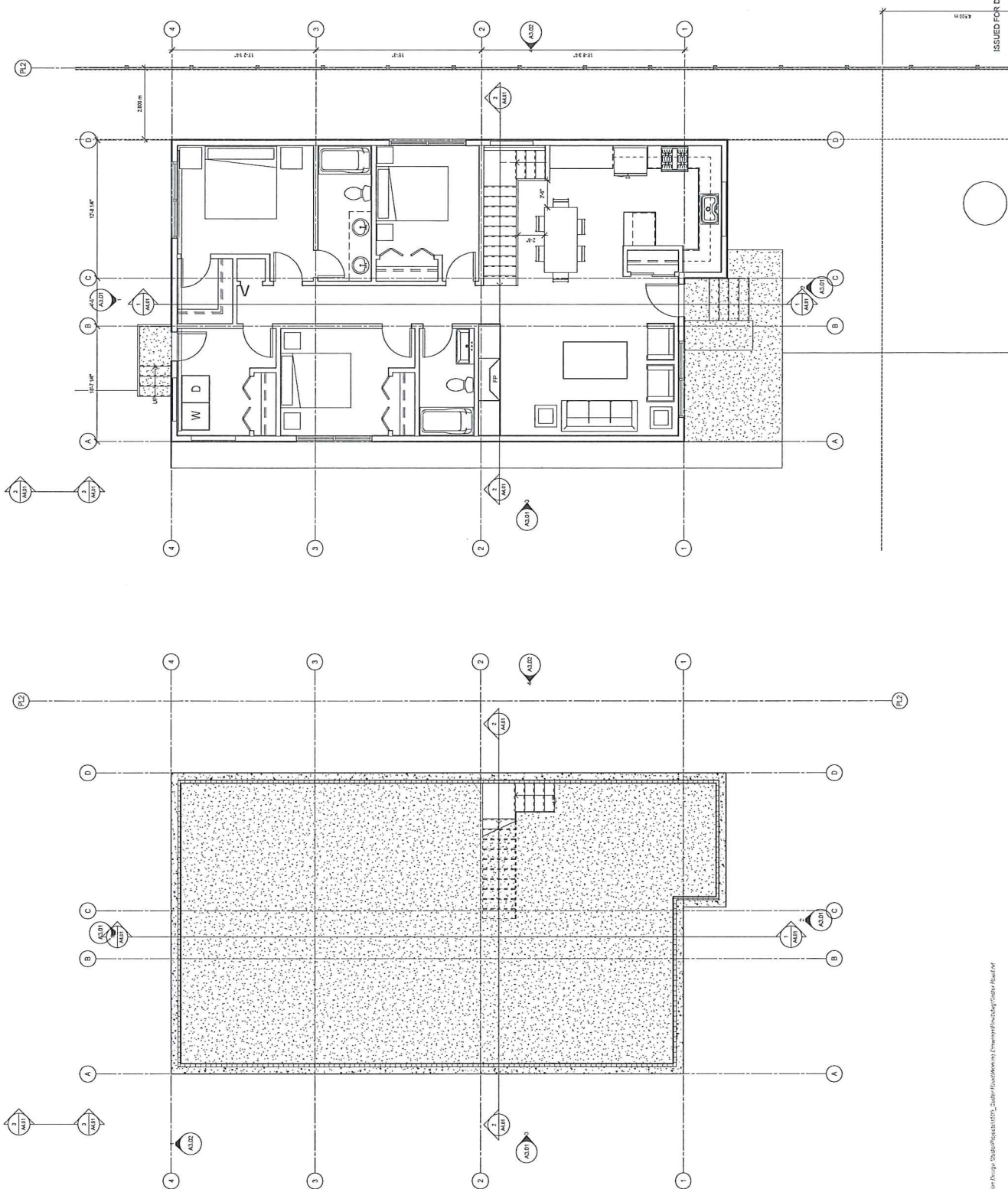
2015 Garden Road, Kelowna, British Columbia
Project no. 1509

FLOOR PLANS

PS	$1/4^{\circ} = 1^{\circ} 0'$
BD	

A2.01

ISSUED FOR DEVELOPMENT PERMIT



Project File Name and Location: K:\Winston Davis\Submissions\1909_06\Other Papers\1909_06\Other Papers\

<input type="checkbox"/>	NOT controlled. Revisions may be made without notice.
<input type="checkbox"/>	A CONTROLLED document. Revisions will be advised.
<input type="checkbox"/>	The first issue of the document.
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<input type="checkbox"/>	Not for Construction.

NOVATION
101-1665 DILLWORTH DR., SUITE 400
KELOWNA, B.C. V1Y 6T1

285 Sadler Road, Kelowna, British Columbia
project no. 1509

Designated	PS	1/4" = 1'-0"
Notes	PS	
Site Map		
Grading Plan		

2019-06-12 11:51:48 AM

Project File Name and Location: K:\Motion Design Studio\Projects\1000_Studio\RoadWork\Design\Stage\Stage Road.vd

CITY OF KELOWNA

MEMORANDUM

Date: July 17, 2015
File No.: Z15-0032
To: Land Use Management Department (LB)
From: Development Engineer Manager (SM)
Subject: 285 Sadler Road – Lot 1, Plan 8519, Sec. 26, Twp. 26, ODYD

The Works & utilities Department comments and requirements regarding this application to rezone from RU-1 to RU-6 are as follows:

1. Subdivision

Provide easements as required

2. Geotechnical Study.

A geotechnical study is required over the proposed building site. The geotechnical study should be undertaken by a Professional Engineer or a Geoscientist competent in this field. This study should analyse the soil characteristics and suitability for development of the requested zoning. As well, the study should address drainage patterns including the identification of ground water and the presence of any springs and the suitability of the lands for disposal of site generated storm drainage. In addition, this study must describe soil sulphate contents, the presence or absence of swelling clays and the recommendation for footing and foundation construction.

3. Domestic water and fire protection.

This development is within the service area of the Rutland Waterworks District (RWWD). A second service is required in order to meet current policies. The developer is required to make satisfactory arrangements with the RWWD for these items. All charges for service connection and upgrading costs are to be paid directly to the RWWD. The developer is required to provide a confirmation that the district is capable of supplying fire flow in accordance with current requirements. A second service is required to meet current policy for Duplex properties.

4. Sanitary Sewer.

The property is located within Specified Area # 1 therefore there are no Specified Area charges associated with this application.

.../2

5. Power and Telecommunication Services.

The services to this development are to be installed underground. It is the developer's responsibility to make a servicing application to the respective utility companies. The utility companies are then required to obtain the city's approval before commencing their works.

6. Road improvements.

Sadler Road must be upgraded to a full urban standard including a sidewalk curb and gutter, piped storm drainage system, fillet pavement, street lights, and adjustment and/or re-location of existing utility appurtenances if required to accommodate this construction. The cost of this frontage upgrade is estimated at **\$22,900.00** and is inclusive of a bonding escalation.

7. Engineering.

Design, construction, supervision and inspection of all off-site civil works and site servicing must be performed by a consulting civil Engineer and all such work is subject to the approval of the city engineer.

8. Design and Construction.

- a) Design, construction supervision and inspection of all off-site civil works and site servicing must be performed by a Consulting Civil Engineer and all such work is subject to the approval of the City Engineer. Drawings must conform to City standards and requirements.
- b) Engineering drawing submissions are to be in accordance with the City's "Engineering Drawing Submission Requirements" Policy. Please note the number of sets and drawings required for submissions.
- c) Quality Control and Assurance Plans must be provided in accordance with the Subdivision, Development & Servicing Bylaw No. 7900 (refer to Part 5 and Schedule 3).
- d) A "Consulting Engineering Confirmation Letter" (City document 'C') must be completed prior to submission of any designs.
- e) Before any construction related to the requirements of this subdivision application commences, design drawings prepared by a professional engineer must be submitted to the City's Works & Utilities Department. The design drawings must first be "Issued for Construction" by the City Engineer. On examination of design drawings, it may be determined that rights-of-way are required for current or future needs.

.../3

9. Servicing Agreements for Works and Services

- a) A Servicing Agreement is required for all works and services on City lands in accordance with the Subdivision, Development & Servicing Bylaw No. 7900. The applicant's Engineer, prior to preparation of Servicing Agreements, must provide adequate drawings and estimates for the required works. The Servicing Agreement must be in the form as described in Schedule 2 of the bylaw.
- b) Part 3, "Security for Works and Services", of the Bylaw, describes the Bonding and Insurance requirements of the Owner. The liability limit is not to be less than \$5,000,000 and the City is to be named on the insurance policy as an additional insured.

10. Bonding and Levies Summary.

a) Performance Bonding

Sadler Road frontage upgrade

\$22,900.00

Note that the applicant is not required to do the construction. The construction can be deferred and the City will initiate the work later at its own construction schedule, the cost would be reduced to **\$13,560.00**. and the Admin.& Inspection fee would be waived

b) levies

3% Administration & Inspection fee

\$ 575.82 (\$548.40 + \$27.42 GST)

Steve Muenz, P.Eng.
Development Engineering ManagerB²

CITY OF KELOWNA
BYLAW NO. 11132
Z15-0032 - Thorsten Tropf
285 Sadler Road

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 Lot 1, Section 26, Township 26, ODYD, Plan 8519, located on Sadler Road, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone.
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

Approved under the Transportation Act

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: August 24, 2015

RIM No. 1250-30

To: City Manager

From: Community Planning, Community Planning & Real Estate (TY)

Application: Z15-0005 **Owner:** 0958123 BC Ltd

Address: 540 Osprey Avenue **Applicant:** U-neek Thinking

Subject: Rezoning Application

Existing OCP Designation: MXR - Mixed Use (Residential/Commercial)

Existing Zone: RU6 - Two Dwelling Housing

Proposed Zone: C4 - Urban Centre Commercial

1.0 Recommendation

THAT Rezoning Application No. Z15-0005 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A District Lot 14 ODYD Plan EPP14200, located at 540 Osprey Avenue, Kelowna, BC from the RU6 - Two Dwelling Housing zone to the C4 - Urban Centre Commercial zone be, considered by Council.

AND THAT the Rezoning Bylaw be forwarded to a Public Hearing for further consideration.

AND THAT the final adoption of the Rezoning Bylaw be considered subsequent to the outstanding conditions of approval as set out in Schedule "A" attached to the Report from the Community Planning department dated August 24, 2015;

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

2.0 Purpose

To rezone the subject property to facilitate a five storey mixed use building.

3.0 Community Planning

Community Planning Staff supports the proposed rezoning application on the subject property. The property is designated in Kelowna's Official Community Plan as MXR - (Mixed Use Residential/Commercial). In the Pandosy Urban Centre this Future Land Use specifically speaks to the C4 - Urban Center Commercial zone. The proposed development meets the intent of the C4

zone providing retail, office and residential opportunities. Retail is located on the first storey with offices on the second storey, and residential on the remaining three storeys.

The applicant worked with City Staff to bring forward an example of a mixed use development with three types of uses on one property. This development will add six multi-family units with the goal of densifying the Pandosy Urban Centre, and encouraging a live/work/play ideal.

The OCP seeks to revitalize this urban centre, encouraging the residential component of a mixed use building. The applicant has relocated a single family dwelling that was on the subject property to another residential property in Kelowna. The applicant has also worked with Staff to bring forward a design that fits with current redevelopment of the surrounding blocks as well as neighbouring properties yet to be developed.

4.0 Proposal

4.1 Background

A 1940s single family home that was on the subject property was renovated and relocated to 2047 Doryan Street, Kelowna BC.

As part of this rezoning application, City of Kelowna Development Engineering has identified a 1.65 m dedication requirement along the front property line of the subject property in order to construct a sidewalk along the north side of Osprey Ave. This sidewalk will be located along the north side of the existing curb on the subject block. A sidewalk in this location will further the goals of pedestrian linkages within this urban centre. The application shows a revised property line set back 1.65 m from existing and has agreed to install two street trees on the subject property.

4.2 Project Description

The exterior finish of the first storey of the mixed use building will be coloured concrete with a textured finish. The remaining storeys will be a mix of materials such as stucco, split faced concrete masonry block, corrugated metal, and wood finish fibreglass siding.

A zero lot line is permitted and utilized along the west side of the property. This west wall of the proposed building is void of any architectural details such as windows in order to meet BC building code fire separation requirements and as such does not have the same aesthetic appeal as other exterior walls. The applicant has proposed a mural installation to address visual interest of this wall for the neighbouring properties and traffic along Pandosy Street. The final design has not been determined; however the applicant has noted the proposed size and location as shown on the conceptual elevations.

On the ground floor, the proposed building will provide retail space with two entrances to the upper storeys. Patio space for residential and office units are provided for in the front and rear of the building.

Three variances will be triggered with the proposed design. They include site coverage, height and parking. The site coverage is triggered as all parking is enclosed, screening views from neighbouring properties as noted as a guideline in Kelowna's OCP. The same exterior treatment along the front of the building will continue around the rear parking enclosure. The first storey of the development creates a site coverage of 91%, the upper storeys of the building have a site coverage of 37%.

The fifth storey requires the second variance as noted in the Zoning Analysis Table in this report. The footprint of the fifth storey is 22% of the storey below it and is set back 5.0 m from the front of the building, and 6.0 m from each side. This reduces the visibility of the top storey from

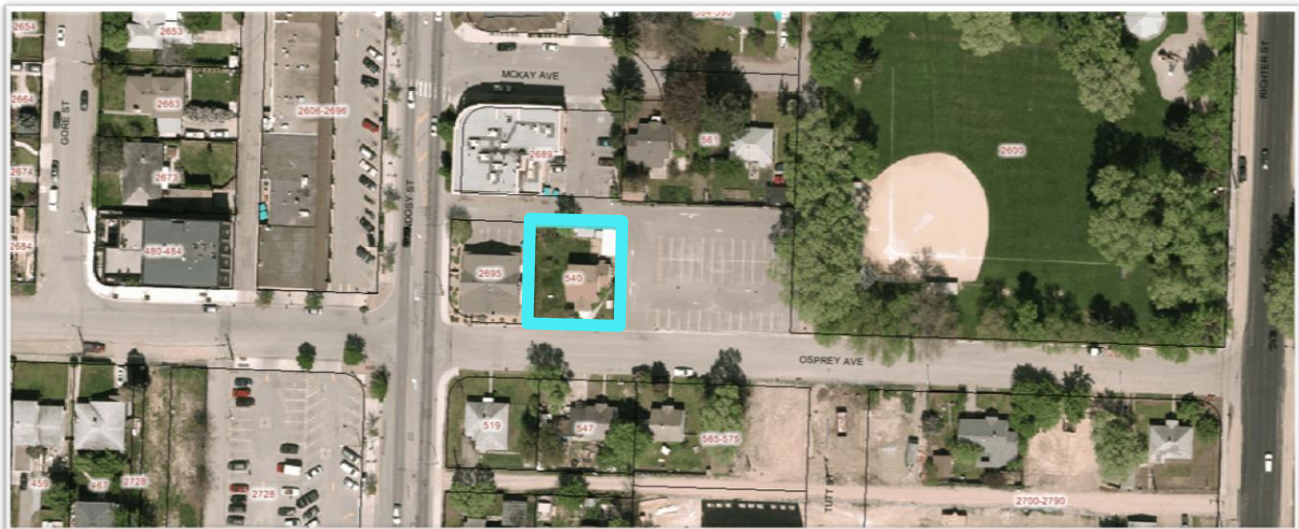
pedestrians and local traffic. The floor area of the fifth floor is 56.5 m², and together with patio trellis is 132.5 m².

The off street parking for this development is the third variance requested. The applicant has accommodated full size parking stalls for each residential unit along with the one accessible parking space for the commercial uses. The variance is for the six commercial spaces that are required as part of Zoning Bylaw No. 8000. The applicant will be required to provide the City funds as per the Payment in Lieu of Parking Bylaw No. 8125, Schedule A, South Pandosy Urban Town Centre: \$7,500.00 per off-street parking space.

Staff worked with the applicant with the parking requirements and agreed that at the very minimum the development would need to address the residential unit parking as well as provide the accessible parking of the commercial use. The Pandosy Urban Centre is in a transition of encouraging alternative means of transportation, the subject property is within 100 m of the BC Transit bus stops heading north and south along Pandosy Avenue. Staff feels that six residential units assists in increasing density of those living in this urban area which will in turn assist with parking issues for those that work in the area. Long term plans to increase multiple unit residential go hand in hand with tackling the parking problems in the area. By balancing the commercial and residential spaces a vibrant community with less need to travel is created. This development is an example where the residential outweighs the commercial space both in units and square meters.

The landscape design along Osprey Avenue takes into account safety and sightlines for pedestrian use as well as vehicular traffic using the adjacent lane. Trees will be installed with root protection for the building and City infrastructure.

