

City of Kelowna

Regular Council Meeting

AGENDA



Monday, January 27, 2020
1:30 pm
Council Chamber
City Hall, 1435 Water Street

Pages

1. Call to Order

I would like to acknowledge that we are gathered today on the traditional, ancestral, unceded territory of the syilx/Okanagan people.

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

2. Confirmation of Minutes

3 - 9

Regular PM Meeting - January 20, 2020

3. Reports

3.1 Excellence in Enterprise Asset Management Practice

10 - 11

To present Council with the Award for Excellence in Enterprise Asset Management Practice that was received at the Cityworks conference in December 2019.

4. Development Application Reports & Related Bylaws

4.1 Gallagher Rd, 2975, TA19-0017 - David Geen

12 - 29

Mayor to invite the Applicants, or Applicants' Representative, to come forward.

To consider a Staff recommendation to NOT support an application for a Text Amendment to the Zoning Bylaw to facilitate temporary farm worker housing for up to 70 additional temporary farm workers on the subject property.

4.2 Okanagan Rail Trail Landscaping and Screening Regulations

30 - 52

To amend Section 7 of the Zoning Bylaw to introduce landscape buffering and screening requirements for properties adjacent to the Okanagan Rail Trail and to clarify the Minimum Landscape Buffer Treatment Level descriptions.

4.3	BL11970 (TA19-0004) - Amendment to Section 7 of Zoning Bylaw No. 8000 - Landscaping and Screening	53 - 55
	To give first reading to Bylaw No. 11970.	
4.4	Dilworth 950, DP19-0144, The Board of Education of School District No. 23 (Central Ok)	56 - 78
	To issue a Development Permit for the form and character of a child care centre.	
5.	Bylaws for Adoption (Development Related)	
5.1	588 Radant Rd, BL11520 (Z17-0080) - Craig Bulawka Professional Corporation	79 - 79
	To adopt Bylaw No. 11520 in order to rezone the subject property from the RU1 – Large Lot Housing zone to the RU6 – Two Dwelling Housing zone.	
6.	Non-Development Reports & Related Bylaws	
6.1	License of Occupation – Swim Area, Dock and Water Intake	80 - 149
	To execute the renewal of three Licenses of Occupation with the Province of British Columbia for securing tenure of the swim area in front of Waterfront Park and dock in front of the Delta Grand Hotel and a water intake in Hydraulic Creek.	
6.2	RDCO Board Voting Unit	150 - 156
	To assign distribution of votes for the City of Kelowna directors on the Regional District of Central Okanagan Board of Directors.	
7.	Mayor and Councillor Items	
8.	Termination	



City of Kelowna Regular Council Meeting Minutes

Date: Monday, January 20, 2020
Time: 1:30 pm
Location: Council Chamber
City Hall, 1435 Water Street

Members Present Mayor Colin Basran, Councillors Ryan Donn, Gail Given, Brad Sieben*, Mohini Singh, Luke Stack* and Loyal Wooldridge

Members Absent Councillors Maxine DeHart and Charlie Hodge

Staff Present City Manager, Doug Gilchrist; City Clerk, Stephen Fleming, Deputy City Clerk, Laura Bentley; Divisional Director, Planning & Development Services, Ryan Smith*; Development Planning Department Manager, Terry Barton*; Planner Specialist, Alex Kondor*; Planner, Arlene Janousek*; Planner, Hailey Rilkoff*; Planner Specialist, Ross Soward*; Divisional Director, Infrastructure, Alan Newcombe*; Legislative Coordinator (Confidential), Arlene McClelland

(* Denotes partial attendance)

1. Call to Order

Mayor Basran called the meeting to order at 1:32 p.m.

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

2. Confirmation of Minutes

Moved By Councillor Wooldridge/Seconded By Councillor Donn

R0024/20/01/20 THAT the Minutes of the Regular Meetings of January 13, 2020 be confirmed as circulated.

Carried

3. Development Application Reports & Related Bylaws

3.1 Morrison Rd 1425, A19-0012 & FH19-0003 - Surinder K. Boparai & Avtar S. Boparai

Staff:

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

Moved By Councillor Stack/Seconded By Councillor Sieben

R0025/20/01/20 THAT Agricultural Land Reserve Appeal No. A19-0012 for Lot B, Section 36, Township 26, ODYD, Plan EPP15301 located at 1425 Morrison Road, Kelowna, BC for a non-adhering residential use permit pursuant to Section 25 of the Agricultural Land Commission Act, be supported by Council;

THAT the Council directs Staff to forward the subject application to the Agricultural Land Commission for consideration;

THAT Council authorizes the issuance of Temporary Farm Worker Housing Permit No. FH19-0003 Lot B, Section 36, Township 26, ODYD, Plan EPP15301 located at 1425 Morrison Road, Kelowna, BC subject to the following:

1. Approval by the Agricultural Land Commission of Non-Adhering Residential Use Permit Application A19-0012;
2. The dimensions and siting of the building to be constructed on the land be in accordance with Schedule A;
3. A vegetated buffer is provided for screening to adjacent property lines and between the temporary farm worker housing and active farming areas in accordance with Schedule B;
4. The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscape buffer, as determined by a professional landscaper;
5. Registration of a Section 219 restrictive covenant on title that states:
 - i. The dwellings will be used for temporary farm workers only;
 - ii. The owner will remove the dwellings if the farm operation changes such that if they are no longer required;
 - iii. The dwellings will only be used for farm workers for a maximum of ten (10) months of the year;
 - iv. The maximum number of accommodations permitted on this farm unit within this City sector is 60 workers; and,
 - v. The temporary farm worker housing building footprint is a maximum of 0.3ha.

AND THAT this Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

Carried

3.2 East Kelowna Rd 2830, A19-0016 - William Trent Kitsch/Maria Louise Kitsch

Staff:

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

Moved By Councillor Wooldridge/Seconded By Councillor Sieben

R0026/20/01/20 THAT Agricultural Land Reserve Appeal No. A19-0016 for Lot A, Section 16, Township 26, ODYD, Plan 32982 Except Plan KAP71228 located at 2830 East Kelowna Road, Kelowna for a non-farm use in the Agricultural Land Reserve pursuant to Section 20 of the Agricultural Land Commission Act, be supported by Council;

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

Carried

3.3 Nickel Rd 300, Z19-0104 - Okanagan Valley Construction Ltd., Inc. No. BCo665697

Staff:

- Displayed a PowerPoint Presentation summarizing the application.

Moved By Councillor Wooldridge/Seconded By Councillor Singh

R0027/20/01/20 THAT Rezoning Application No. Z19-0104 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 6 Section 27 Township 26 ODYD Plan 8839 located at 300 Nickel Road, Kelowna, BC, from the RU1 – Large Lot Housing zone to the RM1 – Four Dwelling Housing zone be considered by Council;

AND THAT the Rezoning Bylaw be forwarded to 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 Development Planning Department dated January 20, 2020;

AND THAT final adoption of the Rezoning Bylaw be considered subsequent to the approval of the Ministry of Transportation and Infrastructure;

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.

Carried

3.4 Nickel Rd 300, BL11972 (Z19-0104) - Okanagan Valley Construction Ltd., Inc. No. BCo665697

Moved By Councillor Wooldridge/Seconded By Councillor Singh

R0028/20/01/20 THAT Bylaw No. 11972 be read a first time.

Carried

3.5 Vaughan Ave 760, TA19-0019 (BL11973) - 760 Vaughan Inc., Inc. No. BC1148021

Councillor Sieben declared conflict of interest as he provides insurance services for the Applicant and departed the meeting at 1:52 p.m.

Staff:

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

Moved By Councillor Stack/Seconded By Councillor Wooldridge

R0029/20/01/20 THAT Zoning Bylaw Text Amendment Application No. TA19-0019 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "A" attached to the report from the Development Planning Department dated January 20, 2020 for Lot 2 Section 30 Township 26 ODYD Plan 23753 located at 760 Vaughan Avenue, Kelowna, BC be considered by Council;

AND THAT the Zoning Bylaw Text Amendment Bylaw be forwarded to a Public Hearing for further consideration.

Carried

3.6 Vaughan Ave 760, BL11973 (TA19-0019) - 760 Vaughan Inc., Inc. No. BC1148021

Moved By Councillor Wooldridge/Seconded By Councillor Singh

R0030/20/01/20 THAT Bylaw No. 11973 be read a first time.

Carried

Councillor Sieben returned to the meeting at 2:08 p.m.

3.7 Speer St 2257-2263, Z19-0102 (BL11974) - Jesse David East and John Thomas Hodges

Staff:

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

Moved By Councillor Sieben/Seconded By Councillor Wooldridge

R0031/20/01/20 THAT Rezoning Application No. Z19-0102 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 34 District Lot 14 ODYD Plan 413, located at 2257 Speer Street, Kelowna, BC and Lot 35 District Lot 14 ODYD Plan 413, located at 2263 Speer Street, Kelowna, BC from the RU6 – Two Dwelling Housing zone to the HD2 – Hospital and Health Support Services 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 Development Planning Department dated January 20, 2020;

AND THAT final adoption of the Rezoning Bylaw be considered subsequent to the demolition of existing dwellings and the consolidation of the subject properties;

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.

Carried

3.8 Speer St 2257-2263, BL11974 (Z19-0102) - Jesse David East and John Thomas Hodges

Moved By Councillor Wooldridge/Seconded By Councillor Singh

R0032/20/01/20 THAT Bylaw No. 11974 be read a first time.

Carried

3.9 Mugford Rd 550, Z19-0122 (BL11975) - Dr. A Ravindran Inc., Inc. No. B.C. 0814175

Staff:

- Displayed a PowerPoint Presentation summarizing the application.