Subject Property Map: 540 Osprey Ave



4.3 Site Context

The subject property is located on the north side of Osprey Avenue between Pandosy Street and Richter Street in the South Pandosy sector of Kelowna. The property is currently zoned RU6 - Two Dwelling Housing, identified in Kelowna's OCP as MRX, and is within the Permanent Growth Boundary.

Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C4	Retail Commercial Building

East	City of Kelowna Road Dedication	Non-Accessory Parking Lot
South	RU6	Single Family Dwelling
West	CRU6	Retail Commercial Building

4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	C4 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Minimum Lot Area	460 m ²	543.21 m ²
Minimum Lot Width	13.0 m	22.01 m
Minimum Lot Depth	30.0 m	24.68 m
Development Regulations		
Maximum Floor Area Ratio	1.3 + (0.2*(7/12)) = 1.42	1.42
Maximum Site Coverage	75%	91% ❶
Maximum Height	4 Storeys or 15.0 m	5 storeys or 17.8 m ❷
Minimum Front Yard	0.0 m	0.4 m
Minimum Side Yard (west)	0.0 m	0.0 m
Minimum Side Yard (east)	0.0 m	0.4 m
Minimum Rear Yard	0.0 m	0.0 m
Other Regulations		
Minimum Parking Requirements	1 per dwelling unit = 6 required 1.75 per 100m ² GFA of commercial space 382 m ² of GFA commercial (6.7) = 7 required <i>1 to be accessible parking</i> 13 total	6 residential 1 commercial (accessible) ❸ 7 total
Bicycle Parking Class I	0.5 per dwelling unit = 3 0.2 per 100 m ² GLA = 1	11
Bicycle Parking Class II	0.1 per dwelling unit = 1 0.6 per 100m ² GLA = 3	7
Private Open Space	6.0 m ² per bachelor = 24m ² 10.0 m ² per 1 bedroom = 10 m ² 15.0 m ² per +1 bedroom = 15.0m ²	44 m ² 16 m ² 92 m ²
❶ Indicates a requested variance to the Maximum Site Coverage ❷ Indicates a requested variance to the Maximum Height ❸ Indicates a requested variance to the Minimum Parking Requirements		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Goals For a Sustainable Future ¹ The objectives and policies in each of the OCP chapters are focused on creating a sustainable community. Some of the main goals of this OCP are to:

1. Contain Urban Growth. Reduce greenfield urban sprawl and focus growth in compact connected and mixed-use (residential and commercial) urban and village centres.

Land Use Designation Definitions

¹ City of Kelowna Official Community Plan, (Introduction Chapter).

Mixed Use (Residential / Commercial) (MXR)² Developments that provide for commercial floor space on the ground floor or above, with additional potential for residential units above the ground floor.

Development Process Compact Urban Form.³ 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.

Other Urban Centres⁴ : Locate taller buildings in the geographic centre of Urban Centres and generally decrease height moving away from the centre, to a maximum of 4 storeys at the periphery of the Urban Centres, where adjoining land is designated for single/two unit housing.

Site and Context Considerations⁵ Ensure all parking is screened from public view or contained within the structure.

Town Centre (S. Pandosy / Rutland / Capri-Landmark)⁶

A vibrant, amenity-rich area wherein different land uses frequently occur within the same building and almost always occur within a one-block area.

6.0 Technical Comments

6.1 Building & Permitting Department

- Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permit(s)
- Placement permits are required for any sales or construction trailers that will be on site. The location(s) of these are to be shown at time of development permit application.
- A Hoarding permit is required and protection of the public from the staging area and the new building area during construction. Location of the staging area and location of any cranes should be established at time of DP.
- A Building Code analysis is required for the structure at time of building permit applications, but the following items may affect the form and character of the building(s):
 - Any security system that limits access to exiting needs to be addressed in the code analysis by the architect.
 - Access to the roof is required per NFPA and guard rails may be required and should be reflected in the plans if required.
 - We strongly recommend that the developer have his professional consultants review and prepare solutions for potential impact of this development on adjacent properties. Any damage to adjacent properties is a civil action which does not involve the city directly. The items of potential damage claims by adjacent properties are items like settlement of foundations (preload), damage to the structure during construction, additional snow drift on neighbour roofs, excessive noise from mechanical units, vibration damage during foundation preparation work etc.

² City of Kelowna Official Community Plan, (Future Land Use Chapter).

³ City of Kelowna Official Community Plan, Policy 5.3.2 (Development Process Chapter).

⁴ City of Kelowna Official Community Plan, Policy 5.5.1 (Development Process Chapter).

⁵ City of Kelowna Official Community Plan, Policy 5.5.1 (Development Process Chapter).

⁶ City of Kelowna Official Community Plan, Policy D.1.19 (Urban Design Development Permit Areas Chapter).

- A Geotechnical report is required to address the sub soil conditions and site drainage at time of building permit application.
- Fire resistance ratings are required for storage, janitor and/or garbage enclosure room(s). The drawings submitted for building permit is to clearly identify how this rating will be achieved and where these area(s) are located.
- An exit analysis is required as part of the code analysis at time of building permit application. The exit analysis is to address travel distances within the units, number of required exits per area, accessibility etc
- Washroom requirements for base building are to be addressed in the building permit application. This will be addressed at time of building permit application.
- Size and location of all signage to be clearly defined as part of the development permit. This should include the signage required for the building addressing to be defined on the drawings per the bylaws on the permit application drawings.
- Full Plan check for Building Code related issues will be done at time of Building Permit applications. Please indicate how the requirements of Radon mitigation and NAFS are being applied to this structure.

6.2 Development Engineering Department

See Schedule (A), Revised Development Engineering Memorandum dated April 23, 2015

6.3 FortisBC Inc - Electric

- There are primary distribution facilities within the lane adjacent the subject's north property line. 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.

Application Chronology

Date of Application Received:	January 28, 2015
Date of Revised Drawings Received:	June 16, 2015
Date Public Consultation Completed:	July 16, 2015

Report prepared by:

Tracey Yuzik, Planner

Reviewed by:

☐

Lindsey Ganczar, Planning Supervisor

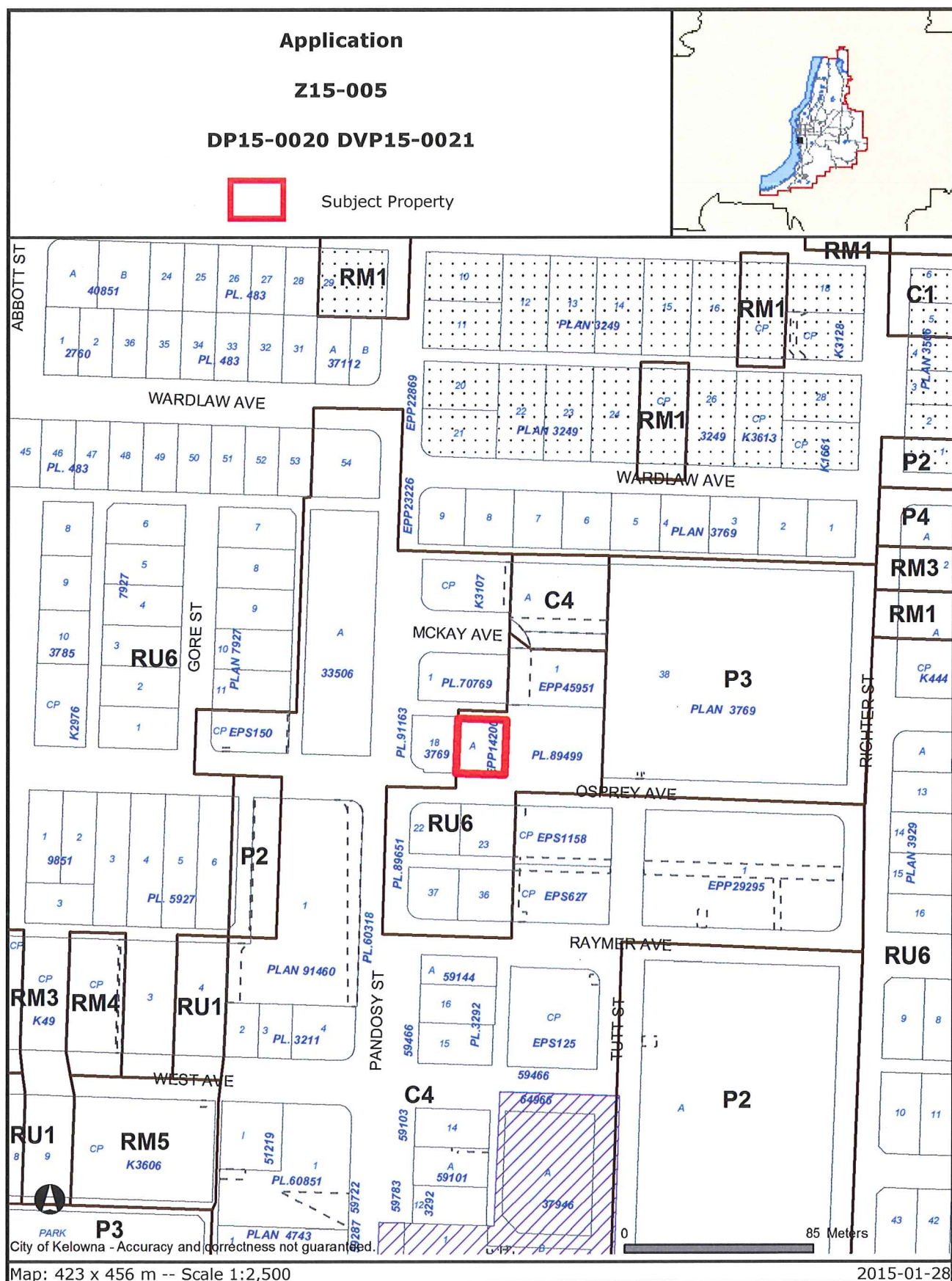
Approved for Inclusion:

☐

Ryan Smith, Community Planning Department Manager

Attachments:

Subject Property Map
Schedule (A) Development Engineering Memorandum
Conceptual Site Plan
Conceptual Elevations
Conceptual Landscape 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.

CITY OF KELOWNA
MORANDUM

Date: April 23, 2015
File No.: Z15-0005

To: Urban Planning (TY)

From: Development Engineering Manager(SM)

Subject: Proposed Mixed Use - 540 Osprey Ave *REVISED*

RU6 to C4

Development Engineering has the following requirements associated with this application. 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

.1) Domestic Water and Fire Protection

- a) The development site is presently serviced with a small diameter (13-mm) water service. The developer's consulting mechanical engineer will determine the domestic, fire protection requirements of this proposed development and establish hydrant requirements and service needs. Only one service will be permitted for this development.
- b) It is apparent that the existing 100mm diameter watermain within Osprey Avenue is substandard and will not support this development. The applicant, at his cost, will arrange for upgrading 27m of watermain and the installation of one new larger water service. The estimated cost of this construction for bonding purposes is **\$12,000.00**.
- c) The developer must obtain the necessary permits and have all existing utility services disconnected prior to removing or demolishing the existing structures. The City of Kelowna water meter contractor must salvage existing water meters, prior to building demolition. If water meters are not salvaged, the developer will be invoiced for the meters.

.2) Sanitary Sewer

- (a) The development site is presently serviced with a 100mm-diameter sanitary sewer service. The developer must engage a consulting mechanical engineer to determine the requirements of this development. Only one service will be permitted for this development.
- (b) The applicant, at his cost, will arrange for the capping of unused services at the main and the installation of one larger service. The estimated cost of this construction for bonding purposes is **\$5,000.00**

.3) Storm Drainage

- (a) The developer must engage a consulting civil engineer to provide a storm water management plan for these sites which meets the requirements of the City Storm Water Management Policy and Design Manual. The storm water management plan must also include provision of lot grading plans, minimum basement elevations (MBE), if applicable, and provision of a storm drainage service and recommendations for onsite drainage containment and disposal systems.
- (b) Only one service will be permitted for this development. The applicant, at his cost, will arrange the installation of one overflow service. The estimated cost of this construction for bonding purposes is **\$5,000.00**

.4) Road Improvements

- (a) *Osprey Avenue fronting this development must be upgraded to an urban standard to include a concrete sidewalk, and relocation or adjustment of existing utility appurtenances if required to accommodate the upgrading construction. The estimated cost of the road improvements for bonding purposes is **\$3,200.00***
- (b) MacKay Ave realignment fronting this development triggers the installation of a concrete sidewalk. The estimated cost of this road improvement for bonding purposes is **\$3,600.00**.
- (c) The lane fronting the north boundary of this development is constructed to a paved standard, therefore the only upgrade that is required is the pavement widening. The estimated cost of the road improvements for bonding purposes is **\$1,000.00**

.5) Road Dedication and Subdivision Requirements

By registered plan to provide the following:

- a) *Dedicate 1.5m width along the full frontage of Osprey Ave.*
- b) Grant statutory rights-of-way if required for utility services.

.6) Electric Power and Telecommunication Services

The electrical and telecommunication services to this building as well as the local distribution wiring must be installed in an underground duct system, and the building must be connected by underground ducting. 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.

.7) Engineering

Road and utility construction design, construction supervision, and quality control supervision of all off-site and site services including on-site ground recharge 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) Design and Construction

- a) Design, construction supervision and inspection of all off-site civil works and site servicing must be performed by a Consulting Civil Engineer and all such work is subject to the approval of the City Engineer. Drawings must conform to City standards and requirements.
- b) Engineering drawing submissions are to be in accordance with the City's "Engineering Drawing Submission Requirements" Policy. Please note the number of sets and drawings required for submissions.
- c) Quality Control and Assurance Plans must be provided in accordance with the Subdivision, Development & Servicing Bylaw No. 7900 (refer to Part 5 and Schedule 3).
- d) A "Consulting Engineering Confirmation Letter" (City document 'C') must be completed prior to submission of any designs.
- e) Before any construction related to the requirements of this subdivision application commences, design drawings prepared by a professional engineer must be submitted to the City's Works & Utilities Department. The design drawings must first be "Issued for Construction" by the City Engineer. On examination of design drawings, it may be determined that rights-of-way are required for current or future needs.

.9) Servicing Agreements for Works and Services

- a) A Servicing Agreement is required for all works and services on City lands in accordance with the Subdivision, Development & Servicing Bylaw No. 7900. The applicant's Engineer, prior to preparation of Servicing Agreements, must provide adequate drawings and estimates for the required works. The Servicing Agreement must be in the form as described in Schedule 2 of the bylaw.
- b) Part 3, "Security for Works and Services", of the Bylaw, describes the Bonding and Insurance requirements of the Owner. The liability limit is not to be less than \$5,000,000 and the City is to be

.10) Latecomer Protection

Under provisions of Section 990 of the BC Municipal Act, and in conformance with the City of Kelowna Subdivision Development & Servicing Bylaw No. 7900, the owner is eligible to apply for latecomer protection for the following:

- i) Watermain replacement within Osprey Avenue

.11) Geotechnical Report

As a requirement of this application the owner must provide a geotechnical report prepared by a Professional Engineer qualified in the field of hydro-geotechnical survey to address the following:

- (a) Area ground water characteristics.
- (b) Site suitability for development, unstable soils, etc.
- (c) Drill and / or excavate test holes on the site and install piezometers if necessary. Log test hole data to identify soil characteristics, identify areas of fill if any. Identify unacceptable fill material, analyse soil sulphate content,

Identify unsuitable underlying soils such as peat, etc. and make recommendations for remediation if necessary.

- (d) List extraordinary requirements that may be required to accommodate construction of roads and underground utilities as well as building foundation designs.
- (e) Additional geotechnical survey may be necessary for building foundations, etc.

.12) 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.

.13) Bonding and Levy Summary

(a) Bonding

Sanitary & Storm service upgrades	\$10,000.00
Watermain and service upgrade	\$12,000.00
Road Frontage Improvements	\$ 7,800.00

Total Bonding \$29,800.00

NOTE: The bonding amounts 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. The owner must also enter into a servicing agreement in a form provided by the City.

.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). in the amount of **\$1,058.40** (\$1008.00 + 50.40GST)

20) Development Permit and Site Related Issues

Access and Manoeuvrability

- (i) The future, access and egress from the lane way to the north of the site may be restricted to right-in and right-out onto Pandosy Street with a future median.



Steve Muenz, P. Eng.
Development Engineering Manager
SS

Note:
Artist renderings may appear darker than actual colour.

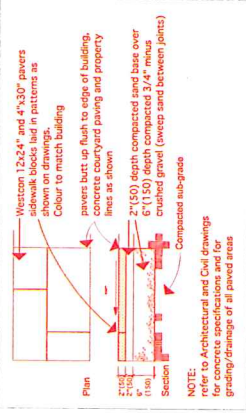


PLANT LIST:

NOTES:

1. All planting materials and procedures to British Columbia Landscape and Nursery Association/ British Columbia Society of Landscape Architects joint Landscape Standard, latest edition.
2. All plant material to be certified P. ramorum free.
3. All trees, shrubs and groundcovers to be irrigated using a drip system.
4. Growing medium to the following minimum depths:
 - groundcover areas 200mm
 - shrub areas 300mm
 - tree pits to be dug 200mm larger than root balls in all directions and filled with growing medium
5. All new trees to be set back a minimum of 0.75 meters from all underground utilities.
6. Mulch requirements:
 - 75mm minimum depth of "Ogo Grow" brand composted mulch over all planting beds.