Moved By Councillor Donn/Seconded By Councillor Singh

R0033/20/01/20 THAT Rezoning Application No. Z19-0122 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot E Sec 26 TWN 26 ODYD Plan 35641 located at 550 Mugford Road, Kelowna BC from the RU1 – Large Lot Housing to the RU2 – Medium Lot Housing zone to be considered by Council;

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

AND THAT final adoption of the Rezoning Bylaw be considered subsequent to the approval of the Ministry of Transportation and Infrastructure;

AND FURTHER 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 Development Planning Department dated January 20, 2020.

Carried

3.10 Mugford Rd 550, BL11975 (Z19-0122) - Dr. A Ravindran Inc., Inc. No. B.C. 0814175

Moved By Councillor Donn/Seconded By Councillor Sieben

R0034/20/01/20 THAT Bylaw No. 11975 be read a first time.

Carried

4. Non-Development Reports & Related Bylaws

4.1 Rental Housing Grants Recommendation for 2020

Councillor Stack declared a perceived conflict of interest as his employer competes for these types of grants from time to time and departed the meeting at 2:17 p.m.

Staff:

- Displayed a PowerPoint Presentation providing an overview of three rental housing grant applications and responded to questions from Council.

Moved By Councillor Singh/Seconded By Councillor Given

R0035/20/01/20 THAT Council receives the report from the Planner Specialist, dated January 13, 2020 regarding the Rental Housing Grants funding recommendation for 2020;

AND THAT Council approves the 2020 Rental Housing Grants as identified in the report from the Planner Specialist, dated January 13, 2020, in accordance with the Housing Opportunities Reserve Fund Bylaw No. 8593 and Council Policy No. 335.

Carried

Councillor Stack returned to the meeting at 2:25 p.m.

4.2 Birch Avenue Water Main Project Cancelled and Budget Transferred to South End Water Upgrades Project

Staff:

- Provided reasons for cancelling the Birch Avenue Water Main Project and transferring those funds to the South End Water Upgrades project and responded to questions from Council.

Moved By Councillor Stack/Seconded By Councillor Donn

R0036/20/01/20 THAT Council receives for information the report from the Infrastructure Divisional Director dated January 20, 2020 regarding the cancellation of the Birch Avenue Water Main project and the transfer of the remaining budget to the South End Water Upgrades project;

AND THAT the 2019 Financial Plan be amended to include the cancellation of the Birch Avenue Water Main project and the transfer of remaining budget to the South End Water Upgrades project as noted in the Financial/Budgetary Considerations section below.

Carried

4.3 Cancellation - Sutherland Outfall Oil Grit Chamber Project and Budget Transfer to Chichester Pond Sediment Forebay Project

Staff:

- Provided reasons for transferring budget from the Sutherland Project to the Chichester Pond Project.

Moved By Councillor Donn/Seconded By Councillor Wooldridge

R0037/20/01/20 THAT Council receives for information, the report from the Infrastructure Divisional Director dated January 20, 2020 regarding the cancellation of the Sutherland Outfall Oil/Grit Chamber Project and the transfer of the remaining budget to the Chichester Pond – Sediment Forebay project;

AND THAT the 2019 Financial Plan be amended to include the cancellation of the Sutherland Outfall project and the transfer of remaining budget to the Sediment Forebay project, as noted in the Financial/Budgetary Considerations section below.

Carried

5. Bylaws for Adoption (Non-Development Related)

5.1 BL11833 - Amendment No. 24 to the Bylaw Notice Enforcement Bylaw No. 10475

Moved By Councillor Donn/Seconded By Councillor Sieben

R0038/20/01/20 THAT Bylaw No. 11833 be adopted.

Carried

5.2 BL11747 Amendment No. 2 Fire & Safety Bylaw No. 1076

Moved By Councillor Donn/Seconded By Councillor Sieben

R0039/20/01/20 THAT Bylaw No. 11747 be read adopted.

Carried

6. Mayor and Councillor Items

Councillor Wooldridge:

- Spoke to their attendance at the Kelowna Art Gallery's Installation Opening Reception on Friday January 17th.

Mayor Basran:

- Congratulated Kelowna's Malindi Elmore for breaking the Canadian record in the Houston Marathon.

7. Termination

This meeting was declared terminated at 2:29 p.m.

Mayor Basran

/acm



City Clerk

DRAFT

Report to Council



Date: January 27, 2020

To: Council

From: City Manager

Subject: Award for Excellence in Enterprise Asset Management Practice

Department: Infrastructure Engineering

Recommendation:

THAT Council receives for information, the report from the Infrastructure Engineering Department dated January 27, 2020, regarding the recently received Award for Excellence in Enterprise Asset Management Practice.

Purpose:

To present Council with the Award for Excellence in Enterprise Asset Management Practice that was received at the Cityworks conference in December 2019.

Background:

Cityworks is an asset management software company that designs the leading GIS-centric enterprise asset management system to manage, track, analyze and score infrastructure assets. Cityworks is used by the City of Kelowna for their enterprise asset management system and is currently being implemented across all infrastructure service areas. The City of Kelowna received the award at the Cityworks User Conference in Salt Lake City in December 2019 recognizing the City's excellence in asset management practice supported by the organization's senior leadership and Council. The implementation of these asset management practices helps to improve work planning, budgeting and communication across the organization to ensure the City maintains high quality long-lasting infrastructure that supports service delivery.

The award criteria acknowledge:

- Clearly identified Corporate Policy and Framework,
- Corporate Governance structure and engagement at all levels of the organization,
- Organization's commitment and discipline to the enterprise focus,
- Enterprise integration efforts, vision and achievements.

Esri Canada nominated the City of Kelowna as the City exemplifies many of the qualities befitting of this award. The City was selected from a pool of more than 700 Cityworks clients worldwide.

Internal Circulation:

Divisional Director, Infrastructure
Deputy City Manager
Information Services Department Manager
Divisional Director, Human Resources & Community Safety
Community Communications Manager
Asset Manager
Sr. Project Manager, Infrastructure

Considerations applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Financial/Budgetary Considerations:
External Agency/Public Comments:
Communications Comments:

Submitted by:

J. Shaw, P.Eng.
Infrastructure Engineering Manager

Approved for inclusion:



A. Newcombe, Divisional Director, Infrastructure

cc: Divisional Director, Infrastructure
Deputy City Manager
Divisional Director, Corporate Strategic Services
Divisional Director, Human Resources & Community Safety

REPORT TO COUNCIL



Date: January 27th 2020

To: Council

From: City Manager

Department: Development Planning (AK)

Application: TA19-0017 **Owner:** Geen, David

Address: 2975 Gallagher Drive **Applicant:** Sellinger, Bob

Subject: Zoning Bylaw Text Amendment, ALR Non-Adhering Residential Use Permit and Temporary Farm Worker Housing Permit

Existing OCP Designation: REP – Resource Protection Area

Existing Zone: A1 – Agriculture 1

1.0 Recommendation

THAT Zoning Bylaw Text Amendment Application No. TA19-0017 to amend the City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "A" attached to the Report from the Development Planning Department dated January 27th 2020 for Lot A, Section 12, Township 26, ODYD, Plan EPP71625 located at 2975 Gallagher Drive, Kelowna, BC, NOT be considered by Council;

2.0 Purpose

To consider a Staff recommendation to NOT support an application for a Text Amendment to the Zoning Bylaw to facilitate temporary farm worker housing for up to 70 temporary farm workers on the subject property, which would result in a total of up to 130 temporary farm workers for a single farm unit located within the same City Sector and increase the maximum 'temporary farm worker housing footprint' from 0.3ha to 0.95ha.

3.0 Development Planning

Development Planning staff are recommending non-support for the proposed application which would result in a total of 130 temporary farm workers for a single farm unit located within the same City Sector and increase the maximum 'temporary farm worker housing footprint' from 0.3ha to 0.95ha. The City's Zoning Bylaw limits the amount of housing for temporary farm workers per farm unit in each City Sector to avoid an excessive concentration of workers in agricultural areas that lack amenities such as shops, services, sanitary connection, parks, and access to transit. The subject site is an isolated agricultural parcel not located near transit, stores, or other amenities.

Staff are recommending non-support due to the fact that 60 beds of TFWH has been deemed to be the maximum amount of workers that is appropriate for each farm unit in each Sector of the City. The property owners have previously been granted approval for 60 workers within the same Sector on the subject property early in 2019 (A19-0005 AND FH19-0001). In 2017, Council adopted new regulations for Temporary Farm Worker Housing (TFWH) following consultation with the Ministry of Agriculture, the farming industry, and the public. The regulations were intended to address concerns related impact on agricultural land, increased demands on municipal infrastructure, and the potential 'detachment' of the workers having no connection to the overall community. The current zoning bylaw regulations allow farmers to have accommodations for up to 40 temporary farm workers on parcels less than 8.0 ha and up to 60 temporary farm workers for parcels 8.0 ha or greater on farm units within each City sector. This maximum applies to each 'farm unit', which is defined as the group of parcels owned, rented, or leased by an individual farmer. This enables farmers to have multiple TFWH locations within the City but not in the same Sector of the City. Staff recommend that more urban locations of the City are more appropriate for this level of housing.

4.0 Proposal

4.1 Background

The property is farmed by Coral Beach Farms Ltd. The company currently has 930 acres of cherries planted with an additional 250 acres planned in 2020 for a total of 1,180 acres. 300 of those acres are in the City of Kelowna. The majority of land owned or leased by the company is in the Central and North Okanagan. In 2018 the company produced 3,750 tons of cherries, and upwards of 6,000 tons is expected by 2021. The cherries are currently packed at the company's facility in Carr's Landing and a new packing facility under construction on a property on Shanks Road near Highway 97 N is anticipated to be used in 2020.