PAVING DETAIL (nts):



CITY OF KELOWNA
BYLAW NO. 11133
Z15-0005 - 0958123 BC Ltd., Inc. No. BC0958123
540 Osprey Avenue

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 Lot A, District Lot 14, ODYD, Plan EPP14200 located on Osprey Avenue, Kelowna, B.C., from the RU6 - Two Dwelling Housing zone to the C4 - Urban Centre Commercial zone.
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

CITY OF KELOWNA
BYLAW NO. 11100
TA14-0021 - New CD25 - Light Industrial-Residential Mixed Use Zone

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, **Section 1 - General Administration, 1.3 Zoning Map, 1.3.1** be amended by adding the following to the table under **Section 18 - Comprehensive Development Zone**:

CD25	Light Industrial-Residential Mixed Use Zone
------	---

2. AND THAT **Schedule 'B' - Comprehensive Development Zones**, be amended by adding a new **CD25 - Light Industrial-Residential Mixed Use Zone** as attached to and forming part of this bylaw.
3. 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 1st day of June, 2015.

Considered at a Public Hearing on the 30th day of June, 2015.

Read a second and third time by the Municipal Council this 30th day of June, 2015.

Approved under the Transportation Act this 9th day of July, 2015.

Audrie Henry
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Schedule 'B' Comprehensive Development Zones

CD25 - Light Industrial-Residential Mixed Use Zone

1.1 Purpose

The intent of this zone is to permit a mixed light industrial and residential use development. The development will consist of residential uses in combination with small light industrial uses to be contained in the same structure. The purpose for this zone is to provide for a transition between the adjacent residential on one side and the light industrial on the other side. This strategic use of the site allows a residence in close proximity to a superior class of clean industrial and office space where compatibility amongst all uses is paramount.

1.2 Principal Uses

The principal uses in this zone are as follows:

- a) **broadcasting studios**
- b) **commercial storage**
- c) **contractor services, limited**
- d) **custom indoor manufacturing**
- e) **equipment rentals**
- f) **food primary establishment**
- g) **household repair services**
- h) **industrial high technology research and product design**
- i) **liquor primary establishment, minor**
- j) **mobile catering food services**
- k) **participant recreation services, indoor**
- l) **private clubs**
- m) **multiple dwelling housing**

1.3 Secondary Uses

The secondary uses in this zone are as follows:

- a) **home based business, minor**
- b) **retail (ancillary to principle uses)**

1.4 General Conditions of Use

1.4.1 Industrial

- a) No use shall produce dust or other emissions that exceed standards set by provincial legislation without the authorization from appropriate provincial agency.

- b) No use shall produce odor, glare, vibration or noise that creates a nuisance or that impairs the use, safety or livability of adjacent properties including the residential units above the industrial.
- c) All principal uses, except residential, shall be confined to the lower units with all operations, storage, office and administration functions.
- d) Outdoor operations, storage or associated long term **vehicle** parking is not permitted on the premises.
- e) Contractors and other similar operators requiring fleet vehicles are not permitted to park more than two **vehicles** in outdoor parking areas.
- f) **Drive-in food services** are not a permitted form of development in this zone.
- g) All lighting shall be of a residential character in design, downward directional and constructed at the lowest elevation practical for the intended application so as to minimize light trespass to residential units above.
- h) Mezzanine floors within the first storey may only be used for office or light storage. Operations, residential use and associated industrial activity are not permitted on mezzanine floors.
- i) Principal uses other than residential are not permitted above the first storey.
- j) Auto body repair and paint shops are prohibited in this zone.

1.4.2 Residential

- a) All residential uses shall be located above the first storey.
- b) Garages for residential units shall be on the second storey, accessed from ground level from the rear of the building.
- c) Residential outdoor space is restricted to amenity areas on decks and balconies. Common landscaped areas are accessible as passive green space for all homeowners.
- d) Separate entrances to each residential unit will be located on the upper floor and separated from the industrial uses respecting all British Columbia Building Code requirements that are in force.
- e) **Home based businesses** shall only be permitted within a dwelling unit.

1.4.3 Outdoor Storage

- a) No outdoor storage of any kind is permitted.
- b) **Ancillary** storage shall not be permitted in compounds, **accessory buildings**, or **storage containers**. Outdoor storage racks are also not permitted on site, except when exchanging equipment and apparatus from inside the industrial

units. Duration of such racking will not be permitted longer than one (24 hour) day.

- c) All garbage bins shall be located and screened in accordance with the City of Kelowna Zoning Bylaw requirements. Access for pick up and drop off of garbage bins shall not conflict with residential or customer traffic and parking.
- d) Trucks and company fleet vehicles may not be parked in designated on-site parking spaces while being used for storage, outdoor displays or sales and in any state of disrepair.

1.4.4 Parking

- a) Parking for residential tenants shall be separate from parking designated for the industrial uses and associated customers.
- b) Residential uses will be required to contain their own parking spaces within the structure in accordance to the City of Kelowna Zoning Bylaw.

1.4.5 Home Based Business

- a) A **home based business, minor** will be permitted in accordance to the City of Kelowna zoning provisions and only if associated with the principal residential use.
- b) A home occupation/home based business will not be permitted to occupy additional residential units in the building.

1.4.6 Retail Commercial

- a) Retail for the purposes of the CD25 zone means where goods, merchandise and other materials are offered for sale at retail to the general public.
- b) Retailing of any goods and services may only be permitted if such goods and services are directly related to the principal use, must entail minor retail occurrences and occupy very limited space to displays within the industrial unit. The maximum floor area devoted to retailing and such accessory activities shall not exceed 25% of the **gross floor area** of the **building(s)**.

1.4.7 Signs

- a) The type, size, design, amount and placement of signs shall be subject to Development Permit Area Guidelines and provisions of the City of Kelowna Sign Bylaw.

1.4.8 Landscaping, Screening and Fencing

- a) All landscaping of yards shall be in accordance with the City of Kelowna Zoning Bylaw.
- b) Visual screening of any appurtenances and equipment on building walls and rooftops is required in accordance with the Development Permit Area Guidelines.

- c) Garbage receptacles and bins must be screened from view with appropriate opaque fencing and landscape materials which are consistent with the overall site design.
- d) All other requirements shall be subject to the Development Permit Area Guidelines.

1.4.9 Appurtenances/Mechanical

- a) Vents, ducts, stacks and any other appurtenances or mechanical equipment that may be required for the lower floor uses shall not direct noise, dust or odors towards or onto the upper floor uses or adjacent uses.
- b) All external appurtenances and mechanical equipment must be designed to not be visually obtrusive or are to be properly screened.

1.5 Floor Area Ratio/Lot Coverage

- a) The maximum **floor area ratio** is 0.20.
- b) The maximum **site coverage** is 50% including building, drive lanes and parking areas.

1.6 Setbacks

- a) The minimum front yard is 10m for all buildings and structures.
- b) The minimum side yards are 25m (east side) and 11.5m (west side) for all buildings and structures.
- c) The minimum rear yard is 41m for all buildings and structures (abutting other zones).

1.7 Height

- a) The maximum height is 14m for the combined industrial and residential building.

1.8 Parking and Loading (Off-street)

- a) Parking shall be provided in accordance with the Parking and Loading regulations of the City of Kelowna Zoning Bylaw.
- b) Off-street parking space requirements for the industrial uses will account for 41 stalls, including space for tenants and customers.
- c) Off-street parking space requirements for the residential uses will account for 14 stalls, including the enclosed garages and visitor parking spaces.
- d) Loading and unloading bays are required at one stall per industrial unit (9 oversized stalls).

1.9 Development Permit Guidelines

- a) Every application for CD25 Zone shall be accompanied by an application for a Development Permit.

CITY OF KELOWNA

BYLAW NO. 11101

**Official Community Plan Amendment No. OCP14-0023 -
Watermark Ventures Ltd. formerly known as Georg-Michael Holzhey
Ltd. Inc. No. BC0812540
205 Lougheed Road**

A bylaw to amend the "*Kelowna 2030* - Official Community Plan Bylaw No. 10500".

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

1. THAT Map 4.1 - **GENERALIZED FUTURE LAND USE** of "*Kelowna 2030* - Official Community Plan Bylaw No. 10500" be amended by changing the Generalized Future Land Use designation of Lot A, Section 2, Township 23, ODYD, Plan KAP84518, located on Lougheed Road, Kelowna, B.C., from the IND - Industrial designation to the IND-T - Industrial -Transitional designation;
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 1st day of June, 2015.

Considered at a Public Hearing on the 30th day of June, 2015.

Read a second and third time by the Municipal Council this 30th day of June, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 11102
Z14-0048 - Watermark Ventures Ltd. formerly known as
Georg-Michael Holzhey Ltd. Inc. No. BC0812540
205 Lougheed Road

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 Lot A, Section 2, Township 23, ODYD, Plan KAP84518, located on Lougheed Road, Kelowna, B.C., from the I1 - Business Industrial zone to the CD25 - Light Industrial/Residential Mixed Use zone.
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 1st day of June, 2015.

Considered at a Public Hearing on the 30th day of June, 2015.

Read a second and third time by the Municipal Council this 30th day of June, 2015.

Approved under the Transportation Act this 8th day of July, 2015.

Audrie Henry
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 11111
Z15-0028 - University Business Park Ltd., Inc. No. 431185
3699 Hwy 97 N

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 Lot 3, Section 35, Township 26, ODYD, Plan KAP57139 located on Hwy 97 N, Kelowna, B.C., from the C3 - Community Commercial zone to the C3lp/rls - Community Commercial (liquor primary/retail liquor sales) zone.
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 13th day of July, 2015.

Considered at a Public Hearing on the 28th day of July, 2015.

Read a second and third time by the Municipal Council this 28th day of July, 2015.

Approved under the Transportation Act this 5th day of August, 2015.

Blaine Garrison
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 11114
TA15-0006 - City of Kelowna
New C3rls - Community Commercial (Retail Liquor Sales) and
C3lp - Community Commercial (Liquor Primary)

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, **Section 1 - General Administration**, under **Section 14 - Commercial Zones** be amended by adding "C3rls" under Column 1 and "Community Commercial (Retail Liquor Sales)" under Column 2 in its appropriate location;
2. AND THAT **Section 14 - Commercial Zones**, be amended by adding to the title in its appropriate location the following:
"C3rls - Community Commercial (Retail Liquor Sales)
C3lp - Community Commercial (Liquor Primary)"
3. AND THAT **14.3.2 Principal Uses** be amended by:
 - a) Deleting "(C3lp/rls only)" from (q) liquor primary establishment, major(C3lp/rls only) and replacing it with "(C3lp and C3lp/rls only)";
 - b) Deleting "(C3lp/rls only)" from (aa) retail liquor sales establishment (C3lp/rls only) and replacing it with "(C3rls and C3lp/rls only)";
4. 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 27th day July, 2015.

Considered at a Public Hearing on the 11th day of August, 2015.

Read a second and third time by the Municipal Council this 11th day of August, 2015.

Approved under the Transportation Act this 17th day of August, 2015.

Blaine Garrison
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA

BYLAW NO. 11124

**Heritage Revitalization Agreement Authorization Bylaw HRA15 - 0001 -
Grant Good, Marie McAlpine, F. Devillier Medical Prof. Corp. Janette Armstrong
and F. De Villiers Medical Prof. Corp., Inc. No. 101092982
2124 Pandosy Street**

WHEREAS a local government may, by bylaw, enter into a heritage revitalization agreement with the Owner of property which Council deems to be of heritage value pursuant to section 966 of the *Local Government Act*;

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Heritage Revitalization Agreement with Grant Good, Marie McAlpine, F. Devillier Medical Prof. Corp., Janette Armstrong and F. De Villiers Medical Prof. Corp., Inc. No. 101092982 for the property located at 2124 Pandosy Street, Kelowna, B.C.;

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

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Heritage Revitalization Agreement with Grant Good, Marie McAlpine, F. Devillier Medical Prof. Corp., Janette Armstrong and F. De Villiers Medical Prof. Corp., Inc. No. 101092982 for the property known as the "Cadder House" located at 2124 Pandosy Street, Kelowna, B.C., and legally described as:

Strata Lot 1, 2, 3, 4 and 5, District Lot 14, ODYD, Strata Plan KAS3144 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on form V;

In the form of such Agreement attached to and forming part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement, as well as any conveyances, deeds, receipts and other documents in connection with the attached agreement, and to affix the corporate seal of the City of Kelowna to same.
3. This bylaw shall come into full force and effect as of and from the date of adoption.
4. Heritage Revitalization Agreement Authorization Bylaw No. 9184 – HRA03-0003 – 2124 Pandosy Street and all amendments thereto, are hereby repealed.

Read a first time by the Municipal Council this 27th day of July, 2015.

Amended at first reading by the Municipal Council this 11th day of August, 2015.

Considered at a Public Hearing this 11th day of August, 2015.

Read a second and third time by the Municipal Council this 11th day of August, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE "A"

HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA15-0001			
Cir	Department	Date	Init.
	Planning		
	Development Engineering		
	Building & Permitting		
	City Clerk		

THIS AGREEMENT dated as of the day of , 201 .

BETWEEN:

CITY OF KELOWNA, a Municipal Corporation having offices at
1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

AND:

THE OWNERS OF STRATA LOTS 1, 2, 3, 4 AND 5, KAS3144
2124 PANDOSY STREET
KELOWNA, BC
V1Y 1S6

(herein called the "OWNERS")

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Owner of property identified as having heritage value, pursuant to Section 966 of the *Local Government Act*;

AND WHEREAS the Owners own certain real property on which is situated a building of heritage value, pursuant to the City's Heritage Register, which property and building are located at 2124 Pandosy Street, Kelowna, British Columbia and legally described as:

Strata Lot 1, KAS 3144	PID: 026-923-181
Strata Lot 2, KAS 3144	PID: 026-923-190
Strata Lot 3, KAS 3144	PID: 026-923-203
Strata Lot 4, KAS 3144	PID: 026-923-211
Strata Lot 5, KAS 3144	PID: 026-923-220

SCHEDULE "A" - Page 2.

(herein called the "Heritage Lands")
AND WHEREAS the units are located within two (2) buildings on the Heritage Lands, herein called the "Heritage Buildings";

AND WHEREAS the Owners have presented to the City a proposal for the use, development and preservation of the Heritage Lands and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 966 of the *Local Government Act*;

AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Section 890 through 894 of the *Local Government Act* apply;

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 976 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 977 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 Heritage Revitalization

- 1.1 The parties agree that the Heritage Lands has heritage value, deserving of protection and conservation and the Owner specifically agrees to restore, maintain, preserve and protect the heritage character of the buildings located on the Heritage Lands in accordance with attached Schedules "AA", "BB", and "CC".
- 1.2 The parties agree that the Heritage Lands may, notwithstanding the current zoning on the Heritage Lands, be used for the following permitted uses:
 - (a) A maximum of seven units as shown in Schedule "AA" provided that:
 - i. The units will be limited to the following sizes:
 - Strata Lot 1, Carriage House: 51.6 m²
 - Strata Lot 1, Proposed Basement Unit A: 65 m²
 - Strata Lot 1, Proposed Basement Unit B: 40 m²
 - Strata Lot 2: 86.2 m²
 - Strata Lot 3: 111 m²
 - Strata Lot 4: 75 m²
 - Strata Lot 5: 71 m²
 - ii. The use of the Heritage Lands shall be predominantly residential. A maximum of two units may be used for commercial purposes at any given time;

SCHEDULE "A" - Page 3.

- iii. The principal uses permitted on the Heritage Lands are:
 - Apartment, Short Term Rental
 - Apartment Housing
 - Congregate Housing
 - Group Home, Minor
 - Supportive Housing
 - iv. The secondary uses permitted on the Heritage Lands are:
 - Agriculture, Urban
 - Carriage House
 - Child Care, Minor
 - Home Based Business, Major
 - Home Based Business, Minor
 - Offices
 - Wellness Studio
 - v. The hours of operation for all commercial enterprises located on the subject property shall be between 8:00 am and 7:00 pm, Monday through Friday; and
 - vi. Fourteen (14) on-site parking stalls shall be provided, as shown on Schedule "AA".
- (b) No additional units shall be developed without an application to amend this agreement.
 - (c) The owner agrees to maintain the designation of the property under Section 967 of the *Local Government Act* as a Heritage Property.
- 1.3 The parties agree that, except as varied or supplemented by the provisions of this Agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the Heritage Lands.
- 1.4 Where a Heritage Alteration Permit is required, the discretion to approve, refuse or revise such permit is delegated by Council to the Community Planning Department Manager.