Coral Beach Farms employs approximately 1,000 staff in the peak summer season. By 2023 the company expects to employ over 1,400 staff. Approximately 60% of seasonal staff are brought in under the Seasonal Agricultural Workers Program (SAWP) program from Mexico and Jamaica, with the remainder primarily being international backpackers and out-of-province Canadians.

The property owners have previously been granted approval for 60 workers within the same Sector on the subject property early in 2019 (A19-0005 AND FH19-0001). The applicants have provided a detailed letter (attached) which states the company currently has 222 beds in City of Kelowna and 474 beds for workers in Lake Country and Vernon. The applicants have also provided a letter of opinion from an agrologist (attached) on the proposed worker accommodation area and its impact on the overall agricultural operations on the subject property.

4.2 Project Description

The property owners have applied for permits to accommodate 70 additional workers on the subject site located at 2975 Gallagher Road which will mean up to 130 workers will be housed on the property. The subject property is zoned for A1 - Agriculture and located within the Agricultural Land Reserve (ALR). The lot is 61 hectares (151 acres) in area. Approximately 96 acres are presently planted as cherry orchard and cherry/apple tree nursery. The proposed accommodation is required in order to house seasonal workers to maintain the cherry orchard on the property and nearby orchards of Coral Beach Farms.

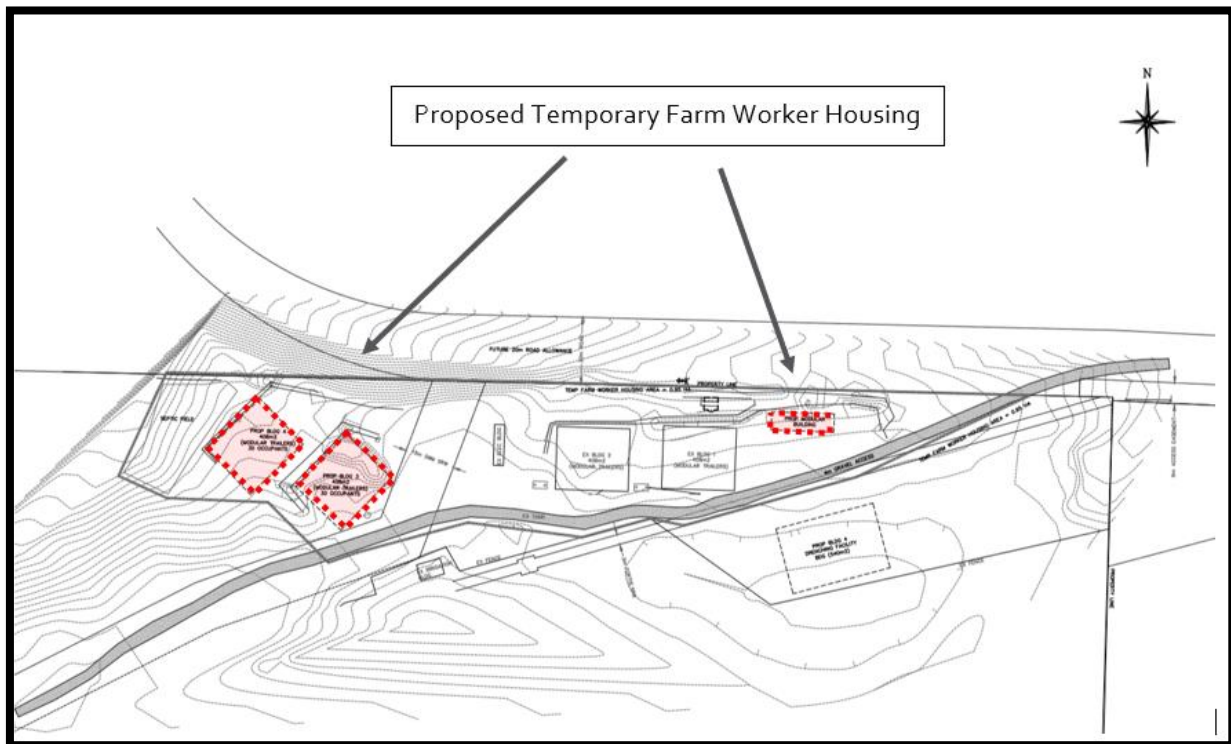
The application is for 70 additional beds for temporary farm worker housing (TFWH) in temporary structures on non-permanent foundations. Specifically, the proposal is to accommodate 70 additional seasonal farm workers by placing 12 'ATCO' trailers on the property. The majority of the housing will be

located in two 'pods' of 6 trailers each. Each pod includes bedrooms, shared washrooms and a common kitchen area.

The proposed housing is located in a City Sector that currently has approximately 60 units of temporary farm worker housing (TFWH). In comparison the Rutland City Sector has approximately 231 units of existing TFWH and the McKinley City Sector has 180 units of TFWH. The applicant owns multiple parcels within the City of Kelowna and surrounding area. Staff have discussed other possible sites with the applicant. The applicant has advised that the subject site is the least disruptive location to their agricultural operation and is intended to be the least disruptive to adjacent properties. In addition to the proposed housing the applicant is also proposing to construct 44 units of temporary farm worker housing in the East Kelowna City Sector.

The Official Community Plan (OCP) states that temporary farm worker housing should utilize all existing dwellings within a farm unit prior to building new temporary farm worker housing. The applicants have clarified that throughout their farms in Kelowna, and also in Lake Country and Vernon, 100% of the dwellings are used for farm staff. Specifically, the applicants state they have zero non-farm use rental accommodation, which could otherwise be converted to use for temporary farm worker housing.

To deal with the fact the proposed housing is located in an isolated rural area, the applicants are proposing to provide bus transportation to urban amenities such as grocery stores or banks. The site is accessed by easement over the Kirschner Mountain property the applicants are proposing to pay the cost of upgrading a portion of this easement to a municipal emergency road standard to ensure safe access to the site. The trailers are located near a low-point of the property and the proposed location is not highly visible from the surrounding area. A landscape buffer has been installed as condition of the previous approval for 60 workers on the subject site and would be required to be expanded to buffer the proposed units.



4.3 Site Context

The site is located outside of the Permanent Growth Boundary and within the Belgo-Black Mountain City Sector. The site is located on a portion of Layer Cake Mountain and was planted with cherries starting in 2017/18. The lot is adjacent to Mission Creek to the south and west which is designated as Park in the Official Community Plan and Zoned P3 – Parks and Open Space. The lot is adjacent to Kirschner Mountain to the north which is designated S2Res – Single/Two Unit Residential in the OCP and zoned A1 – Agriculture 1. The property is accessed by easement from Gallagher Road to the east, and the location of the access easement will likely become a future road to service Kirschner Mountain development.

5.0 **Current Development Policies**

5.1 Kelowna Official Community Plan (OCP)

Chapter 5: Development Process

Objective 5.33 Protect and enhance local agriculture.

Policy 5.33.1 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.

Objective 5.34 Preserve productive agricultural land.

Policy 5.34.2 Farm Help Housing. Accommodation for farm help on the same agricultural parcel will be considered only where:

- Agriculture is the principal use on the parcel; and
- The applicant demonstrates that the additional housing is necessary to accommodate farm employee(s) whose residence on the farm property is considered critical to the overall operation of the farm. The primary consideration is whether the scale of the farm operation is large enough that permanent help is deemed necessary.
- Temporary farm worker housing (e.g. bunkhouse accommodation on non-permanent foundations) is the preferred solution where the need for farm worker housing is justified.

Chapter 15 Farm Protection Development Permit Guidelines.

Design temporary farm working housing such that:

- Temporary farm worker housing should use all existing dwellings within the farm unit, prior to building new temporary farm worker housing, unless the existing dwellings are used for a use consistent with the Agriculture Land Commission Act. Alternatively, the existing dwellings on the farm unit must be removed, decommissioned to an approved use or demolished including decommissioning the existing septic system, prior to the authorization of a new temporary farm worker housing structure.
- Temporary farm worker housing footprint should be contiguous with the residential footprint (i.e. homeplate) and / or within 50 metres of the road and/or located to maximize agricultural potential and limit negative impacts on the farm parcel.
- Temporary farm worker housing should have a minimum 3 metre wide vegetated buffer for screening to adjacent property lines and between the temporary farm worker housing and active farming areas.

5.2 City of Kelowna Agriculture Plan

Allow Temporary Farm Worker Housing, as permitted by City of Kelowna bylaw. Temporary Farm Worker Housing, as permitted by the City of Kelowna, should be allowed. The TFWH footprint means the portion of a lot that includes all structures, driveways and parking areas associated with the temporary farm worker housing, including but not limited to structures for cooking, sanitary, living and sleeping. The footprint does not include the vegetated buffer

6.0 **Technical Comments**

6.1 Development Engineering Department

- See Attached Servicing Memo (Attachment A)

6.2 Ministry of Agriculture

- Ministry staff in general support the development of farm worker accommodation appropriate to the farm operation's agricultural activity and consistent with the ALC's Act and Regulations.
- Based on the information provided, Ministry staff consider the proposal to be a reasonable application based on the crop, scale, and location of the agricultural operation. Ministry staff are aware of Kelowna's accompanying referral requests for FH19-0006 farm help application and TA19-0017 zoning bylaw text amendment and will respond separately following further review.
- Ministry staff anticipate that the zoning bylaw text amendment will require Minister's approval given that the City of Kelowna's is identified in the Local Government Act's Right to Farm Regulation with the proposed bylaw being submitted following 3rd reading.

7.0 **Application Chronology**

Date of Application Received: October 18th 2019
 Date Public Consultation Completed: December 20th 2019

Agricultural Advisory Committee December 12th 2020

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on December 12th 2019 and the following recommendation was passed:

THAT The Agricultural Advisory Committee recommends that Council support temporary farm worker housing for up to 70 additional farm workers on the subject property, which would result in a total of up to 130 temporary farm workers for a single farm unit located within the same City Sector.

8.0 Alternate Recommendation

8.1 Discussion

Should Council support the applicant's proposal, several approvals are required:

1. Zoning Bylaw Amendment (TA19-0017) - The property owners have applied for a site-specific text amendment to the Zoning Bylaw to allow for structures to accommodate a maximum of 70 temporary farm workers on the property, and to accommodate a maximum of 130 temporary farm workers on this farm unit in the Belgo-Black Mountain City Sector. A text amendment is also required to increase the maximum Temporary Farm Worker Housing Footprint from 0.4ha to 0.95ha to accommodate the proposed structures. In 2019 the property owners obtain permission for Temporary Farm Worker Housing to house 60 workers on the subject site at 2975 Gallagher Road.

In 2017, Council adopted new regulations for Temporary Farm Worker Housing (TFWH) following consultation with the Ministry of Agriculture, the farming industry, and the public. The regulations were intended to address concerns related to:

- Potential misuse of farm worker housing;
- Loss of agricultural land;
- Changes to the agricultural landscape;
- Increased demands on municipal infrastructure; and
- A perceived 'detachment' of the workers having no connection to the community.

The regulations allow farmers to have accommodations for up to 40 temporary farm workers on parcels less than 8 ha and up to 60 temporary farm workers for parcels 8 ha or greater on farm units within each City sector. This maximum applies to each 'farm unit', which is defined as the group of parcels owned, rented, or leased by an individual farmer. This enables farmers to have multiple TFWH locations within the City but not in the same Sector of the City. The main reason for the limit on worker allocation is to avoid concentrating a large amount of workers in an otherwise agricultural or rural area where there are typically not many amenities such as transit or grocery stores. The limit on the number of farm workers per City Sector is also in place to minimize impacts such as traffic and noise on surrounding properties.

2. Non-Adhering Residential Use (A19-0017) – Owners of land within the Agricultural Land Reserve are required to obtain approval from the Agricultural Land Commission for dwellings for temporary farm help where it exceeds what would be considered one dwelling unit on a property. Should Council choose to support the site specific text amendment and non-adhering residential use application, approval from the Agricultural Land Commission would be required prior to adoption of the text amendment.
3. Temporary Farm Worker Housing Permit (FH19-0006) – A Farm Worker Housing permit must be approved by Council confirming the proposal meets the City of Kelowna regulations and guidelines related to temporary farm worker housing. In keeping with the Ministry of Agriculture's Guide to Bylaw Development in Farming Areas and the City's regulations for TFWH, the property owner would be required to register Section 219 restrictive covenants on title that generally state:
 - The TFWH will be used for temporary farm workers only;

- The owner will remove the TFWH if the farm operation changes such that it is no longer required; and
- The TFWH will only be used for farm workers for a specified number of months of the year (typically a maximum of eight, though may be increased to ten).

The proposed temporary farm worker accommodation meets all other regulations of the Zoning Bylaw and the guidelines stated in Official Community Plan. The proposal is also consistent with Ministry of Agriculture standards for temporary farm worker accommodation. Specifically, agriculture is the principal use on the parcel, and the applicant has demonstrated that the housing is necessary to accommodate farm employees whose residence on the farm property is considered critical to the overall operation of the farm. The proposed accommodation is on non-permanent foundations which is the preferred solution where the need for farm worker housing is justified.

8.2 Alternative Recommendations

THAT Zoning Bylaw Text Amendment Application No. TA19-0017 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in Schedule "A" attached to the report from the Development Planning Department dated January 27th 2020 for Lot A, Section 12, Township 26, ODYD, Plan EPP71625 located at 2975 Gallagher Drive, Kelowna, BC be considered by Council;

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

AND THAT final adoption of the Zoning Bylaw Text Amending 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 January 27th 2020;

AND THAT final adoption of the Zoning Bylaw Text Amending Bylaw be considered subsequent to approval from the Ministry of Agriculture;

AND FURTHER THAT final adoption of the Zoning Bylaw Text Amending Bylaw be considered in conjunction with Council's consideration of a Non-Adhering Residential Use Permit, and Farm Help Development Permit for the subject property.

Report prepared by: Alex Kondor, Planner Specialist

Reviewed by: Terry Barton, Development Planning Department Manager

Approved Inclusion: Ryan Smith, Divisional Director, Planning & Development Services

Attachments :

Schedule A: Zoning Bylaw Text Amendments

Attachment A: Development Engineering Memo

Attachment B: Supporting Documents (Site Plan, Letter of Rational, Agrologist Report)



Schedule A – Section 9 – Specific Use Regulations - Zoning Bylaw No. 8000 Text Amendment TA19-0017

No.	Section	Relevant Existing	Proposed	Explanation
1.	<p>9.13.4 Site Specific Regulations</p> <p>Add: Lot A, Section 12, Township 26, ODYD, Plan EPP71625 located at 2975 Gallagher Drive, Kelowna, BC to existing table: 'Regulations apply for Temporary Farm Worker Housing on a site-specific basis as follows:'</p> <p>Add: Notwithstanding section 9.13.2(a) TFWH Footprint Size, the TFWH footprint may not exceed 0.95 ha for structures to accommodate a maximum of 130 temporary farmworkers.</p>	<p>9.13.2 TFWH Footprint Size</p> <p>a) TFWH footprint may not exceed 0.20 ha for structure(s) to accommodate a maximum of forty temporary farmworkers and may not exceed 0.30 ha for structure(s) to accommodate a maximum of sixty temporary farm workers.</p>	<p>The following regulations shall apply to this farm unit only.</p> <p>Notwithstanding section 9.13.2(a) TFWH Footprint Size, the TFWH footprint may not exceed 0.95 ha for structures to accommodate a maximum of 130 temporary farmworkers.</p>	<p>Zoning Bylaw Section 9.13.2 states TFWH footprint may not exceed 0.30 ha for structure(s) to accommodate a maximum of sixty temporary farm workers. This amendment would allow the TFWH footprint to be increased to 0.95 ha.</p>



No.	Section	Relevant Existing	Proposed	Explanation
2.	Add: Notwithstanding section 9.13.3(a) Temporary Farmworker Allocation, structures to accommodate a maximum of 130 temporary farm workers shall be permitted on this farm unit in this city sector as identified on Official Community Plan Map 5.4	9.13.3 Temporary Farm Worker Allocation (a) Structure(s) to accommodate a maximum of forty temporary farm workers per each city sector as identified on Official Community Plan Map 5.4 for parcels up to eight hectares. For parcels eight hectares or more, structure(s) to accommodate a maximum of sixty temporary farm workers per each city sector as identified on Official Community Plan Map 5.4.	Notwithstanding section 9.13.3(a) and Temporary Farmworker Allocation, structures to accommodate a maximum of 130 temporary farm workers shall be permitted on this farm unit in this city sector as identified on Official Community Plan Map 5.4.	(c) limits the amount of farm workers per Farm Unit in each City Sector therefore a site-specific text amendment is required to allow for a total of 130 temporary farm workers to be located within the same farm unit within the same City Sector. This is a site-specific text amendment to increase the total Temporary Farm Worker Allocation permitted within the Belgo-Black Mountain Sector to 130 units for the subject farm unit.

**CITY OF KELOWNA
MEMORANDUM**

Date: ~~November 26, 2019~~ **January 03, 2020**

File No.: A19-0017

To: Land Use Planning Manager (AK)

From: Development Engineering Manager (JK)

Subject: 2975 Gallagher Rd

A1

The Development Engineering Branch has the following comments with regard to this application for a non-adhering residential use permit for an additional 70-unit temporary farm working housing within the Agricultural Land Reserve (ALR). The Development Technician for this file will be Jim Hager.

1. Domestic water and fire protection.

- a. The subject lot is within the Black Mountain Irrigation District (BMID) water service area. The developer is required to make satisfactory arrangements with BMID for all water and fire protection-related issues. All charges for service connection and upgrading costs, as well as any costs to decommission existing services, shall be the responsibility of the developer.
- b. The developer's consulting mechanical engineer will determine the domestic and fire protection requirements of this proposed development and establish hydrant requirements and service needs. All fire flow calculations approved by BMID are to be shared with the Development Engineering Branch upon submittal of any off-site civil engineering drawings.
- c. Provide an adequately sized domestic water and fire protection system complete with an individual lot connection. The water system must be capable of supplying domestic and fire flow demands of the project in accordance with the Subdivision, Development & Servicing Bylaw No. 7900.

2. Sanitary Sewer.

- a. This subject parcel is currently not within the City service area. Sanitary sewage is presently handled by an on-site sewage disposal system.
- b. The applicant's consulting engineer will determine the requirements of the on-site disposal system that will support the proposed use. The disposal system shall be reviewed by the Interior Health Authority and Building & Permitting.
- c. The increased capacity of the on-site septic system to accommodate the additional 70 units may require the approval of Ministry of the Environment (MOE) (total daily flows > 22,700 L/day). Confirmation of approval by MOE **or the Interior Health Authority** will be required prior to issuance of the Building Permit.