2.0 Definitions

The following words, terms, and phrases, wherever they occur in this Agreement, shall have the meaning assigned to them as below. For all other definitions and regulations, refer to Zoning Bylaw No. 8000, as amended.

AGRICULTURE, URBAN means the cultivation of a portion of a parcel for the production of food including fruits, vegetables, nuts and herbs for human consumption only. This use is limited to production activities which are not deemed to be noxious or offensive to adjacent properties or the general public. Activities that produce or emit hazards, odour, dust, smoke, noise, effluent, light pollution, glare, or other emission are prohibited. This use is limited to a maximum of 25 m² in area on this property.

APARTMENT, SHORT TERM RENTAL means apartment housing having a principal common entrance and cooking facilities and furnishings within each dwelling. There is no minimum tenancy period for this use on this property.

APARTMENT HOUSING means any physical arrangement of attached residential units, intended to be occupied by separate households. The minimum tenancy period is one (1) month.

CARRIAGE HOUSE means a dwelling unit located within a building that is subordinate to the principal building on the property.

CHILD CARE, MINOR means an establishment licensed as required under the *Community Care and Assisted Living Act* intended to provide care, educational services, and supervision to no more than eight (8) children.

COMMERCIAL USE means the use of a unit on the Heritage Lands as a Child Care, Minor; Home Based Business, Major; Offices; or Wellness Studio.

CONGREGATE HOUSING means housing in the form of multiple sleeping units where residents are provided with common living facilities, meal preparation, laundry services and room cleaning. Congregate housing may also include other services such as transportation for routine medical appointments and counselling.

GROUP HOME, MINOR means the use of one or more units as a care facility licensed as required under the *Community Care and Assisted Living Act* to provide room and board for not more than a total of six (6) residents with physical, mental, social, or behavioural problems that require professional care, guidance and supervision. A group home, minor may include, to a maximum of four (4), any combination of staff and residents not requiring care. The character of the use is that the occupants live together as a single housekeeping group and use a common kitchen.

HOME BASED BUSINESS, MAJOR means development consisting of the use of a dwelling unit for a business by a resident who resides for more than 240 days of a year at that unit. The business must be secondary to the residential use of the unit and shall not change the residential character of the principal building.

HOME BASED BUSINESS, MINOR means development consisting of the use of a dwelling unit for a business by a resident who resides for more than 240 days of a year at that unit. The business must be secondary to the residential use of the unit and shall not change the residential character of the principal building.

OFFICES means development primarily for the provision of professional, management, administrative, consulting, medical or financial services in an office setting. Office uses are limited to those that operate by appointment only.

PRINCIPAL USE means the main or primary use of the Heritage Lands that is provided for in the list of permitted uses in this Heritage Revitalization Agreement.

SECONDARY USE means the use of the Heritage Lands that must be in conjunction with a principal use and is provided for in the list of permitted uses in this Heritage Revitalization Agreement.

SUPPORTIVE HOUSING means housing consisting of dwellings with support services on-site that may or may not include collective dining facilities, laundry facilities, counselling, educational services, homemaking and transportation.

WELLNESS STUDIO means development for wellness counselling on a one-to-one basis or in a group setting to a maximum of ten (10) individuals. This use may include, but is not limited to, a physical fitness, yoga, pilates or weight loss studio and may include standard ancillary facilities.

3.0 Proposed Development

- 3.1 The Owners agree not to alter the exterior of the Heritage Buildings except pursuant to a Heritage Alteration Permit issued by the City and in accordance with this Agreement.
- 3.2 The Owners agree to maintain the exterior of the Heritage Buildings on the Heritage Lands in general accordance with the design attached hereto as Schedule "BB" and forming part of this Agreement.
- 3.3 The Owners agree to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedule "CC" and forming part of this agreement.
- 3.4 The Owners agree to provide and pay for all servicing required by the proposed development of the Heritage Lands and to provide required bonding for same, including, but not limited to: domestic water and fire protection, sanitary sewer, storm drainage, road improvements, road dedications and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting.

4.0 Development Engineering Requirements

- 4.1 The Owners agree that any development on the Heritage Lands must meet the requirements of Subdivision, Development and Servicing Bylaw No. 7900, as amended.

5.0 Building & Permitting Requirements

- 5.1 The Owners agree that any development on the Heritage Lands must meet the requirements of the British Columbia Building Code of the day.

6.0 Damage or Destruction

- 6.1 In the event that the Heritage Building is damaged, the parties agree as follows:

- (a) The Owners may repair the Heritage Building in which event the Owners shall forthwith commence the repair work and complete same within one year of the date of damage;

OR, in the event that the Heritage Building is destroyed,

- (b) The City will, by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

7.0 Breach

- 7.1 In the event that the Owners is in breach of any term of this Agreement, the City may give the Owners notice in writing of the breach and the Owners shall remedy the breach within 30 days of receipt of the notice. In the event that the Owners fails to remedy the breach within the time allotted by the notice, the City may by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act* cancel this Agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

8.0 Amendment

- 8.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:
- (a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;
 - (b) By Heritage Alteration Permit (HAP), issued pursuant to Section 972 of the *Local Government Act*.

9.0 Representations

- 9.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

10.0 Statutory Functions

- 10.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

11.0 Enurement

- 11.1 This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

12.0 Other Documents

- 12.1 The Owners agree at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

13.0 Notices

13.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

(a) To the City:

City of Kelowna
1435 Water Street
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

(b) To the Owners:

THE OWNERS OF STRATA LOTS 1, 2, 3, 4 AND 5, KAS3144
2124 PANDOSY STREET
KELOWNA, BC
V1Y 1S6

Or, to such other address to which a party hereto may from time to time advise in writing.

14.0 No Partnership or Agency

14.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

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

CITY OF KELOWNA
by its authorized signatories

(Mayor)

(City Clerk)

SCHEDULE "A" - Page 8.

THE OWNERS OF STRATA LOTS 1, 2, 3, 4 AND 5, KAS3144

In the presence of:

Witness (print name)

Grant Wayne Good (The Owner of
Strata Lot 1)

Address

Occupation

In the presence of:

Witness (print name)

Marie Hillevi McAlpine (The Owner of
Strata Lot 2)

Address

Occupation

In the presence of:

Witness (print name)

F. DeVilliers Medical Prof. Corp. (The
Owner of Strata Lot 3)

Address

Occupation

SCHEDULE "A" - Page 9.

In the presence of:

Witness (print name)

Janette Armstrong (The Owner of Strata
Lot 4)

Address

Occupation

In the presence of:

Witness (print name)

F. De Villiers Medical Prof. Corp.,
Inc.No. 101092982 (The Owner of
Strata Lot 5)

Address

Occupation

[illegible]

REVISED PLANS

CADDER HOUSE
BIRMINGHAM, ALA.

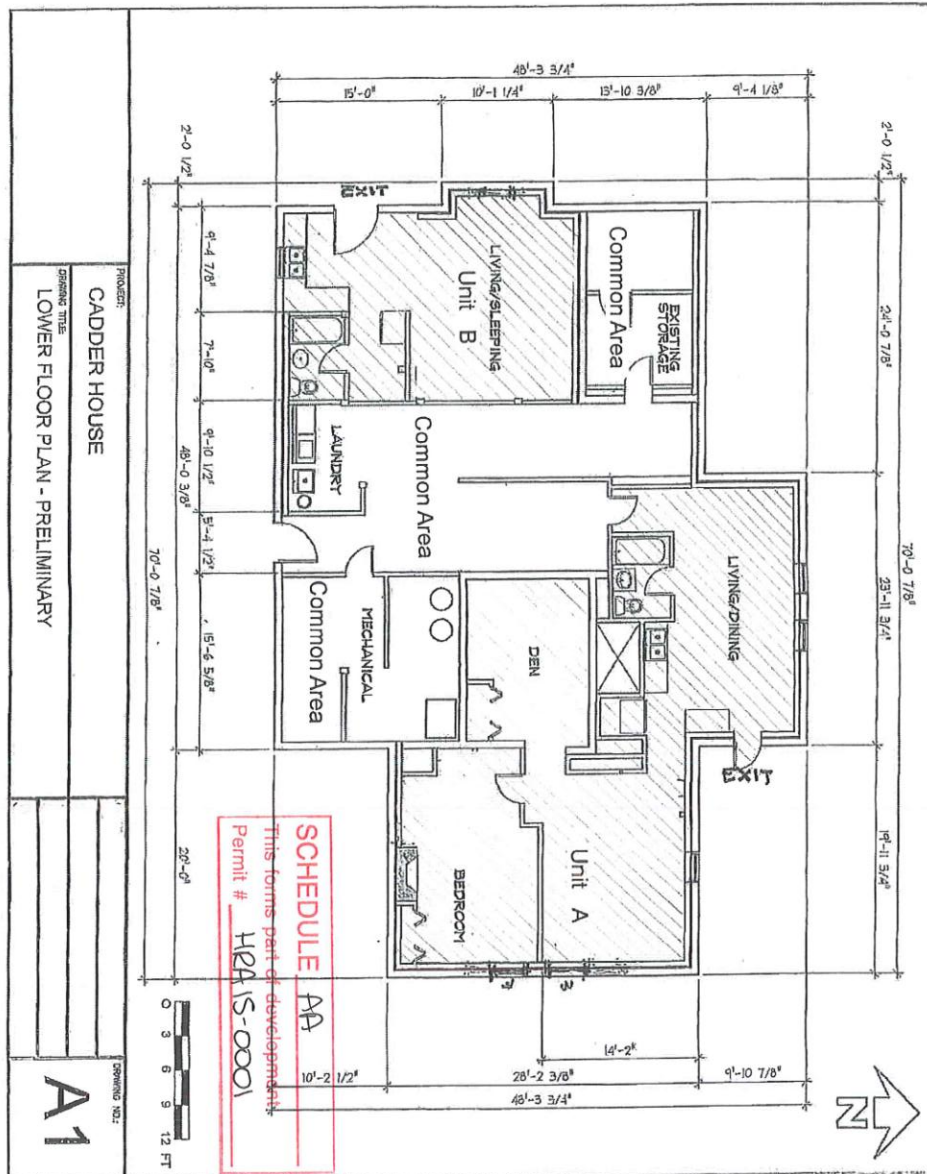
MAIN LEVEL
FIRST FLOOR PLAN

This forms part of development
Permit # **APRIS-0001**

Date _____

Signature _____

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Architectural drawing of a two-story house with a gabled roof and a chimney. The drawing is labeled "REVISED PLANS" in large, bold, capital letters. Below the drawing, there is a section for "SCHEDULE 86" and a table for "This form is part of development".

REVISED PLANS

SCHEDULE 86

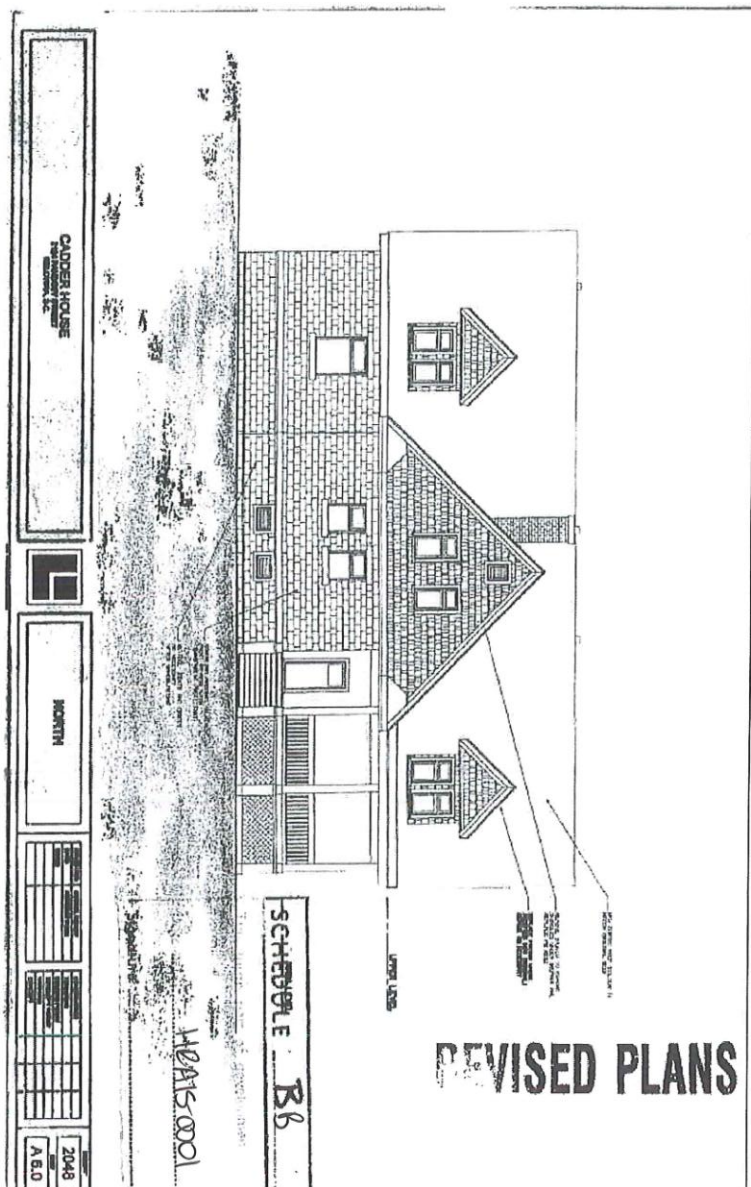
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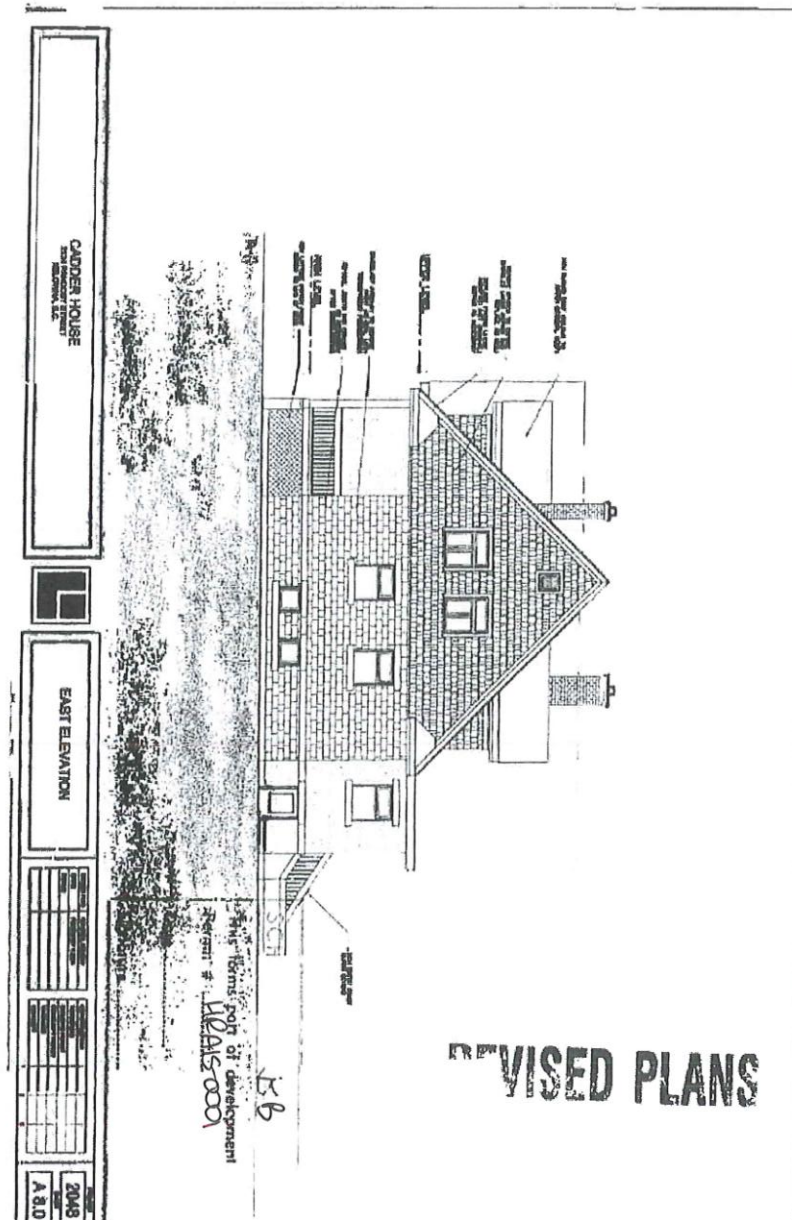
Item	Description	Quantity	Unit	Price	Total
1	Excavation	100	cu yd	10.00	1000.00
2	Foundation	100	sq ft	10.00	1000.00
3	Concrete	100	cu yd	10.00	1000.00
4	Reinforcement	100	lb	10.00	1000.00
5	Formwork	100	sq ft	10.00	1000.00
6	Brickwork	100	sq ft	10.00	1000.00
7	Roofing	100	sq ft	10.00	1000.00
8	Windows	100	sq ft	10.00	1000.00
9	Doors	100	sq ft	10.00	1000.00
10	Paint	100	sq ft	10.00	1000.00

Signature _____

Date _____

2048
A70







Report to Council



Date: August 24, 2015
File: 0220-01
To: City Manager
From: Genelle Davidson, Financial Services Director
Subject: Principles and Strategies for Financial Strength & Stability

Recommendation:

THAT Council approve and endorse the City of Kelowna Principles & Strategies for Financial Strength & Stability documents as outlined in the Report from the Financial Services Director dated August 24, 2015.

Purpose:

To seek Council approval and endorsement of the City of Kelowna Principles and Strategies for Financial Strength & Stability documents.

Background:

Strong financial management is one of the primary goals of the City of Kelowna. The City is facing economic and growth realities and it is incumbent on the leadership to ensure alignment of the financial principles and strategies thereby ensuring that the City is resilient and sustainable.

The Principles and Strategies for financial strength and stability documents are intended to be a hands-on reference guide for Council, City Manager, senior leadership and staff when considering financial decisions that affect the City. Consideration should be given to ensure the proposal being contemplated and subsequent decision is aligned with the City's endorsed financial principles and with one or more of the ten financial strategies. The document will also be an informative document for the community so that the community is aware of the financial principles we live by and the financial strategies outlining how we will get there.

Staff met with Council on May 22 in a workshop led by a consultant from Urban Systems to introduce a draft of the City's Financial Principles and Strategies. Staff then incorporated the feedback that was received from Council and subsequently presented the post-workshop Principles and Strategies to the senior leadership team to receive their feedback.

A second and third Council workshop was held on June 22 and July 27 where staff circled back to Council with revisions and enhancements. Council has endorsed the principles and strategies as presented and directed staff to continue building the document providing additional detail and context around each of the ten strategies as well as developing a summary to be used as an easy reference sheet.

The five financial principles that were endorsed by Council are: Sufficient; Pragmatic; Flexible; Transparent; Balanced. These principles serve as a basis against which the financial strategies as outlined below, can be tested, reviewed and updated as needed.

The ten financial strategies that were endorsed by Council are: Assets - New; Assets - Renew; Debt; Development Financing; Grants; Operations; Partnerships & Enterprise; Property Taxation; Reserves & Surplus Funds; User Fees & Charges.

Staff has worked with the senior leadership team to receive their input and comments as well as the internal staff project team. All feedback has been incorporated into the two final documents presented today for approval and endorsement.

Next steps include: messaging this information through social media; adding the two documents to the City website for easy reference and access; Senior Leadership Directors cascading this information to their appropriate staff in their Divisions for use in their financial planning and decision making; reviewing and updating financial policies; developing and reporting performance measures; integration with budgeting and financial planning reporting.

Internal Circulation:
Divisional Director Infrastructure
Divisional Director Corporate & Protective Services
Communications Consultant

Considerations not applicable to this report:
Financial/Budgetary Considerations:
Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Communications Comments:
Alternate Recommendation:

Submitted by:

G. Davidson, Financial Services Director

Approved for inclusion:



Rob Mayne, Div. Director Corporate & Protective Services

Principles and Strategies for Financial Strength and Stability

August 2015



Prepared by: Urban Systems Ltd.

This report is prepared for the sole use of the City of Kelowna. No representations of any kind are made by Urban Systems Ltd. or its employees to any party with whom Urban Systems Ltd. does not have a contract.

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INTRODUCTION

The foundation of a vibrant community

As outlined in the City of Kelowna's Official Community Plan (OCP) 2010-2030, members of the community envision a Kelowna that offers "the best balance between environmental protection, economic growth, social development and cultural vibrancy." Financial strength and stability will provide the foundation for the City to provide services, infrastructure and amenities desired by the citizens of Kelowna today and in the future.

Purpose of this document

The City defines financial strength and stability as "the ability to acquire and manage a portfolio of financial and physical assets that meet the current and future needs of our community". This is the goal. The principles and strategies set out in this document will guide decision-making within the City and help to realize this goal and, ultimately, the vision for Kelowna.

The purpose of this document is to outline those principles and strategies and to guide staff and Council in the work they do.

This document is an important resource in the City's overall decision-making framework. If the community's vision is the ultimate destination, and we need financial strength and stability to get there, then:

- these **principles** are what we live by
- these **strategies** are how we'll get there

These principles and strategies will guide the development of detailed policies, which will set the boundaries for budgeting and planning decisions. Performance measures will tell us how we're doing along the way.

Decision making framework



PRINCIPLES FOR FINANCIAL STRENGTH & STABILITY

The financial strategies contained within this document are consistent with the principles presented below. These principles serve as a basis against which the financial strategies can be tested, reviewed and updated as needed.

Sufficient | Revenues and expenses support the City's service levels and long-term goals

The 2015 Citizen Survey results tell us that residents of Kelowna value the high quality services that they receive and are accustomed to. In order to meet these service standards the City needs to ensure that the budgets for operations and infrastructure are *sufficient*. Revenues also need to be *sufficient* to meet long-term investment needs.

Pragmatic | Financial decisions take measured risks while ensuring appropriate service levels are protected

There will be occasions when assuming some degree of risk is advantageous to the City in order to leverage opportunities or to be ready to meet the needs of a changing population. However, any risks taken need to be measured and carefully considered so the impacts on delivery of City services are understood.

Flexible | Financial policies allow for opportunities and changing circumstances

The City needs the flexibility to take advantage of arising opportunities and to respond to emergent issues. Resources need to be accessible for the unforeseen and policy frameworks need to allow for flexibility and swift action when required.

Transparent | Financial strategies, plans and processes are accessible and visible

The citizens of Kelowna are interested in what their local government is doing. Having information easily available and presented in a form that is easy to understand encourages discussion and engagement, holding decision-makers accountable. Being transparent ultimately builds trust and benefits the community overall.

Balanced | Service levels are affordable and appropriate

The citizens of Kelowna expect consistent and quality services from their local government. They also expect that decisions regarding the variety and level of services they receive and pay for make efficient use of their tax dollars and user fees. This requires a careful balance between the level of service and the cost of the service to ensure the needs of the City are met.

FINANCIAL MANAGEMENT STRATEGIES

The ten strategies contained in this document are intended to guide the City's future financial planning. While some of these strategies focus on a particular component of the financial balance - revenues and costs - they are all interrelated and work together to provide a broad framework for managing the City's overall finances.

Reference these strategies widely and often. They guide the development of financial policies and performance measures, which provide boundaries for financial decision-making and report on how we are doing.

The ten financial management strategies are:

- Assets - New
- Assets - Renew
- Debt
- Development Financing
- Grants
- Operations
- Partnerships & Enterprise
- Property Taxation
- Reserves & Surplus Funds
- User Fees & Charges

ASSETS - NEW

New assets add to the City's inventory and are required to improve services or accommodate growth but do not include asset renewal or replacement.

Having clear processes in place for deciding on when and how to invest in new assets will facilitate sound financial decision-making that is understood and supported by Council, staff and the community. This means taking a holistic, multiple bottom line approach to prioritizing capital projects; evaluating emergent opportunities against existing priorities; and communicating the decision-making process in a way that is transparent and easy to understand.

Objective

To ensure new asset investments are financially strong, stable, and aligned with City priorities.

Strategies

1.1 Expenditures for new assets will be prioritized based on social, economic and environmental factors and life cycle cost implications

The community's vision for Kelowna is a balance of social, economic, and environmental factors. It is important for the City to consider this holistic set of factors when setting priorities for expenditures, as there may be cases where a project meets the financial bottom line but may negatively impact the environment over the long term. The full life cycle costs of operating, maintaining and replacing infrastructure, and providing services will be considered when making financial decisions.

1.2 Emergent opportunities will be evaluated against existing priorities

It is important that the City remains open and flexible to emergent opportunities, whether they are opportunities for new grants, innovative ways of providing services, or new approaches to community development. However, the City will maintain its long-term vision and will evaluate emergent opportunities against existing priorities.

1.3 Investment in new assets should follow the long-term capital plan

New capital investments should be made following the long-term capital plan in order to address the community's highest needs and the City's risk tolerance. It is important to maintain a certain degree of flexibility along the way to respond to emergent opportunities.

1.4 The decision-making process for new asset investment will be documented, transparent and clearly communicated to Council, staff and the community

A clear process for identifying and prioritizing new capital projects will provide Council, staff and the community with a common language so decisions regarding capital expenditures are clearly communicated and understood. This is essential for fostering an engaged community and for holding decision-makers accountable.

ASSETS - RENEW

The delivery of municipal services greatly depends on a wide variety of infrastructure such as roads, buildings, sewer and water systems. While much of this infrastructure lasts a long time, it eventually needs to be renewed or replaced. The replacement of these assets is expensive and therefore needs to be carefully planned for so the City maintains its financial strength and stability for future generations. The timing and funding requirements for asset renewal and replacement are part of the City's long term capital plan.

Objective

To proactively manage and reinvest in City assets to meet service level needs for current and future generations.

Strategies

2.1 The City will invest in existing infrastructure renewal in accordance with the long-term capital plan

The City's long-term capital plan sets out priorities for capital infrastructure upgrades in order to provide appropriate levels of service to the community over the long term. Deviations from the plan can jeopardize future service levels, leading to unexpected asset failures which can be costly and potentially pose a risk to service levels, public health and safety.

2.2 Funding for asset renewal will be balanced against service levels and risk tolerance

The point at which infrastructure will require renewal cannot be known exactly, and needs to be viewed with consideration to service levels and risk tolerance. For example, infrastructure that is considered critical to system operations will be given a higher priority for capital reinvestment. This may come with the tradeoff of deferring renewal of other less critical infrastructure.

2.3 Life cycle costs should be managed through preventative maintenance and renewal strategies

Proactive asset management should yield more stable annual costs and lower total lifecycle costs than reactive repair and renewal. Asset management is about making investment decisions with respect to building, operating, maintaining and replacing infrastructure assets.

DEBT

Debt is a common tool that municipalities use to finance capital expenditures over both the medium and long term. Debt is viewed as a fair way of financing a project since those who are paying the principal and interest charges are benefitting from the service.

Objective

To ensure debt financing is used strategically to maintain the City's financial strength and stability.

Strategies

3.1 General Fund debt servicing costs will be maintained at or below a targeted level of annual taxation demand

The City's general fund is used to cover the cost of providing services such as roads and police/emergency services (i.e. services which benefit the entire community, as opposed to a specific user or group). For such general services, debt servicing costs will remain at or below a targeted level of annual taxation in order to ensure that the annual debt payments are reasonable and that future debt capacity remains to take advantage of emergent opportunities.

3.2 The City's debt capacity will be preserved by limiting the use of debt to fund only one-time major capital projects

Many capital expenditures recur on an annual basis and are relatively stable over time. This would include expenditures such as paving roads and replacing water and sewer mains. These recurring types of expenditures can be readily financed with a "pay as you go" strategy. However some projects do not recur on an annual basis and require significant amounts of funds, such as a new fire hall or sewage treatment plant. For these one-time major capital projects, debt is the preferred funding source. By borrowing for major, one-time capital projects only, the City will preserve debt servicing capacity for when, or if, it is truly needed.

3.3 If possible and when beneficial, debt will be paid down earlier

It is not always beneficial to pay down debt at every opportunity. Variables such as existing and future interest rates are a key consideration in this decision. For example, if the cost of borrowing for a new major infrastructure project is significantly higher than the interest rates on existing debt, the City should consider maintaining the existing debt and transferring available funds to the new capital project. However, when it is beneficial to do so, the City should consider retirement of existing debt a priority.

3.4 Financing for less than a five-year term will be completed through internal financing

For smaller projects requiring a financing term of five years or less, the City should fund by borrowing from its reserves. This approach conserves borrowing capacity and has the benefit of the City paying the interest to itself rather than to an external lender.

3.5 Impacts on overall City debt levels from "self-funded" cost centres and Funds will be reviewed and understood

The City has several "self-funded" cost centres and Funds whereby these cost centres and Funds debt servicing costs are paid for by user fees specific to that area. I.e. Airport, Water, Wastewater and Parking. Impacts on overall City of Kelowna debt capacity should be considered so that these areas do not inadvertently negatively affect the City's ability to borrow for General Fund purposes.

DEVELOPMENT FINANCING

Development cost charges (DCCs) are collected by the City from land developers to offset the cost of new or expanded infrastructure for new users, such as roads, drainage, sewers, water, and parks. DCC's are one-time charges that are paid by the developer at the time of subdivision or acquiring a building permit. Development charges do not pay for operating costs or for the future repair, renewal or replacement of infrastructure.

Objective

To ensure growth helps to pay for the demand it creates and does not impose an undue financial burden on Kelowna taxpayers.

Strategies

4.1 Developers will pay their fair share for growth-related infrastructure through DCCs and other tools

Infrastructure costs should be paid by those who will use and benefit from the installation of such systems. DCC's should employ mechanisms that distribute these costs between existing users and new development in a fair, equitable and transparent manner.

4.2 Where appropriate, other funding can be used to provide additional capacity over and above the current OCP horizon

For some capital upgrades, it may be appropriate to consider growth over a longer horizon than the timeframe covered by the City's OCP. The OCP horizon is parallel to the DCC program horizon. Examples include long term utility plans that have a vision beyond the OCP; over sizing a sewer main to eventually service existing homes beyond the identified growth area.

4.3 Taxation-funded DCC's through grant programs may be used to encourage economic development and community projects

Financial assistance for non-profit and affordable rental housing is an example of the social investment the City may wish to make in achieving its vision.

GRANTS

A grant is a transfer of money to the City from another entity (generally a higher level of government). There are two types of grants:

Conditional grants	These are provided for a specific purpose and may not be used for any other project. An example would be the Infrastructure Canada Grants.
Unconditional grants	These are provided without conditions on their use. An example would be the provincial Gas Tax community works fund.

Grants are a useful tool in a municipality's financial toolbox, and can be used strategically to offset costs to taxpayers and ratepayers. However, a reliance on grants to fund capital projects and services will undermine a community's ability to attain financial strength and stability. Furthermore, most grants require that the beneficiary covers a portion of the cost to deliver the project, highlighting the need for grants to be leveraged for projects that are a City priority.

Objective

To pragmatically leverage grant opportunities.

Strategies

5.1 Grants will only be pursued for the City's priority projects

Grants are often offered to local governments by senior levels of government in response to senior government priorities. These priorities may not always align with those of the City of Kelowna, which are set out by Council in response to the community's needs and aspirations.

The City will strategically identify opportunities for grants that align with local priorities. This will ensure that efforts remain focused on what matters in the community, and that the City's funds or resources are not diverted from where they are actually needed.

5.2 Grant funding will not increase the scope of a project without Council endorsement

Direction on the scope of a priority project is provided by Council so it delivers the appropriate level of service. An increase in scope in response to a grant opportunity may not be the most appropriate use of City funds or resources; therefore, Council will review such grant opportunities and revisions to scope and only endorse them if they align with the City's.

5.3 Annual project funding must be sufficient without conditional grants

Dependence on grants as a funding source is not in line with the City's principles of financial management. The City will plan and budget for projects and services annually under the assumption that conditional grants will not be received by the City. Grants will be treated as opportunities to leverage City funds only where appropriate.

5.4 Long-term financial planning will rely on unconditional grant opportunities only

Unconditional grants may be used as a planned source of revenue only if it can be expected as funding available over the long term. An example of this is the Community Works Fund under the Renewed Gas Tax Agreement, which is available to all municipalities from the federal government as a direct annual allocation to support local priorities.

OPERATIONS

The City needs sufficient revenues to sustain ongoing operations over the lifetime of a service or asset. Without sufficient revenues, service levels may be affected and assets can quickly deteriorate and become liabilities.

Objective

To ensure operations receive sufficient financial support to provide programs and services to residents.

Strategies

6.1 All services, including new services, must be aligned with the City's priorities and reviewed regularly

It is important that that City regularly reviews its services and related operating costs to ensure that services continue to align with the City's priorities, providing good value to the community.

6.2 The full financial cost of service and staff requirements will be understood by Council and administration

The City's decision-makers need to have a comprehensive understanding of the full cost of service provision so that service levels and revenues remain in balance. This includes accounting for staffing requirements that provide corporate services support such as finance, human resources, information technology, and communications which are required as City services change.

6.3 Future changes in operating costs, including personnel resourcing requirements, will be considered in long-term capital and financial planning

The City must consider the impacts on the operating budget as part of long term capital planning to ensure that the full cost of delivering the service is incorporated into long term financial plans.