- d. An Engineering drawing showing the location of the septic field with relation to the current drainage easement (Plan EPP71368) on the subject lot is to be provided.

3. Storm drainage

- a) The developer must engage a consulting civil engineer to provide a storm water management plan for the site, which meets the requirements of the Subdivision, Development and Servicing Bylaw No. 7900. The storm water management plan must also include provision of lot grading plan, minimum basement elevation (MBE), if applicable, and provision of a storm drainage service for the development and / or recommendations for onsite drainage containment and disposal systems. Only one service will be permitted for this development. The applicant, at his cost, will arrange the installation of one overflow service if required.
- b) Provide the following drawings:
 - i. A detailed Lot Grading Plan (indicate on the Lot Grading Plan any slopes that are steeper than 30% and areas that have greater than 1.0 m of fill);
 - ii. A detailed Stormwater Management Plan; and
 - iii. An Erosion and Sediment Control Plan.

4. Geotechnical Report

- a) Provide a geotechnical report prepared by a Professional Engineer competent in the field of hydro-geotechnical engineering to address the items below: NOTE: The City is relying on the Geotechnical Engineer's report to prevent any damage to property and/or injury to persons from occurring as a result of problems with soil slippage or soil instability related to this proposed subdivision.
- b) The Geotechnical reports must be submitted to the Development Services Department (Subdivision Approving officer) for distribution to the Development Engineering Branch and Inspection Services Division prior to submission of Engineering drawings or application for subdivision approval.
 - iv. Area ground water characteristics, including any springs and overland surface drainage courses traversing the property. Identify any monitoring required.
 - v. Site suitability for development.
 - vi. Site soil characteristics (i.e. fill areas, sulphate content, unsuitable soils such as organic material, etc.).
 - vii. Any special requirements for construction of roads, utilities and building structures.
 - viii. Recommendations for items that should be included in a Restrictive Covenant.
 - ix. Recommendations for roof drains, perimeter drains and septic tank effluent on the site.
 - x. Any items required in other sections of this document.

5. Gallagher Rd Extension

- a) The location of the subject lot aligns with the future alignment of Gallagher Rd, as seen

in the 20-Yr Major Roads Network in the City of Kelowna's Official Community Plan. Future Gallagher Rd is classified as a 2-Lane Major Collector (Rural SS-R5).

- b) The ~340-m section of the access road from Gallagher Rd to the subject lot's access is to be upgraded to a 6.0-m wide emergency access standard. The emergency access standards are found in Table 1 and Table 2 of Section 4 (Highways) of Schedule 4 of Bylaw 7900. The 50-mm asphalt layer and reverse crossfall seen in SS-R2 will not be a requirement.

Note: Although not a requirement, it is recommended that the applicant contact the owners of 2980 Gallagher Rd to coordinate any works related to road structure along the future alignment of the Gallagher Rd and Loseth Rd connection.

- c) ~~As the future Gallagher Rd is to be constructed as part of a larger development-related project, cash-in-lieu will be collected for future design and construction.~~
- d) ~~The directly attributable elements of the Rural SS-R5 cross-section will be based on 100% of the road works, as follows:~~
- ~~i. This development will be responsible for the design and construction costs of 340 m of Future Gallagher Rd (from the existing paved termination of Gallagher Rd to the subject lot's driveway).~~
 - ~~ii. 3,400 m² of asphalt driving surface (10.0 m width x 340 m length = 1,700 m²)~~
- e) ~~Cash-in-lieu \$289,000 will be required to be paid to the City of Kelowna for the future extension of Gallagher Rd to Loseth Rd ((3,400 m² x \$68 /m²) x 125% = \$289,000).~~

Note: ~~The additional 25% to the cost is based on Section 8.1 (b) of Bylaw 7900 — City to Perform Work.~~

6. Future Gallagher Rd Access


Once Gallagher Rd is constructed (schedule to be decided), the subject lot will front a dedicated City of Kelowna road. Accesses to Gallagher Rd will be formalized at the time of construction and shall adhere to all relevant City of Kelowna Bylaws and Policies, including number of accesses and access widths. Ensure that plans for future site access are confirmed with the Development Engineering Branch.

7. Electric Power and Telecommunication Services

All proposed service connections are to be installed underground. It is the developer's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for these services, which would be at the applicant's cost.

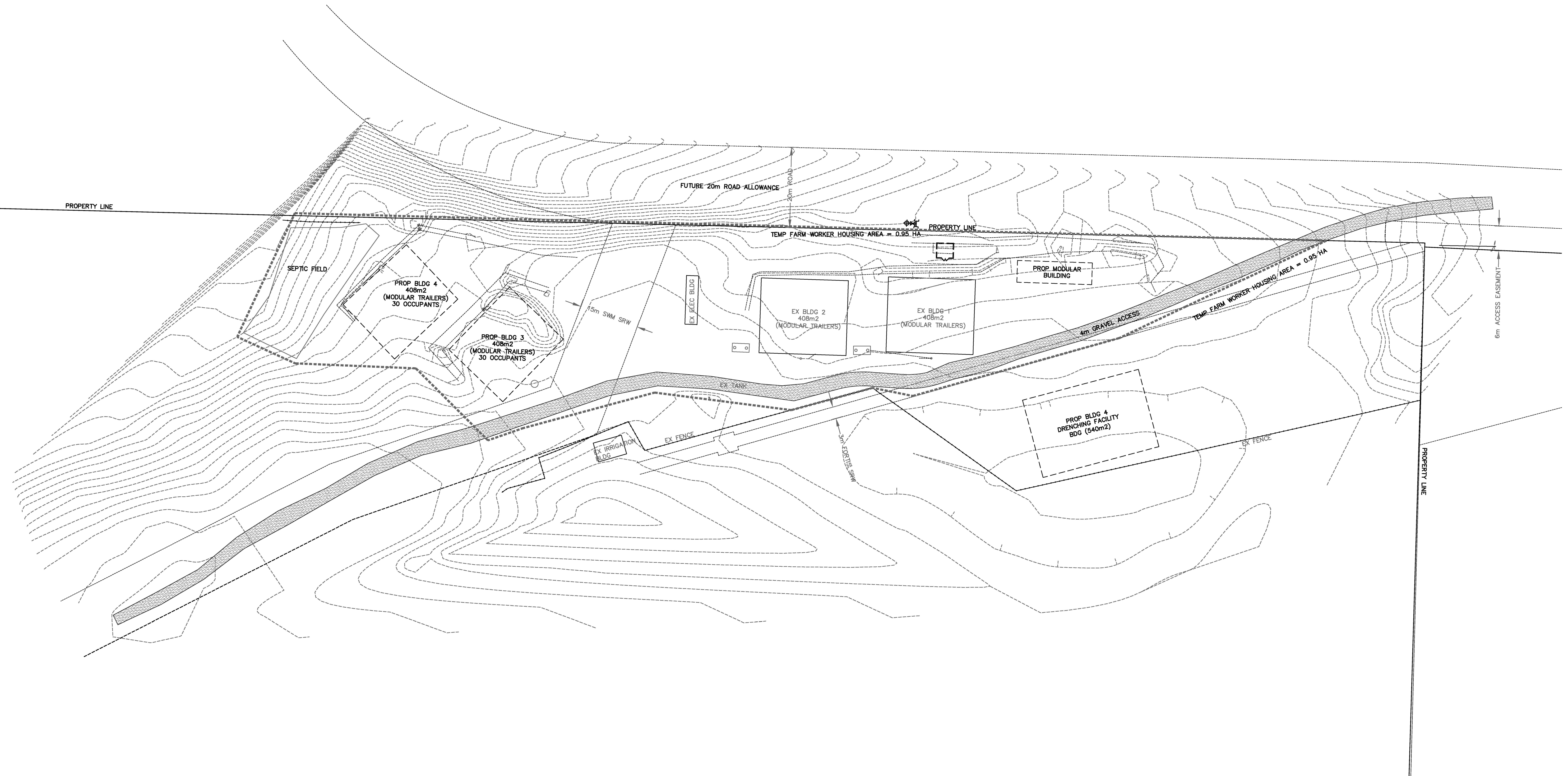
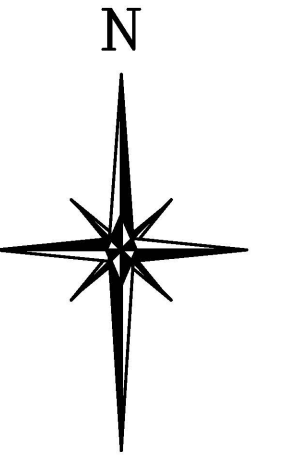
8. Charges and Fees

- a) Cash-in-lieu for Gallagher Rd ~~_____~~ **\$289,000.00**

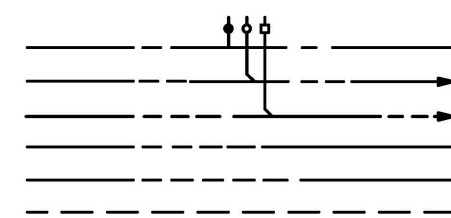

James Kay, P.Eng.
Development Engineering Manager

JKH

TA19-0017

Planner Initials ak

Legend
Water
San. Sewer
Storm Sewer
Gas
U.G. Telephone
U.G. Electrical



Manhole
Power Pole
Lamp Standard
Catch Basin
Hydrant
Trees

○ MH
 ● P.P.
 □ L.S.
 ▨ C.B.
 ⊕
 ●

I.C. (SAN)
I.C. (STM)
C.S.
LPT
SERVICE BOX

PROTECH
CONSULTING 2012

200 - 1461 St. Paul Street Kelowna B.C.