6.4 Ongoing operating activities will only be funded through taxes, fees and charges

Ongoing operating costs will not be covered through reserves, debt, or grants. The City will set taxes, fees and charges to achieve full cost recovery, where appropriate, balancing affordability and accessibility with value for level of service.

PARTNERSHIPS & ENTERPRISE

A healthy community thrives on establishing economically and socially beneficial partnerships. To provide the services its residents want, Kelowna has nurtured many partnerships with individuals, community groups and private-sector companies. Partnerships can be an effective approach to providing community facilities, programs and services without increasing general taxation.

Objective

To proactively explore opportunities that build community capacity and connections, and leverage resources to provide services that are aligned with City priorities.

Strategies

7.1 The City will pragmatically partner with other entities to deliver community services and amenities

The most efficient and effective forms of service delivery will be considered by the City, including partnerships with other entities that align with City objectives and priorities. This is to ensure that the resources within the community, or neighbouring communities, are leveraged to provide the best value to the citizens of Kelowna.

7.2 The City will explore access to new sources of capital and revenue streams

There is a limit to the level of taxes and fees that can be levied to provide services. In order to provide new services that might not normally be funded, the City needs to seek out new sources of capital and/or new revenue streams. This may be accomplished through exercising certain rights conferred on the City through legislation, leveraging City assets and/or making staff expertise available to other governments.

7.3 The City will leverage existing assets to attract private sector involvement

The City of Kelowna possesses many valuable assets such as land, parks and facilities. These assets can be attractive to the private sector in many different ways and therefore provide the City of Kelowna the opportunity to leverage these assets in giving greater value to the community.

7.4 The City will leverage the expertise of outside partners

In order to provide the best value to the community, the City will leverage the expertise of outside partners where appropriate. This may include, but is not limited to, other local governments, senior levels of government and agencies, First Nations, academia, private contractors, not-for-profits and non-governmental organizations.

7.5 Services from partnerships will be reviewed regularly to ensure the needs of the City continue to be met

Partnership agreements and services will be regularly reviewed to ensure that the service provided by the partnership is still relevant and continues to provide good value to the City.

7.6 The City supports organizations within the community that enhance the quality of life

The City recognizes the significant value of volunteers, volunteer groups and agencies to the spiritual, educational, social, cultural, and physical well-being of the community.

PROPERTY TAXATION

Property taxes are generally used to fund services that are provided broadly to the whole community (e.g. roads, policing, fire, transportation, waste collection and disposal).

Property tax is based on the assessed value of a property (i.e. land and improvements/buildings). Property owners have their property assessed on an annual basis by BC Assessment, and the assessed value of the property is then multiplied by the City of Kelowna's tax rate (expressed as the amount of tax per thousand dollars of assessed property value) to compute an annual property tax. The tax rates are set for each of the various property classifications and adjusted annually to ensure that the City raises the required funds to support the annual budget.

Objective

To ensure property taxes and fees are sufficient to meet the community's short and long-term needs.

Strategies

8.1 Property taxes will remain as stable as possible over time

The City will strive to ensure that tax increases are measured and relatively consistent year to year.

8.2 Property taxes will be comparative with similar communities

The City needs to remain comparative in order to attract and retain economic development; however, it is recognized that the services and amenities provided by the City are also a major incentive for people and businesses moving to the region. The General Municipal taxes levied for the average house market value will be comparative.

8.3 Increases to property taxes will be balanced among assessment classes

It is not uncommon for certain classes of properties to increase in value by a greater percentage than others in any given year. This would result in the amount of taxes being paid on these classes of properties to increase at a greater rate than for other classes whose values have not appreciated as quickly. In order to ensure that property tax increases are distributed fairly, the City will adjust the tax class ratios so that all classes of properties see their taxes increase by the same percentage in any given year.

8.4 Property tax information will be transparent and easy to understand

By continuing to be transparent and providing citizens access to information that is complete and easy to understand, they can better appreciate the high value they receive for their tax dollars.

8.5 Property taxes will reflect the infrastructure, services and service levels that the community believes are important

Built with input from the public, the City of Kelowna has a vision for the future and plans to get there. Through continued consultation, the City remains aware of community investment priorities and funding preferences, ensuring that plans and budgets stay on track to meet the needs of the community.

RESERVES & SURPLUS FUNDS

Saving money for future projects and unexpected expenditures is an important planning consideration for the City. Reserves provide a financial mechanism for saving money to finance all or part of future infrastructure, equipment, and other requirements. Reserve funds can also provide a degree of financial stability, by reducing reliance on indebtedness to finance capital projects and acquisitions, or flexibility to leverage opportunities as they arise.

There are three basic types of reserves:

Accumulated surplus	This is the net annual surplus that builds up over time.
Reserve accounts	These are reserves that are set aside for a future identified purpose, but can be readily accessed and repurposed as may be necessary.
Statutory reserves (Reserve funds)	These are reserves that are established by Council for a specific purpose through a bylaw. These reserves cannot be repurposed without revising the bylaw.

Sufficient reserves offer the City resiliency in the event of abrupt changes to costs or revenues, and they should be generated and allocated judiciously as part of the City’s overall financial management practices.

Objective

To maintain sufficient reserves so the City has the flexibility to respond to opportunities, and maintain or improve levels of service.

Strategies

9.1 The purpose of each reserve will be documented and reviewed regularly

The City will ensure that the purpose of each reserve is documented at the time it is established, and that this is reviewed on a regular basis to ensure that the reserve is still required and that the balance in the reserve is appropriate.

9.2 Ongoing operating requests will not be funded from reserves

Redirecting funds from reserves or accumulated surplus to offset ongoing operating costs will not be considered by Council as an appropriate practice.

9.3 Accumulated surplus will only be used as an emergency funding source

Accumulated surplus will act as a fund for emergencies, such as fires and floods. Accumulated surplus should not be redirected to fund small capital projects or operating expenditures.

USER FEES & CHARGES

User fees and charges are another way that the City of Kelowna raises revenues. User fees and charges are useful because those that benefit from a service bear the cost of it.

User fees and charges should have a direct relationship to the actual cost of providing a service. Some services are funded by a mix of fees and general taxation. Recreation facilities are a good example - user fees pay for some of the cost but taxation covers the balance of the cost.

Objective

To ensure user fees and charges are sufficient to meet the City's needs.

Strategies

10.1 Everyone will pay a fair amount for the services they receive

It is important that the people, who benefit from a service, pay a fair amount for it.

10.2 Services will be reasonably accessible by all citizens

This means that the City may choose to set user fees and charges for certain services so they do not fully recover the cost to provide the service, and use other sources of funding in the budget to subsidize the cost. Examples include services for which the entire community benefits, and/or where ability to pay is a primary criterion, such as sportsfields.

10.3 User fees will be transparent and easy to understand

There should be a clear link between the benefit received from the service and the fee paid. Fees are calculated in a way that is fair, those who use the service pay for it, they are understandable, reviewed regularly and available to the public if requested.

GLOSSARY

Accumulated Surplus | The balance in a fund that represents the cumulative excess in revenues over expenditures.

Capital Expenditures | Expenditures of a non-operating or maintenance nature, such as costs to acquire equipment, land, buildings and costs associated with new infrastructure or improvements to existing infrastructure.

Costs | The expenditure necessary to attain something.

Cost Centre | A department within the City that may or may not directly generate revenue, but still costs the City money to operate.

Debt Servicing | Cash that is required for a particular time period to cover the repayment of interest and principal on a debt.

Development Cost Charges | monies collected from land developers to offset some of the infrastructure expenditures required to service new development.

Expenditures | The payment of cash on the transfer of property or services for the purpose of acquiring an asset or service.

Fees and Charges | A source of revenue generated by the activities, works or facilities undertaken or provided by or on behalf of the City.

Financial Assets | A non-physical asset including cash, bonds and stocks.

Financial Plan | Commonly referred to as a budget. The budget must be adopted by bylaw through City Council and cover a minimum five-year period. Year one relates to the year in which it comes into force, years two through five are the following four years. The financial plan identifies the revenue sources and the proposed expenditures to be incurred to meet the outlined objectives.

Fund | A fiscal entity with revenues and expenses which are segregated for the purpose of carrying out a specific activity. The City has five main funds: general, water, wastewater, natural gas and airport.

Holistic | Emphasizing the importance of complete systems rather than with individual parts.

Infrastructure | Facilities and improvements such as buildings, roads, sidewalks, storm drainage, waterworks, sanitary sewer systems.

Level of Service | The outputs or objectives the City intends to deliver to its customers.

Liabilities | The state of being responsible or liable for something.

Life Cycle Costs | The total costs estimated to be incurred in the design, construction, operation, maintenance, and final disposition of a physical asset or system over its anticipated useful life span

Official Community Plan | An Official Community Plan (OCP) is a City bylaw that defines policies for land use and development.

Performance Measures | Indicators that are used to assess how well an organization is achieving its desired objectives.

Physical Assets | An asset that you can touch and feel such as a road or a pipe.

Reserve Account | Money that has been earmarked for future operating or capital expenditures. Reserve levels are planned to meet the capital requirements and to provide for operating swings in expenditures or revenues.

Revenue | The income received by the City from taxes, user fees, government transfers and other sources.

Self Funded Cost Centres and Funds | The City's has four "self funded" funds that are: water, wastewater, natural gas and airport. The City also has self-funded cost centres such as the Parking function. These Funds and Cost Centres must be self-sufficient so that revenues generated must offset all operating and capital expenditures.

Service | A system that fulfills a public need such as transportation and water distribution.

Principles & Strategies for Financial Strength & Stability

August 2015

PRINCIPLES



PRAGMATIC. Financial decisions take measured risks while ensuring appropriate service levels are protected



FLEXIBLE. Financial policies allow for opportunities and changing circumstances



SUFFICIENT. Revenues and expenses support the City's service levels and long-term goals



TRANSPARENT. Financial strategies, plans and processes are accessible and visible



BALANCED. Service levels are affordable and appropriate

STRATEGIES

User Fees & Charges

Everyone will pay a fair amount for the services they receive

Services will be reasonably accessible by all citizens

User fees will be transparent and easy to understand

Reserves & Surplus Funds

The purpose of each reserve will be documented and reviewed regularly

Ongoing operating requests will not be funded from reserves

Accumulated surplus will only be used as an emergency funding source

Assets - Renew

The City will invest in existing infrastructure renewal in accordance with the long-term capital plan

Funding for asset renewal will be balanced against service levels and risk tolerance

Life cycle costs should be managed through preventative maintenance and renewal strategies

Assets - New

Expenditures for new assets will be prioritized based on social, economic and environmental factors and life cycle cost implications

Emergent opportunities will be evaluated against existing priorities

Investment in new assets should follow the long-term capital plan

The decision-making process for new asset investment will be documented, transparent and clearly communicated to Council, staff and the community

Development Financing

Developers will pay their fair share for growth-related infrastructure through DCCs and other tools

Where appropriate, other funding can be used to provide additional capacity over and above the current OCP horizon

Taxation-funded DCC's through grant programs may be used to encourage economic development and community projects

STRATEGIES

Partnership & Enterprise

The City will pragmatically partner with other entities to deliver community services and amenities

The City will explore access to new sources of capital and revenue streams

The City will leverage the expertise of outside partners

The City will leverage existing assets to attract private sector involvement

Services from partnerships will be reviewed regularly to ensure the needs of the City continue to be met

The City supports organizations within the community that enhance the quality of life

Debt

General Fund debt servicing costs will be maintained at or below a targeted level of annual taxation demand

The City's debt capacity will be preserved by limiting the use of debt to fund only one-time major capital projects

If possible & when beneficial, debt will be paid down earlier

Financing for less than a five-year term will be completed through internal financing

Impacts on overall City debt levels from "self-funded" cost centres and Funds will be reviewed and understood

Operations

All services, including new services, must be aligned with the City's priorities and reviewed regularly

The full financial cost of service and staff requirements will be understood by Council and administration

Future changes in operating costs, including personnel resourcing requirements, will be considered in long-term capital and financial planning

Ongoing operating activities will only be funded through taxes, fees and charges

Property Taxation

Property taxes will remain as stable as possible over time

Property taxes will be comparative with similar communities

Increases to property taxes will be balanced among assessment classes

Property tax information will be transparent and easy to understand

Property taxes will reflect the infrastructure, services and service levels that the community believes are important

Grants

Grants will only be pursued for the City's priority projects

Grant funding will not increase the scope of a project without Council endorsement

Annual project funding must be sufficient without conditional grants

Long-term financial planning will rely on unconditional grant opportunities only

Report to Council



Date: August 19, 2015
File: 1140-50
To: City Manager
From: Mike Olson, Manager, Property Management
Subject: Lease to Interior Health Authority - Rutland Health Unit, 155 Gray Road
Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approves the City entering into a five (5) year Lease Agreement, with Interior Health Authority, for the Rutland Health Unit, with the option to renew for an additional two (2) year terms of five (5) years each, in the form attached to the Report of the Manager, Property Management, dated August 19, 2015;

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

Purpose:

Lease of the Rutland Health Unit to Interior Health Authority for a five (5) year term.

Background:

The City purchased the southeast corner of Gray Road in 1974 for a future park site. The building on the property has been occupied by the Rutland Health Unit since 1990 and is operated by Interior Health Authority.

The lease was renewed in 1995, 2000, 2005 and 2010. The 2015 lease is based on the same terms and conditions as the previous lease, including Annual Base Rent, but now includes two (2) additional renewal terms of five (5) years each. Since 2010, the Tenant has been responsible for all capital, maintenance and operating costs of the facility. The ageing facility will require a new roof and major upgrades to the building exterior and parking lot. In consideration of the substantial amount of work required of the Tenant to operate the facility, staff recommend a zero Annual Base Rent increase over the first term of the lease. Beginning with the second renewal term in 2020, the Annual Base Rent will increase each year with the British Columbia All Items Index.

The proposed lease meets with the City's commercial leasing practice and does not contradict any legal or statutory requirements.

Internal Circulation:

Financial Services Director
Manager, Parks & Public Places
Manager, Risk Management

Legal/Statutory Authority

Section 26(3) of the Community Charter

Legal/Statutory Procedural Requirements:

Disposition must be published in a weekly newspaper for two (2) consecutive weeks and posted on the public notice posting place

Financial/Budgetary Considerations:

This lease is for one (1) five (5) year term commencing July 1st, 2015 at a rate of \$53,768.75 per annum (\$268,843.75 per term) plus GST.

Considerations not applicable to this report:

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

Submitted by: M. Olson, Manager, Property Management

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

cc: G. Davidson, Financial Services Director
T. Barton, Manager, Parks & Public Spaces
L. Kayfish, Manager, Risk Management

Attachments: 1. Lease
2. PowerPoint

DOCUMENT APPROVAL			
Facility Lease			
Cir.	Dept.	Date	Int.
	RE&BS		
	Risk Mgmt		

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:

INTERIOR HEALTH
231 Pandosy Street, Kelowna, B.C. V1Y 1T2

(the "Tenant")

OF THE SECOND PART

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THIS LEASE, dated the 1st day of July, 2015 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: molson@kelowna.ca |
| (b) | Tenant:
Address of Tenant: | Interlor Health
2312 Pandosy Street, Kelowna, BC V1Y 1T2 |
| (c) | Premises: | Rutland Health Unit
155 Gray Road, Kelowna, BC (see Schedule A) |
| (d) | License Area: | N/A |
| (e) | Initial Term:
Commencement Date: | Five (5) years
July 1, 2015 |
| (f) | Renewal Term (if any): | Two (2) additional terms of five (5) years |
| (g) | Annual Base Rent + Tax: | Years 1-5 = \$53,768.75 + GST
Years 6-15 = Annual Base Rent + CPI |
| (h) | Security/Performance Deposit: | Equal to one (1) month rent |
| (h) | Property Taxes: | Tenant pays if assessed |
| (i) | Utilities: | Tenant pays |
| (j) | Permitted Use: | For the purpose of the Rutland Health Unit, and to provide accommodation for government or similarly publicly funded agencies |

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
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

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.

3. TERM

3.1 Term

The Term of this Lease 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 shall grant to the Tenant at the Tenant's expense a renewal lease of the Premises for Two (2) Renewal Terms of Five (5) years each, upon the same terms and conditions, excluding Annual Base Rent and Additional Rent as are herein contained.

The lease may be renewed Two (2) times for a total of Fifteen (15) years including the original term.

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 including all applicable real estate taxes and other charges.
- (c) **Rent for Renewal Terms**
For any renewal terms, the Annual Base Rent of each year of the Renewal Term will be calculated as the Annual Base Rent plus the percentage increase of the British Columbia All Items Index. If the Index is negative, the Annual Base Rent for that year will remain the same as the previous year.

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 including all applicable real estate taxes and other charges.
- (c) **Payment Format**
The Tenant agrees to pay the Annual Base rent via Bank Transfer 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 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 commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date, to use the Premises 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 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 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 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, 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 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 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 for the purpose of inspection or making repairs, alterations, or improvements to the Premises 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 to prospective tenants during the normal business hours of the last three months of the Term.

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 Premise 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.

7. REPAIR, DAMAGE, AND DESTRUCTION

7.1 Landlord's Repairs

The Landlord will not undertake any maintenance or repairs of the Premises.

7.2 Tenant's Repairs

In accordance with Schedule C attached as the Tenant Responsibility Checklist, the Landlord makes no representation as to the building components or existence of hazardous materials in the Premises; therefore, the Tenant covenants with the Landlord:

- (a) that the Tenant is responsible to assess the Premises for the existence of hazardous materials prior to undertaking any repair and/or maintenance work in the Premises in accordance with Occupational Health and Safety Regulations-Part 6 Substance Specific Requirements;
- (b) 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 including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls;
- (c) 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 in a good and reasonable state of repair, allowing for reasonable wear and tear.
- (d) that the Tenant must prepare and submit an annual maintenance and repair report of all work completed in the Premises. The report must be presented to the Landlord on the anniversary date of the Lease.

7.3 Abatement and Termination

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

- (a) if the damage is such that the Premises 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 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 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 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 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 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 as per the terms contained herein.

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 the conduct by the Tenant of the Tenant's business as described herein including without limitation, water, telephone, sewer, hydro, power, heating, air conditioning, garbage disposal, snow clearing, maintenance of the parking lot, grass cutting, fertilizing, irrigation, leaf and litter clean up, etc. The tenant shall be responsible for obtaining and maintaining a gas operating permit. The tenant shall be responsible for obtaining and maintaining an electrical operating permit. The tenant is responsible of informing the Property Manager, Real Estate and Building Services of the permits and who the Field Safety Representative is.

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, 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, 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 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, 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 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, 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, except to the extent hereinafter specified, in respect of perils and to amounts 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

As a minimum, the Tenant shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies during the Term of this agreement:

- (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 and the Tenant's use and occupancy thereof, of not less than \$5,000,000 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
- (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) motorvehicle 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.
- (f) The Landlord, from time to time, may require other insurance or alterations to any applicable insurance policies if such insurance or alterations would be considered reasonable and prudent for the Tenant to have in force during the period of this contract. The Landlord will give notifications of such request and both parties will mutually agree in writing to amend the insurance provisions of this Lease. Where other insurances or alterations to any insurance policies in force are required by the Landlord and result in increased insurance premium, such increased premium shall be at the Tenant's expense unless otherwise agreed to by the parties.
- (g) The Tenant shall require each of its sub-contractors to provide comparable insurance to that set forth under section 12.2 of this Agreement.

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 change of any such policy or policies.

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.

Notwithstanding the foregoing, the Landlord acknowledges that the Tenant is insured for all risk property insurance and commercial public liability coverage as a health authority under the provisions of the Health Care Protection Program which coverage is equal to or greater than the coverage required by this clause 12.2. The Landlord hereby confirms that the Tenant is deemed to be in compliance with the provisions of these insurance requirements provided that the Tenant remains insured under the Health Care Protection Program (or a successor program that provides substantially the same protection as the Health Care Protection Program) for the term and any renewal or extension terms of this Lease.

If during the Term the Tenant proposes to assign this Lease to any other person pursuant to the terms of this Lease (other than a person who is insured under the Health Care Protection Program or a successor program), then in connection with such assignment of this Lease the assignee will be required to provide the Landlord with certificates of insurance evidencing the policies of insurance described in this clause that meet all of the requirements herein and, in the case of the commercial general liability coverage, such policy will include the Landlord as an additional insured, include cross liability and severability of interest clauses and contain a provision requiring thirty (30) days written notice to the certificate holder of either a material change or cancellation of such policy.

12.3 Limitation of Landlord's Liability

The Tenant agrees that:

- (a) Except to the extent caused or controlled by the negligence of the Landlord, 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).

12.4 Indemnity of Landlord

The Tenant must indemnify and hold harmless the Landlord, its elected officials, officers, agents and employees (including the Landlord's Representative), from and against all liabilities, losses, damages, personal injury, death, property loss or damage, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of, or damage or injury (including death) to, any person or property that occurs in the course of the performance of this Lease, whether suffered, incurred or made by the Tenant or an employee of the Tenant or other party for whom the Tenant is responsible and caused through a willful or negligent act or omission or other actionable wrong of the Tenant, its officers, agents, employees, or subcontractors, or any of their officers, agents or employees, and at its expense the Tenant must defend any and all actions and pay all damages and legal costs and other costs arising therefrom to the extent of its sole or partial fault as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body, apportionment or reimbursement of any such costs not attributed solely or partially to the fault of the Tenant as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body shall be made only following the binding determination by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body.

This indemnity shall survive the expiry or termination of this Lease.

12.5 Indemnity to Tenant

The Landlord must indemnify and hold harmless the Tenant, its elected officials, officers, agents and employees (including the Tenant's Representative), from and against all liabilities, losses, damages, personal injury, death, property loss or damage, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of, or damage or injury (including death) to, any person or property that occurs in the course of the performance of this Lease, whether suffered, incurred or made by the Landlord or an employee of the Landlord or other party for whom the Landlord is responsible and caused through a willful or negligent act or omission or other actionable wrong of the Landlord, its officers, agents, employees, or subcontractors, or any of their officers, agents or employees, and at its expense the Landlord must defend any and all actions and pay all damages and legal costs and other costs arising therefrom to the extent of its sole or partial fault as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body, apportionment or reimbursement of any such costs not attributed solely or partially to the fault of the Landlord as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body shall be made only following the binding determination by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body.

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 perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the City, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the City reasonably determines that the City, its property, its reputation or the Premises is placed in any jeopardy by the requirement for any such remedial work, the City may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

(m) Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or leasehold improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the City,

notwithstanding the degree of their affixation to the Premises and notwithstanding the expiry or earlier termination of this Agreement. This section supersedes any other provision of this Agreement to the contrary.

(n) Indemnity

The Tenant shall indemnify and save harmless the City and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the City or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section by the Tenant or arising from or in connection with:

(i) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or

(ii) any Release or alleged Release of any contaminants at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

(o) Survival of Tenant's Obligations

The obligations of the Tenant under this Section (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Agreement. The obligations of the Tenant under this Section are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Agreement.

14. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

14.1 Tenant's Covenants

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.

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 Remedying 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 to do any work or other things therein, and in such event all expenses of the Landlord in remedying 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 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 by the Tenant or any assignee, sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises 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 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 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 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 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 Early Termination - No Default

There are no early termination provisions.

16.6 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises 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 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 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 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 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, 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 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 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 [or 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 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.

SIGNED, SEALED AND DELIVERED by the Landlord in the presence of:

City Clerk

)
)
)
)
)
)

Occupation

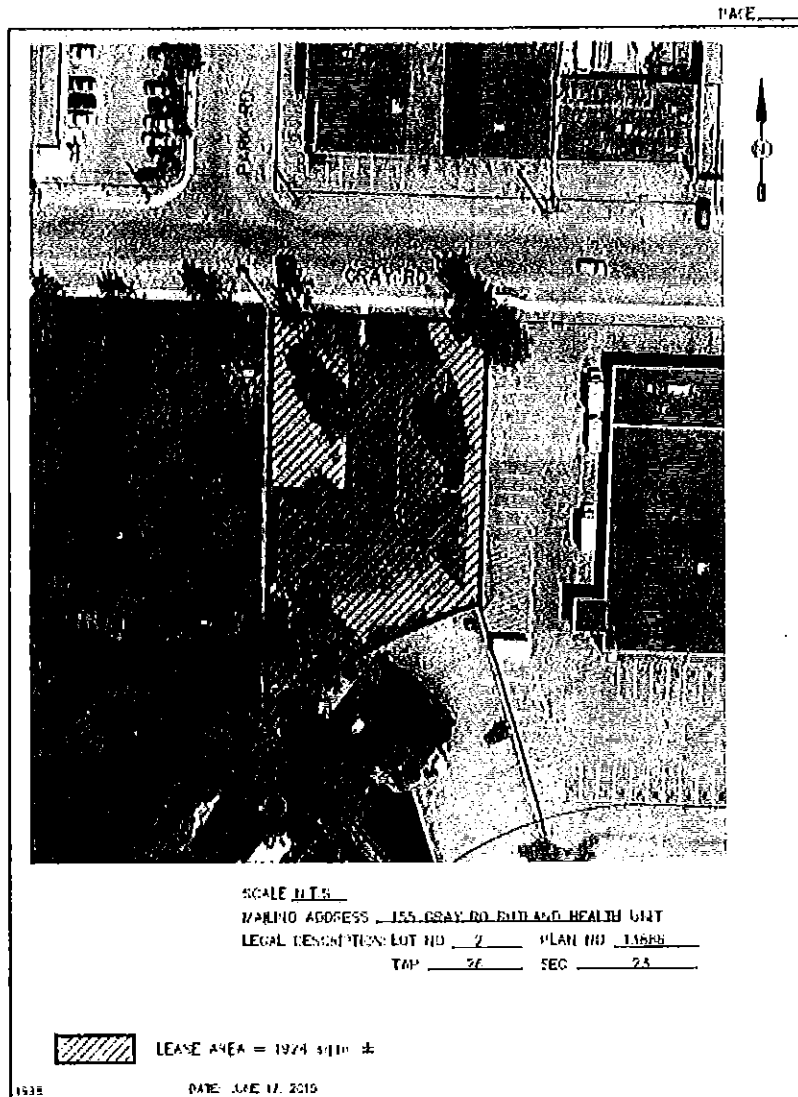
Tommy

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Occupation

SCHEDULE A

PLAN OF THE LEASED PREMISES



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 at 155 Gray Road in the City of Kelowna, British Columbia, more particularly described as Lot 2, Plan 13886 ODYD.

"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.

"Premises" means the Rutland Health Unit at 155 Gray Road 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 Harmonized Sales 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						
Rutland Health Unit 155 Grey Road		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 (Liability Limit)				X	
Kitchen Hood Fire suppression testing				X	
Landscape maintenance				X	
Licences & permits				X	
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.				X	
Pest control				X	
Plumbing system preventative maintenance				X	
Plumbing system repairs (liability limit)				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 (exterior)				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	Description	Revised by	Date
1			

**CERTIFICATE OF INSURANCE**

City staff to complete prior to circulation	
City Dept.:	_____
Dept. Contact:	_____
Project/Contract/Event:	_____

Insured

Name:	_____
Address:	_____

Broker

Name:	_____
Address:	_____

Location and nature of operation and/or contract reference 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: • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobiles; • Cross Liability Clause.				Bodily Injury and Property Damage \$ 5,000,000 Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ 5,000,000 Inclusive

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

- 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.
- The City of Kelowna is named as an Additional Insured.
- 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____

Title _____

Company (Insurer or Broker) _____

Signature of Authorized Signatory _____

Date _____

LEASE AGREEMENT

155 Gray Road



LOCATION



LEASE DETAILS

- ▶ Total annual lease revenue: \$53,768
- ▶ Lease rate: \$8.75/sf
- ▶ Area: +/- 6,145 square feet
- ▶ Operating Costs: N/A (Tenant to complete all R&M)
- ▶ Term of Lease: 5 years
- ▶ Renewals: two 5-year renewals

Report to Council



Date: August 10, 2015
File: 1110-91-038
To: City Manager
From: J. Saufferer, Manager, Real Estate Services
Subject: Proposed Road Closure and Land Exchange - 1659 - 1683 Ethel Street

Recommendation:

THAT Council receives, for information, the Report from the Manager, Real Estate Services dated August 10, 2015, recommending that Council adopt the proposed road closure of a portion of lane adjacent to 1659 - 1683 Ethel Street;

AND THAT Bylaw No. 11130, being proposed road closure of a portion of land adjacent to 1659 - 1683 Ethel Street, be given reading consideration.

Purpose:

To dispose of a 378 square meter portion of unconstructed road (laneway) at the rear of 1659-1683 Ethel Street in exchange for additional roadway along Ethel Street.

Background:

The proposed road closure will allow the adjacent owner to consolidate their properties and create a more comprehensive development site. The lane is excess to the City, as it is unconstructed and has no current or anticipated future purpose. The proposed road closure facilitates an exchange for the road dedication area along Ethel Street that is required by the City for the Ethel Street Multi-Modal Corridor project (Schedule 'A').

Legal/Statutory Authority:

Community Charter, Section 26 and 40

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:
Alternate Recommendation:

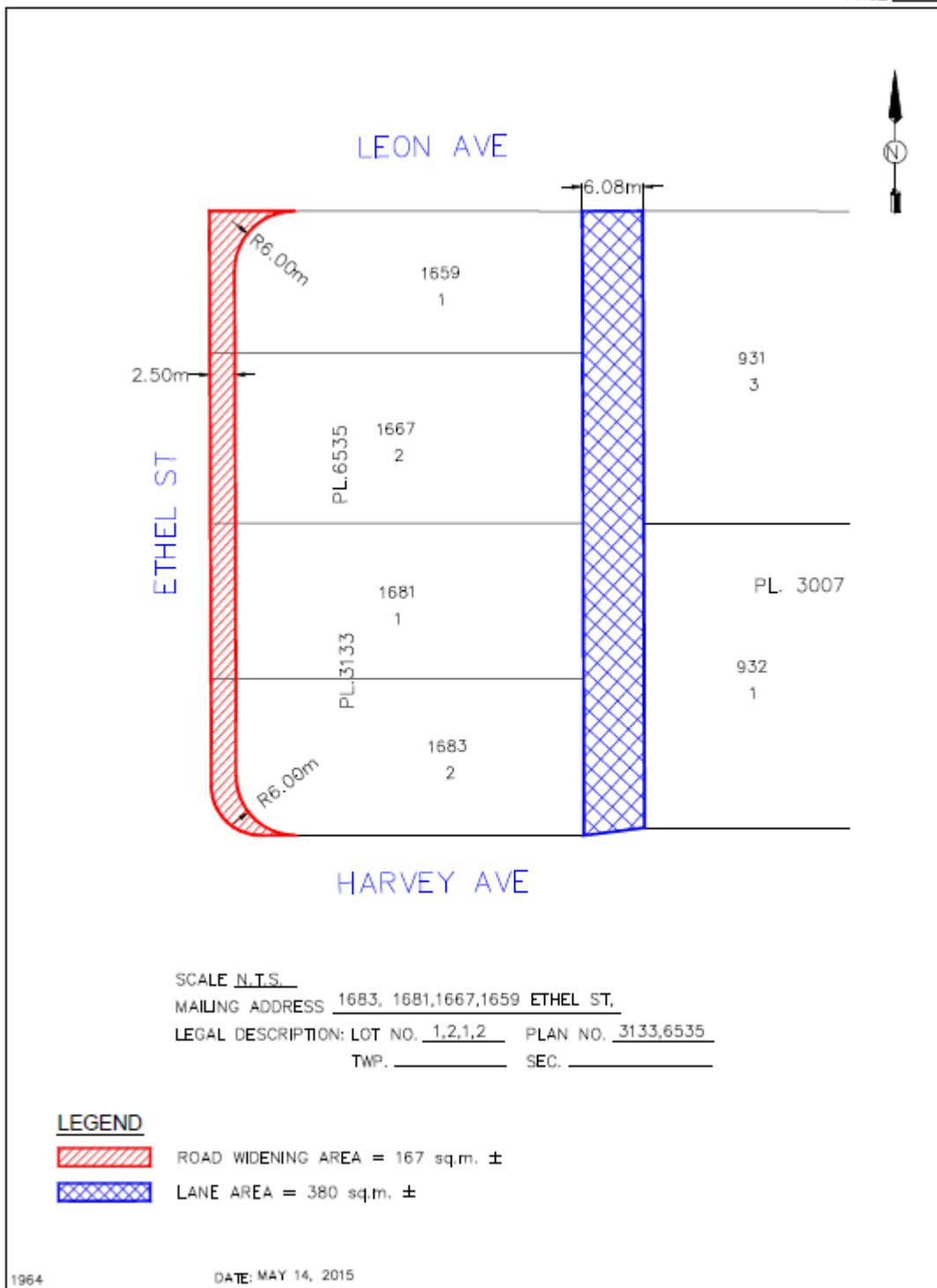
Submitted by: John Saufferer, Manager, Real Estate Services

Approved for inclusion: Derek Edstrom, Direction, Real Estate

cc: M. Hasan, Transportation & Mobility Manager
S. Muenz, Development Engineering Manager

Attachments: Schedule 'A' - Map

Schedule A



CITY OF KELOWNA

BYLAW NO. 11130

Road Closure and Removal of Highway Dedication Bylaw (Portion of Ethel Street)

A bylaw pursuant to Section 40 of the Community Charter to authorize the City to permanently close and remove the highway dedication of a portion of highway on Ethel Street

NOW THEREFORE, the Municipal Council of the City of Kelowna, in open meeting assembled, hereby enacts as follows:

1. That portion of highway attached as Schedule "A" comprising 378m² shown in bold black as Closed Road on the Reference Plan prepared by Roger Galibois, B.C.L.S., is hereby stopped up and closed to traffic and the highway dedication removed.
2. The Mayor and City Clerk of the City of Kelowna are hereby authorized to execute such conveyances, titles, survey plans, forms and other documents on behalf of the said City as may be necessary for the purposes aforesaid.