Phone 860-1771
FAX 860-1994

1	OCT 28 2019	DJP	ADD SITE AREAS		DJP
NO.	DATE	BY	REVISION		CH'K

DRAWN	DS
DESIGN	DJP
APPROVED	DRP
DATE	JULY 2019
SCALE	
HORIZ.	1:500

THE CITY OF KELOWNA
ENGINEERING DEPARTMENT

CORAL BEACH FARMS
2975 GALLAGHER ROAD
SITE LAYOUT

DIVISION

DRAWING NO.

19027-01

Sept 23rd, 2019

CITY OF KELOWNA PLANNING DEPARTMENT

My company, Coral Beach Farms Ltd, presently has 930 acres of cherries planted, with another 250 being planted in spring of 2020. 300 of these acres are in Kelowna, with the balance predominantly in Lake Country, and Vernon. As you are likely aware, sweet cherries are one of the most labour intensive crops grown in BC, and peak labour needs are concentrated in a very short time span over the summer months.

The 2019 season was our last year packing fruit at our Lake Country facility in Carr's Landing, as we are moving into our 140,000 square foot packing facility located in North Kelowna, in April of 2020.

Specifically, in Kelowna, we are farming the following blocks, which total 300 acres:

- 1) 100 acres on Gallagher Road (subject property)
- 2) 50 acres on Bal Court, off Highway 33 (long term lease)
- 3) 80 acres of mixed deeded and lease land in East Kelowna (Dendy orchards)
- 4) 25 acres in the Glenmore valley (leased)
- 5) 10 acres in Okanagan Mission (leased)
- 6) 25 acres on Joe Rich Road in the Black Mountain area (being planted in spring of 2020)
- 7) 10 acres on Shanks Road.

We presently have the following accommodation in the city of Kelowna:

- 1) 140 beds at Shanks road (dedicated to packing staff in peak season)
- 2) 6 beds at Bal Court
- 3) 16 beds at Dendy farm in East Kelowna
- 4) 60 beds at Gallagher Road

Total beds: 222 beds

This forms part of application

TA19-0017

Planner
Initials

ak



This forms part of application

TA19-0017

Planner
Initials

ak



Beds servicing strictly Kelowna farms (net of Shanks beds, which serve packing needs for all 1200 acres of cherries, operation wide): 82 beds

82 beds in Kelowna leaves us in a severe shortfall as our young trees come into production, as we calculate we need approximately $\frac{3}{4}$ worker per bearing acre of cherry trees. Our intent is to build another 70 beds at the Gallagher road site for 2020 (the subject of this application), and for 2021 or 2022, to build 44 additional beds in East Kelowna.

Owing to the sector plan in the present COK farm worker housing bylaw, we do understand that this request will require a site-specific text amendment, and a more detailed process to obtain permitting. However, we have looked at other options and ruled them out: For example, we considered building at Bal Court to remain to compliant with the bylaw. However, this would involve removing producing cherry trees in good soil, and the camp would be located in full view of all the residents of the Toovey road subdivision. On the other hand, adding additional units at Gallagher road places the camp on an area poorly suited to farming (in a frost pocket), and well set back and out of sight from residential areas. This choice is also efficient for us, being both easier to manage when more workers are at one site, and also being located on our largest single property, minimizing the transportation needs for the workers. We note that council members remarked positively on our previous choice of this Gallagher road site for phase #1, and were appreciative of the pains we took to site the camp well.

As a final note, please understand that we also presently have 474 beds (mostly our own, but a percentage rented) in Lake Country and Vernon. We are not concentrating our beds in Kelowna, but rather distributing the beds as evenly as possible, to have the employees located as close as possible to the tasks at hand.

Should you have any further questions, please call me at [REDACTED]

Sincerely,

David Geen

**FarmQuest Consulting Ltd****3755 Haskins Road East****Creston, B.C. V0B 1G1****Mobile: (250) 428-1742 Email: dholder@telus.net**

November 2, 2018

To Whom It Concerns;

I visited the "Layer Cake" farm site owned and operated by David Geen of Coral Beach Farms on Wednesday, October 31st to assess the proposed location for worker accommodation on this farm.

It is my view that the proposed worker accommodation site will be ideally located on this property and will have the least impact on the agricultural capability of the land base. The proposed accommodation site has the following characteristics:

- It is located in the least productive area of the property due to the topography of the land. If planted, the proposed accommodation site would have a high risk for crop loss due to the potential for spring frost.
- It is a highly suitable for worker accommodation facilities due to:
 - o Easy and immediate access to the property entrance
 - o Located on the perimeter of the farming operation
 - o Convenient access to power and water sources
 - o Shade from existing conifers for housing and worker rest area

There are approximately 100 acres currently under cultivation on this farm which have been fenced, planted to cherries or prepared for planting in 2019 and 2020. As the cherry orchard matures, the labour requirement during the peak demand for labour at harvest is estimated to be 1 worker per acre.

The photos included in this report illustrate the proposed worker accommodation site and the view of the current farming operation from that site.

Kind Regards,


Duane Holder P.Ag.

FarmQuest Consulting Ltd.

Photo 1. Proposed Worker Accommodation site.





Photo 2. Existing farming operation adjacent to proposed accommodation site.



Report to Council



Date: January 27, 2020

To: Council

From: City Manager

Subject: Okanagan Rail Trail Landscaping and Screening Requirements and Minimum Landscaping Buffer Treatment Levels

Department: Development Planning Department

Recommendation:

THAT Council receives, for information, the report from the Development Planning Department dated January 27, 2020, with respect to Okanagan Rail Trail Landscaping and Screening Requirements and Minimum Landscape Buffer Treatment Levels;

AND THAT Zoning Bylaw Text Amendment Application No. TA19-0004 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined in the report from the Development Planning department dated January 27, 2020 be considered by Council;

AND FURTHER THAT the Zoning Bylaw Text Amendment Bylaw be forwarded to a Public Hearing for further consideration.

Purpose:

To consider an application to amend the Zoning Bylaw to introduce landscape buffering and screening requirements for properties adjacent to the Okanagan Rail Trail and amend the Minimum Landscape Buffer Treatment Level descriptions to further clarify the intended outcomes of the buffers.

Background:

As part of the City's ongoing initiatives to enhance and encourage use of the Okanagan Rail Trail (ORT), Planning staff are considering appropriate interfaces between uses on private properties abutting the ORT and the trail corridor. The ORT travels through different areas with a wide range of uses, including parks, single family residential areas, light to heavy industrial uses, the airport, and rural and agricultural land. Each of these areas presents distinct opportunities and challenges. Staff identified a need for interim measures to support an improved interface prior to completion of a broader land use review and associated recommendations and are recommending landscaping requirements as a means of accomplishing this.

Discussion

Landscaping and screening regulations present an opportunity to achieve several objectives: provide shade for trail users, improve visual appeal, add a buffer to adjacent uses, and provide secure access between private property and linear trails. Currently, the Zoning Bylaw outlines different landscape buffer requirements for different uses and Development Permit design guidelines provide direction on the landscape design. Introducing a landscape buffer specific to properties abutting the ORT, regardless of use, would support a more consistent landscape treatment and help to achieve the objectives identified above.

Amendments to the landscaping and screening requirements in the Zoning Bylaw would introduce new standards for properties along the ORT, resulting in improved landscaping with trees and fencing along the ORT. A minimum 3.0 m wide landscaping buffer would be required with trees to be planted every 10 m within the buffer area. The standards require one pedestrian access gate for any fences between the ORT and adjacent properties, providing employees, patrons and residents the opportunity to access business and homes via the ORT. The gates would be a minimum of 1.6 m wide in order to accommodate cargo bikes and trailers. Pedestrian access gates would be maintained and controlled by the private property owner, and no vehicle access is permitted.

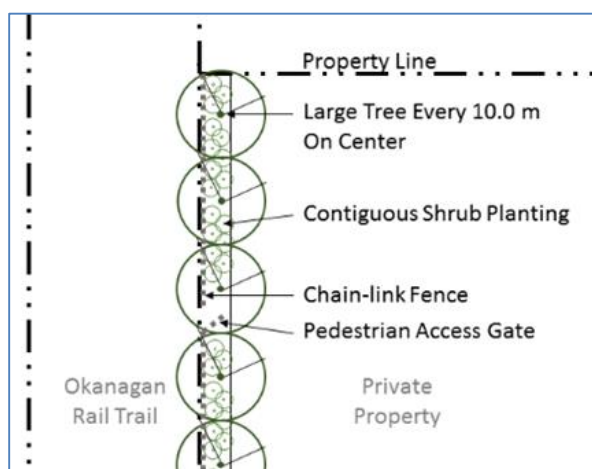


Figure 1 - Level 6 Minimum 3.0m Landscape Buffer

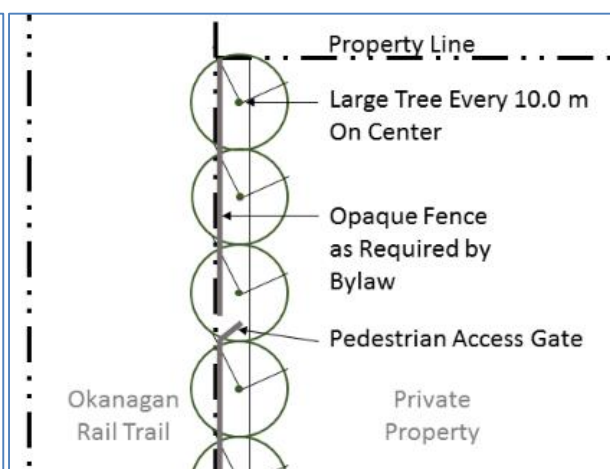


Figure 2 - Level 6 Landscape Buffer with Opaque Barrier

Property owners would be required to follow the new landscaping requirements as part of development or redevelopment of property abutting the ORT and Development Permit plans will need to reflect these landscaping requirements. Private property owners will be responsible for maintaining the landscaping and screening located within the buffer area on their property. It should be noted that properties in the Agricultural Land Reserve and properties zoned P₃ - Parks and Open Space would be exempt from these requirements.

Additional amendments to Section 7 are proposed to update incorrect section references to Section 7.7, which should instead read Section 7.6. Modification of the Minimum Landscape Buffer Treatment Level descriptions for Levels 2, 3 and 4 are proposed to further clarify the intended outcomes of these landscape buffers. These proposed amendments are intended to dispel the misconception that the minimum landscape buffer widths can be reduced with the construction of a continuous barrier (such as

a fence). The intent of these landscape buffers is to provide a minimum 3.0m width buffer which must be planted with vegetation and may include a continuous barrier (such as a fence). Further, the amendment proposes removing the diagrams which are outdated and do not contribute to clarifying the intent of the Minimum Landscape Buffer Treatment Levels.

For a comprehensive review of the proposed changes, see Attachment 'A': Summary of Changes.

Conclusion

The inclusion of new landscaping requirements for properties along the ORT will provide a consistent approach to landscaping on private property along the ORT as well as improve the public-private interface between recreation or active transportation uses and adjacent uses.

Internal Circulation:

Active Transportation

Crime Prevention

Development Engineering

Parks Planning

Policy and Planning

Considerations applicable to this report:

Existing Policy:

Kelowna Official Community Plan (OCP)

Transportation Corridor (TC) Future Land Use Designation

In Kelowna's Official Community Plan (OCP), lands with a Future Land Use designation of Transportation Corridor (TC) are railway (public or private), transit, cycling or pedestrian corridors or other uses that complement an alternative transportation function. The corridor that makes up the Okanagan Rail Trail (ORT) has the TC future land use designation.

Chapter 7: Infrastructure

General transportation policies within the OCP place increased emphasis on sustainable modes of transportation, with Active Transportation (walking and cycling) accorded the highest priority (Objective 7.6; Policy 7.6.1). In addition, Active Transportation infrastructure is seen to increase resilience in the face of higher energy prices; improve community health; and reduce greenhouse gas emissions (Objective 7.8). The OCP's objective to provide a city-wide linear park and trail network (Objective 7.13) identifies the ORT as one of the top six linear park priorities (Policy 7.13.1).

Chapter 14: Urban Design Development Permit Areas

The OCP's Urban Design guidelines encourage the promotion of interesting, pedestrian friendly streetscape designs and pedestrian linkages as well as the promotion of alternative transportation with enhanced streetscapes and multimodal linkages. Linking industrial developments to recreational opportunities is encouraged through the design of industrial developments (14.7.5). The design guidelines prioritize the safe and convenient movement of pedestrians (14.8.1) and promote the use of alternative modes of transportation in site design (14.8.2).

Pedestrian and Bike Master Plan

The City's Pedestrian and Bike Master Plan encourages the application of higher design standards for high demand or 'strategic' active transportation routes, such as the ORT, as one of the objectives in order to increase walking and cycling as practical modes of travel and to improve safety and convenience for pedestrians and cyclists.

Linear Parks Master Plan

The Linear Parks Master Plan envisions an interconnected network of outstanding linear parks with the goal of providing safe and enjoyable trails and infrastructure and providing trail connections that increase city-wide and neighbourhood connectivity.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Report prepared by: H. Rilkoff, Planner I
Approved for inclusion: T. Barton, Development Planning Department Manager

cc:

M. Steppuhn, Park and Landscape Planner
M. Kam, Sustainability Coordinator
J. Kay, Development Engineering Manager
A. Hunsberger, Urban Forestry Supervisor
C. Cornock, Crime Prevention Supervisor
M. Worona, Active Transportation Coordinator

Attachments:

Attachment 'A': Summary of Changes

Attachment A – Proposed Text Amendments to Section 7 – Landscaping and Screening of Zoning Bylaw No. 8000 – TA19-0004

Zoning Bylaw No. 8000 – Section 7 Updates				
No.	Section	Existing	Proposed	Explanation
1.	7.1.1	The minimum level of landscaping required in each zone along all front, rear and side yards shall be determined from the Minimum Landscape Buffer Treatment Levels Schedule (Table 7.1) and landscaping details entitled Minimum Landscape Buffer in Section 7.7.	The minimum level of landscaping required in each zone along all front, rear and side yards shall be determined from the Minimum Landscape Buffer Treatment Levels Schedule (Table 7.1) and landscaping details entitled Minimum Landscape Buffer in Section 7.6.	Replace references to Section 7.7 with correct reference to Section 7.6
2.	7.2.2	Required landscape buffers in subsection 7.7 shall be continuous along the affected property boundaries, except that they may be interrupted only by walkways and driveways providing access to the property and running perpendicular to the property line.	Required landscape buffers in Section 7.6 shall be continuous along the affected property boundaries, except that they may be interrupted only by walkways and driveways providing access to the property and running perpendicular to the property line.	
3.	7.2.10	7.2.10 Urban plazas are permitted as a substitute for a front yard or side yard street landscape buffers according to the provisions of Section 7.4 and Section 7.7.	7.2.10 Urban plazas are permitted as a substitute for a front yard or side yard street landscape buffers according to the provisions of Section 7.4 and Section 7.6.	

4.	7.5.3	No fence constructed at the natural grade in rural residential or residential zones shall exceed 2.0 m in height , except where abutting an agricultural or commercial zone , the maximum height is 2.4 m.	No fence constructed at the natural grade in rural residential or residential zones shall exceed 2.0 m in height , except where abutting an agricultural or commercial zone , the maximum height is 2.4 m. Where fences are constructed adjacent to the Front Lot Line or a Flanking Street, the maximum fence height shall be 1.06 m	Introduction of maximum height for fences sited adjacent to the front lot line or a flanking street.
5.	7.6.1 (b)	Level 2: a minimum 3.0m landscape buffer is required to separate uses from adjacent properties and will consist of a vegetative buffer where no continuous opaque barrier is required.	Level 2: a minimum 3.0m landscape buffer is required to separate uses from adjacent properties;	Modification of Minimum Landscape Buffer Treatment Level descriptions to further clarify the intended outcomes of the buffers
6.	7.6.1 (c)	Level 3: a minimum 3.0 m landscape buffer is required to separate uses from adjacent properties and will consist of a vegetative buffer or a continuous opaque barrier;	Level 3: a minimum 3.0 m landscape buffer is required to separate uses from adjacent properties. The buffer will consist of a vegetative buffer and may include a continuous barrier;	

7.	7.6.1 (d)	Level 4: a minimum 3.0 m landscape buffer is required to separate uses from adjacent properties and will consist of coniferous tree species or native vegetation to provide a continuous opaque screen for parking areas; and	Level 4: a minimum 3.0 m landscape buffer is required to separate uses from adjacent properties. The buffer will consist of coniferous tree species or native vegetation to provide a continuous opaque screen for parking areas; and	
8.	Section 7.6.1 (f)	n/a	<p>Level 6: a minimum 3.0 m landscape buffer is required along all lot lines abutting a Future Land Use designation of Transportation Corridor (TC) in the Official Community Plan.</p> <p>The minimum landscape buffer will include trees which are to be planted every 10.0 m on center within the landscape buffer area. Without limiting Section 7.5.5, any fencing within the minimum landscape buffer must be a black chain link fence, or other materials approved by the Divisional Director of Planning and Development Services, with a maximum height of 2.0 m and with a minimum of one pedestrian access gate along the lot line abutting the TC designation. The fence is to be located at least 0.15 m from the lot line abutting the TC designation. The pedestrian gate will be a minimum 1.6 m wide and may be lockable and controlled by the subject property owner.</p> <p>Only where the bylaw requires a continuous opaque barrier may the chain link fence be substituted for the opaque barrier and a minimum of one pedestrian access gate is required within an opaque barrier.</p>	<p>A new Level 6 standard for all properties abutting the Okanagan Rail Trail (ORT) provides a consistent approach to landscaping on private property along the ORT to improve the public-private interface. These landscaping requirements would be applied at time of development or redevelopment. The standards</p>

			Lands within the Agricultural Land Reserve and lots zoned P3 – Parks and Open Space are exempt from Level 6 requirements.	will be reviewed following the ORT land use study and ongoing work to further define amenities and uses within and along the ORT.										
9.	Table 7.1 Minimum Landscape Buffer Treatment Levels Schedule	Column Headings: <table><tr><td>Location</td><td>Front</td><td>Rear Yard</td><td>Side Yard</td><td>Urban Plaza Permitted (see 7.4)</td></tr></table>	Location	Front	Rear Yard	Side Yard	Urban Plaza Permitted (see 7.4)	Column Headings: <table><tr><td>Location</td><td>Front or Flanking Yard</td><td>Rear Yard</td><td>Side Yard</td><td>Urban Plaza Permitted (see 7.4)</td></tr></table>	Location	Front or Flanking Yard	Rear Yard	Side Yard	Urban Plaza Permitted (see 7.4)	Change heading to require the same landscape buffer treatment level for both Front and Flanking Yards.
Location	Front	Rear Yard	Side Yard	Urban Plaza Permitted (see 7.4)										
Location	Front or Flanking Yard	Rear Yard	Side Yard	Urban Plaza Permitted (see 7.4)										
10.	Table 7.1 Minimum Landscape Buffer Treatment Levels Schedule	n/a	<table><tr><td>Location</td><td>Front or Flanking Yard</td><td>Rear Yard</td><td>Side Yard</td></tr><tr><td>All lots abutting a Future Land Use designation of Transportation Corridor (TC)</td><td colspan="3">6</td></tr></table>	Location	Front or Flanking Yard	Rear Yard	Side Yard	All lots abutting a Future Land Use designation of Transportation Corridor (TC)	6			Table 7.1 identifies the minimum landscape “Level” required along the abutting property line. Using Table 7.1 flags this in the main table (easy to pick up on).		
Location	Front or Flanking Yard	Rear Yard	Side Yard											
All lots abutting a Future Land Use designation of Transportation Corridor (TC)	6													