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

Approved Pursuant to Section 41(3) of the Community Charter this

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

PLAN EPP52160

REFERENCE PLAN TO ACCOMPANY CITY
OF KELOWNA BY-LAW 11130 CLOSING
LANE DEDICATED ON PLAN 6535 AND A
PORTION OF LANE DEDICATED ON PLAN
3133, DISTRICT LOT 138, OSOY005
DIVISION YALE DISTRICT

Pursuant to Section 120 of the Land Title Act

BCCS 82E.083

The intended plot size of this plan is 560mm in width by 432mm in height
(C size) when plotted at a scale of 1:500

LEGEND

- Control Monument
- Non-Standard Post Found
- Standard Iron Post Found
- Standard Iron Post Placed

Integrated Survey Area No. 4, City of Kelowna, NAD83 (CSRS) 4.0.0.BC.1

Old Readings are derived from observations between geodetic control monuments
95H1858, 86H229, 86H235, and are referred to the central meridian of UTM
Zone 11 (117° W. longitude).

The UTM coordinates and estimated horizontal positional accuracy achieved are
derived from observations to Control Monuments 95H1858, 86H229 and 86H235.
This plan shows horizontal ground-level distances unless otherwise specified. To
compute grid distances, multiply ground-level distances by the average combined
factor of 0.999938. The average combined factor has been derived from geodetic
control monuments 95H1858, 86H229 and 86H235.

This plan lies within the Central Okanagan Regional District.

The field survey represented by this plan was completed on the 5th day of August,
2015.
Roger Galbois, BCLS 693

Book of Reference		
PAGE	DESCRIPTION	AREA
CLOSED LANE	CREATED ON PLAN 6535	158 m ²
CLOSED LANE	CREATED ON PLAN 3133	191 m ²
TOTAL AREA		378.0 m ²

MMM GROUP
MMM Geomatics BC
401 Lakeshore Drive
Kelowna, BC V1Y 6J6
1.250.868.1334
FILE: 271502-K02 DWG. No.: V01



CITY OF KELOWNA

BYLAW NO. 11116

Amendment No. 1 to Fire and Life Safety Bylaw No. 10760

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Fire and Life Safety Bylaw No.10760 be amended as follows:

1. **THAT PART FOUR: PERMITS, Section 4.5 Open Air Burning, 4.5.3 (g)** be amended by deleting the word "or" after the words "open burning is prohibited when the venting index is less than" and replacing it with "and";
2. **AND THAT PART FIVE: FIRE PROTECTION EQUIPMENT, 5.8 Fire Hydrants on Private Property, 5.8.5 c)** be amended by adding the words "or relocated" after the words "Provide the Fire Chief or designate with a written report of the flow test performed on new";
3. **AND THAT PART FIVE: FIRE PROTECTION EQUIPMENT, 5.9 Premises Under Construction, 5.9.3** be amended by adding the words "or relocated" after the words "Every owner of premises under construction must ensure that the Fire Department is notified of all newly installed";
4. This bylaw may be cited for all purposes as "Bylaw No. 11116, being Amendment No. 1 to Fire and Life Safety Bylaw No. 10760."
5. 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 10th day of August, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA

BYLAW NO. 11117

Amendment No. 11 to Bylaw Notice Enforcement Bylaw No. 10475

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Bylaw Notice Enforcement Bylaw No. 10475 be amended as follows:

1. THAT Schedule A, Fire and Life Safety Bylaw No. 10760, **PART FIVE: FIRE PROTECTION EQUIPMENT**, 5.5 be amended by deleting "No smoke alarm on premise" and replacing it with "No working smoke alarm on premise".
2. This bylaw may be cited for all purposes as "Bylaw No.11117 , being Amendment No. 1 to Bylaw Notice Enforcement Bylaw No. 10475."
3. 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 10th day of August, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA

BYLAW NO. 11125

Amendment No. 1 to Sanitary Sewer Specified Area No. 18 Bylaw No. 7724 (Caramillo)

WHEREAS pursuant to the provisions of Section 218 of the *Community Charter* provides that Council may, by bylaw, reduce or enlarge the size of a local area service;

AND WHEREAS pursuant to the provisions of Section 211 of the *Community Charter*, and amendments thereto, states that the Council of the City of Kelowna must adopt a bylaw to establish a local area service and its cost recoveries;

AND WHEREAS pursuant to the provision of Section 212 of the *Community Charter*, the Council of the City of Kelowna has received a valid petition from the owners of Lot 12, Section 31 & 32, Township 26, ODYD, Plan 20929 located at 589 Clifton Road to be included in the City of Kelowna Sanitary Sewer Specified Area No. 18 Bylaw No. 7724;

AND WHEREAS the Municipal Officer assigned the responsibility for Corporate Administration for the City of Kelowna under Section 148 of the *Community Charter* has determined the sufficiency of the petition under the provisions of Section 212 of the *Community Charter*;

AND WHEREAS the provisions of Part 7, Division 5, of the *Community Charter* have been complied with;

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

1. THAT the servicing boundary of Local Service Area, formerly known as Sewer Specified Area No. 18 (Caramillo), established by Bylaw No. 7724, be amended by adding Lot 12, Section 31 & 32, Township 26, ODYD, Plan 20929.
2. AND THAT Bylaw No. 7724 being Sewer Specified Area No. 18 (Caramillo) be amended by deleting Schedule 'A' in its entirety and replacing it with a new Schedule 'A' as attached to and forming part of this bylaw.
3. AND THAT the owners are hereby authorized to provide, operate, maintain and to undertake and carry out, or cause to be carried out, the construction of the hook up to the sewer sewer.
4. AND FURTHER THAT the estimated cost of the work is \$1213.00 to be borne upon the owners of Lot 12, Section 31 & 32, Township 26, ODYD, Plan 20929 located at 589 Clifton Road prior to sanitary sewer connection.
5. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

6. This bylaw shall be cited for all purposes as "Bylaw No. 11125, being Amendment No. 1 to Local Area Service (Sewer Specified Area) No. 18 Bylaw No. 7724 (Caramillo)".

Read a first, second and third time by the Municipal Council this 10th day of August, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Schedule "A"



CITY OF KELOWNA

BYLAW NO. 11127

Housing Agreement Authorization Bylaw Dickson Avenue Holdings Ltd., Inc. No. BC0778937 1525 Dickson Avenue

Whereas pursuant to Section 905 of the *Local Government Act*, a local government may, by bylaw, enter into a housing agreement.

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

1. The Municipal Council hereby authorizes the City of Kelowna to enter into a Housing Agreement with Dickson Avenue Holdings Ltd., Inc. No. BC0778937 for the lands known as Lot A, District Lot 141, ODYD, Plan EPP48886 located on 1525 Dickson Avenue, Kelowna, B.C., a true copy of which is attached to and forms part of this bylaw as Appendix "A".
2. The Mayor and City Clerk are hereby authorized to execute the attached agreement as well as any conveyances, deeds, receipts or other documents in connection with the attached agreement.
3. 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 10th day of August, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

PURPOSE-BUILT RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2015 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

as Lot 1, Section 19, Township 26, Plan KAP29557

("Land")

And is

BETWEEN:

Simple Pursuits Inc.
340 West Avenue,
Kelowna, BC V1Y 4Z1

("Owner")

AND:

CITY OF KELOWNA, a local government incorporated pursuant to the *Community Charter* and having its offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

GIVEN THAT:

- A. The Owner has applied to the City for rezoning of the Lands to permit the construction of a housing complex that will include purpose-built rental housing units, as defined in this Agreement, on certain lands more particularly described in this Agreement;
- B. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;
- C. The Owner and the City wish to enter into this Agreement to provide for purpose- built rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 905 of the *Local Government Act*; and
- D. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

This Agreement is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as a housing agreement between the Owner and the City under s. 905(1) of the *Local Government Act*, as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions -

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household. This use does not include a room in a hotel or a motel.

"Household" means

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"Land" means the land described herein;

"LTO" means the Kamloops Land Title Office or its successor;

"Official Community Plan" means the City of Kelowna Official Community Plan Bylaw No. 7600, or its successor bylaw;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the Lands are subdivided;

"Purpose-Built Rental Housing" means a self-contained building(s) containing five or more Dwelling Units that are intended to be used for rental housing and does not include buildings that are stratified; and

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the City of Kelowna Zoning Bylaw No. 8000, or its successor bylaw, and the Official Community Plan apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;

- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting development of the Land, which density bonuses the Owner acknowledges are a benefit to the Owner; and
- (c) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

ARTICLE 2 HOUSING AGREEMENT AND LAND USE RESTRICTIONS

2.0 Land Use Restrictions - The Owner and the City hereby covenant and agree as follows:

- (a) The Land must be used only in accordance with this Agreement;
- (b) The Owner will design, construct and maintain a building or buildings providing 24 Dwelling Units as purpose-built rental housing;
- (c) The Owner acknowledges that the City will not support applications to stratify the building and allow the identified purpose-built rental dwellings to be sold independently of each other for a period of ten (10) years from the date of this agreement.

ARTICLE 3 HOUSING AGREEMENT AND TRANSFER RESTRICTIONS

3.0 Purchaser Qualifications - The City and the Owner agree as follows:

- (a) the Owner must not sell or transfer, or agree to sell or transfer, any interest in any building containing purpose built rental Dwelling Unit(s) on the Land other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the identified purpose- built rental Dwelling Unit(s) are available in accordance with this Agreement.

ARTICLE 4 GENERAL

4.1 Notice of Housing Agreement - For clarity, the Owner acknowledges and agrees that:

- (a) this Agreement constitutes a housing agreement entered into under s. 905 of the *Local Government Act*;
- (b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.
- (d) should the owner request that the notice of this agreement be lifted from the title of the Land, ensuring that the request is made no sooner than ten (10) years from the date of this agreement, repayment of any rental grant received from the City will be required. Funds received would be

directed to the Housing Opportunities Reserve Fund.

- 4.2 **No Effect On Laws or Powers** - This Agreement does not
 - (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
 - (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
 - (c) affect or limit any enactment relating to the use or subdivision of land, or
 - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.
- 4.3 **Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units and will permit representatives of the City to inspect the Dwelling Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Dwelling Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.
- 4.4 **Notice** - Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.
- 4.5 **Agreement Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the City in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.
- 4.6 **Limitation on Owner's Obligations** - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
- 4.7 **Release** – The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.
- 4.8 **Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

- 4.9 **Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 4.10 **Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 4.11 **Severance** - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 4.12 **Equitable Remedies** - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 4.13 **No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
- 4.14 **Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.15 **Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.
- 4.16 **Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in)
the presence of:)

D. Davies)
Signature of Witness)

D. Davies)
Print Name)

1435 Water St.)
Address)

Planning Technician I)
Occupation)

DENISE I. DAVIES
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1435 Water Street, Kelowna, BC

"OWNER"
by its authorized signatories:

[Signature]

Gregor W. Brown
Print Name:

Print Name:

SIGNED, SEALED & DELIVERED in)
the presence of:)

Signature of Witness)

Print Name)

Address)

Occupation)

CITY OF KELOWNA
by its authorized signatories:

Mayor

City Clerk

CITY OF KELOWNA

BYLAW NO. 11128

Housing Agreement Authorization Bylaw - Simple Pursuits Inc., Inc. No. BC0449611 - 2127 Ethel Street

Whereas pursuant to Section 905 of the *Local Government Act*, a local government may, by bylaw, enter into a housing agreement.

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

1. The Municipal Council hereby authorizes the City of Kelowna to enter into a Housing Agreement with Simple Pursuits Inc., Inc. No. BC0449611 for the lands known as Lot 1, Section 19, Township 26, ODYD, Plan 29557 located on 2127 Ethel Street, Kelowna, B.C., a true copy of which is attached to and forms part of this bylaw as Appendix "A".
2. The Mayor and City Clerk are hereby authorized to execute the attached agreement as well as any conveyances, deeds, receipts or other documents in connection with the attached agreement.
3. 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 10th day of August, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Schedule "A"

Page 1

PURPOSE-BUILT RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference _____, 2015 affects:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:

as Lot 1, Section 19, Township 26, Plan KAP29557

("Land")

And is

BETWEEN:

Simple Pursuits Inc.
340 West Avenue,
Kelowna, BC V1Y 4Z1

("Owner")

AND:

CITY OF KELOWNA, a local government incorporated pursuant to the *Community Charter* and having its offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

GIVEN THAT:

- A. The Owner has applied to the City for rezoning of the Lands to permit the construction of a housing complex that will include purpose-built rental housing units, as defined in this Agreement, on certain lands more particularly described in this Agreement;
- B. The City may, pursuant to section 905(1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;
- C. The Owner and the City wish to enter into this Agreement to provide for purpose-built rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 905 of the *Local Government Act*; and
- D. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

This Agreement is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as a housing agreement between the Owner and the City under s. 905(1) of the *Local Government Act*, as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Definitions -

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi permanently for a Household. This use does not include a room in a hotel or a motel.

"Household" means

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"Land" means the land described herein;

"LTO" means the Kamloops Land Title Office or its successor;

"Official Community Plan" means the City of Kelowna Official Community Plan Bylaw No. 7600, or its successor bylaw;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the Lands are subdivided;

"Purpose-Built Rental Housing" means a self-contained building(s) containing five or more Dwelling Units that are intended to be used for rental housing and does not include buildings that are stratified; and

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

1.2 Interpretation - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the City of Kelowna Zoning Bylaw No. 8000, or its successor bylaw, and the Official Community Plan apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

1.3 Purpose of Agreement - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;

- (b) performance of this Agreement by the Owner is a condition, as contemplated by s. 904 of the *Local Government Act*, of the Owner becoming entitled to certain density bonuses respecting development of the Land, which density bonuses the Owner acknowledges are a benefit to the Owner; and
- (c) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

**ARTICLE 2
HOUSING AGREEMENT AND LAND USE RESTRICTIONS**

2.0 Land Use Restrictions - The Owner and the City hereby covenant and agree as follows:

- (a) The Land must be used only in accordance with this Agreement;
- (b) The Owner will design, construct and maintain a building or buildings providing 24 Dwelling Units as purpose-built rental housing;
- (c) The Owner acknowledges that the City will not support applications to stratify the building and allow the identified purpose-built rental dwellings to be sold independently of each other for a period of ten (10) years from the date of this agreement.

**ARTICLE 3
HOUSING AGREEMENT AND TRANSFER RESTRICTIONS**

3.0 Purchaser Qualifications - The City and the Owner agree as follows:

- (a) the Owner must not sell or transfer, or agree to sell or transfer, any interest in any building containing purpose built rental Dwelling Unit(s) on the Land other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the identified purpose- built rental Dwelling Unit(s) are available in accordance with this Agreement.

**ARTICLE 4
GENERAL**

4.1 Notice of Housing Agreement - For clarity, the Owner acknowledges and agrees that:

- (a) this Agreement constitutes a housing agreement entered into under s. 905 of the *Local Government Act*;
- (b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land.
- (d) should the owner request that the notice of this agreement be lifted from the title of the Land, ensuring that the request is made no sooner than ten (10) years from the date of this agreement, repayment of any rental grant received from the City will be required. Funds received would be

directed to the Housing Opportunities Reserve Fund.

- 4.2 No Effect On Laws or Powers** - This Agreement does not
- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
 - (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
 - (c) affect or limit any enactment relating to the use or subdivision of land, or
 - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.
- 4.3 Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units and will permit representatives of the City to inspect the Dwelling Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Dwelling Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.
- 4.4 Notice** - Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.
- 4.5 Agreement Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the City in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.
- 4.6 Limitation on Owner's Obligations** - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
- 4.7 Release** – The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.
- 4.8 Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

- 4.9 **Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 4.10 **Further Acts** - The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 4.11 **Severance** - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 4.12 **Equitable Remedies** - The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 4.13 **No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
- 4.14 **Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.15 **Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.
- 4.16 **Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in)
the presence of:)

Denise I. Davies)
Signature of Witness)

D. Davies)
Print Name)

1435 Water St.)
Address)

Planning Technician I)
Occupation)

DENISE I. DAVIES
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1435 Water Street, Kelowna, BC

"OWNER"
by its authorized signatories:

Gregory W. Brown

Gregory W. Brown
Print Name:

Print Name:

SIGNED, SEALED & DELIVERED in)
the presence of:)

Signature of Witness)

Print Name)

Address)

Occupation)

CITY OF KELOWNA
by its authorized signatories:

Mayor

City Clerk