				Level 6 is a new minimum landscape buffer treatment.
11.	Diagram 7.3	<p>SEE NOTES FOR LANDSCAPE SPECIFICATIONS</p> <p>MINIMUM LANDSCAPE BUFFER LEVEL 2 - 6.0M</p> <p>SEE NOTES FOR LANDSCAPE SPECIFICATIONS</p> <p>MINIMUM LANDSCAPE BUFFER LEVEL 2 - 4.5M</p> <p>SEE NOTES FOR LANDSCAPE SPECIFICATIONS</p> <p>MINIMUM LANDSCAPE BUFFER LEVEL 2 - 3.0M</p> <p>MINIMUM LANDSCAPE BUFFER TREATMENT - LEVEL 2</p> <p>Diagram 7.3</p>	Remove Diagram – Diagrams are inconsistent with Section 7.6 Minimum Landscape Buffers	

12.	Diagram 7.4	<p>SEE NOTES FOR LANDSCAPE SPECIFICATIONS</p> <p>MINIMUM LANDSCAPE BUFFER LEVEL 3 - 6.0M</p> <p>MINIMUM LANDSCAPE BUFFER LEVEL 3 - 4.5M</p> <p>MINIMUM LANDSCAPE BUFFER LEVEL 3 - 3.0M</p> <p>MINIMUM LANDSCAPE BUFFER TREATMENT - LEVEL 3</p> <p>Diagram 7.4</p>		Remove Diagram – Diagrams are inconsistent with Section 7.6 Minimum Landscape Buffers
13.	Diagram 7.5	<p>MINIMUM LANDSCAPE BUFFER LEVEL 4 - 4.5M</p> <p>MINIMUM LANDSCAPE BUFFER TREATMENT HIGHWAY 97 & 33 - LEVEL 4</p> <p>Diagram 7.5</p>		Remove Diagram – Diagrams are inconsistent with Section 7.6 Minimum Landscape Buffers
14.	Diagram 7.6	<p>MINIMUM LANDSCAPE BUFFER LEVEL 5 - 3.0M</p> <p>MINIMUM LANDSCAPE BUFFER TREATMENT ALR - LEVEL 5</p> <p>Diagram 7.6</p>		Remove Diagram – Diagrams are inconsistent with Section 7.6 Minimum Landscape Buffers

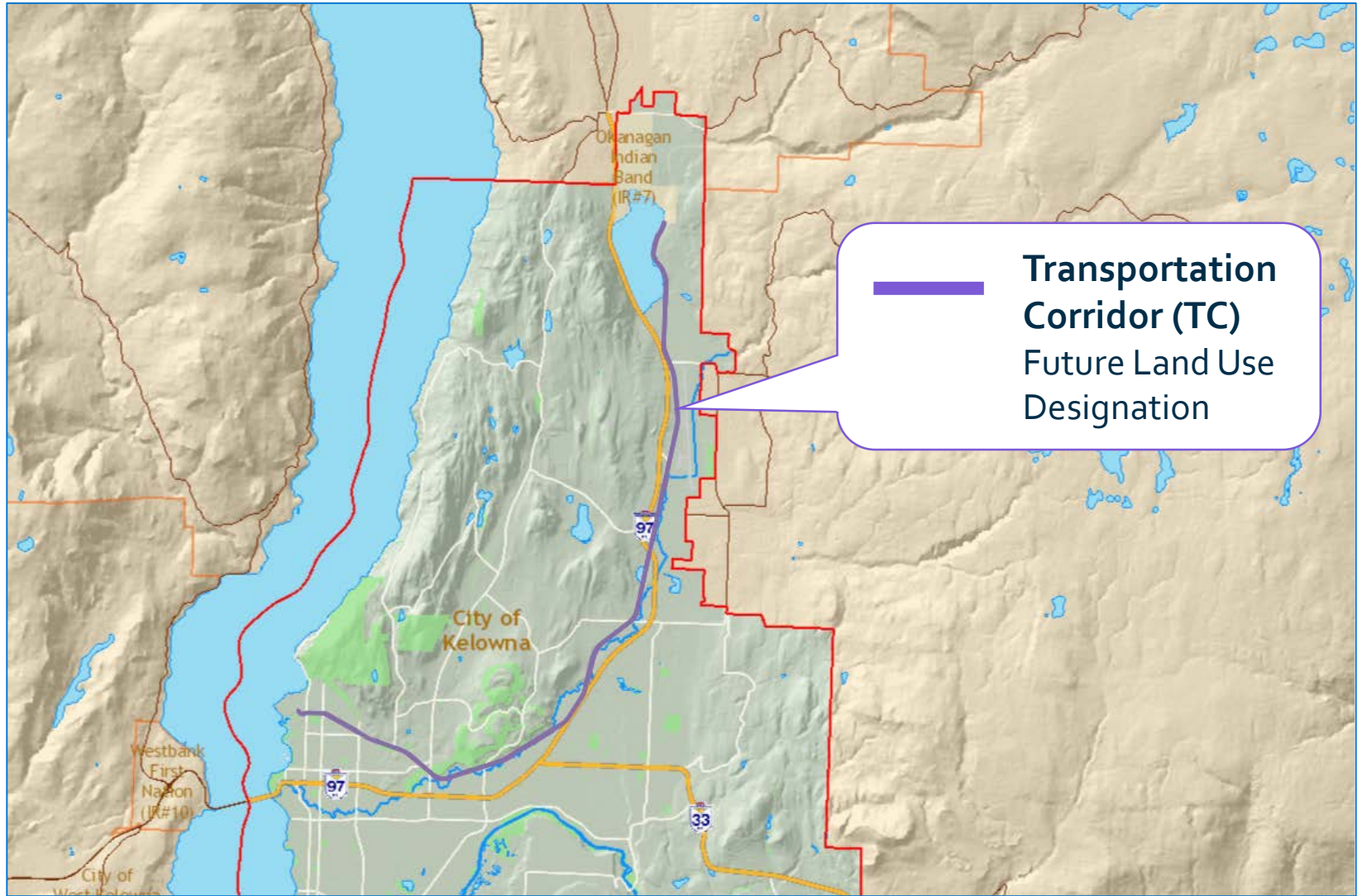
TA19-0004 Okanagan Rail Trail Landscaping & Screening Regulations

Zoning Bylaw Update

Purpose

- ▶ To consider an application to amend the Zoning Bylaw to introduce landscape buffering and screening requirements for properties adjacent to the Okanagan Rail Trail and amend the Minimum Landscape Buffer Treatment Level descriptions to further clarify the intended outcomes of the buffers.

Context Map



Objectives

- ▶ Create an appropriate interface between uses on private property and the Okanagan Rail Trail
- ▶ Shade and visual aesthetic
- ▶ Secure access to private property from the Okanagan Rail Trail
- ▶ Clarify minimum buffer treatment levels

Proposed Amendments

Minimum Landscape Buffer Treatment - new Level 6:

- ▶ Minimum 3.0 m wide landscaped buffer
- ▶ Trees every 10.0 m on center
- ▶ Any fencing must be:
 - ▶ Black chain link (base standard) or better
 - ▶ Maximum 2.0 m high
 - ▶ Minimum 1 pedestrian/cyclist access gate (1.6m wide)
 - ▶ Can be lockable and controlled by property owner

Minimum Landscape Buffer Treatments – Level 6

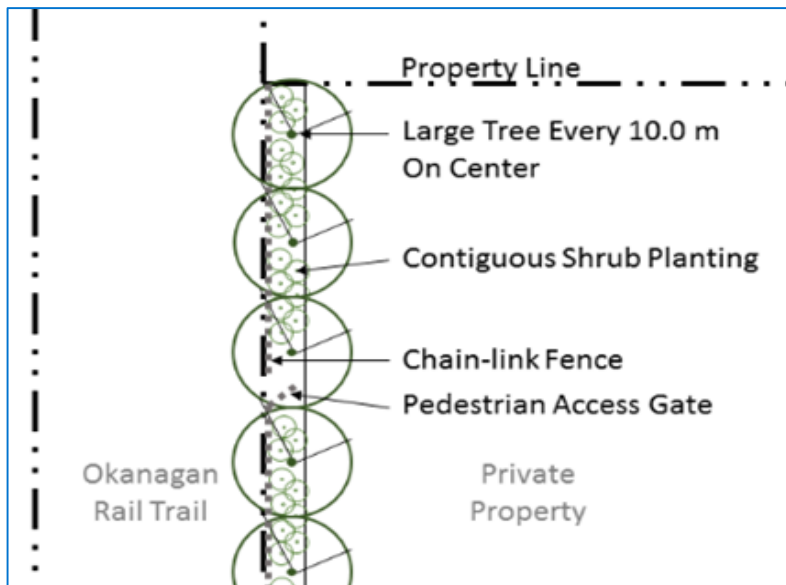


Figure 1 - Level 6 Minimum 3.0m Landscape Buffer

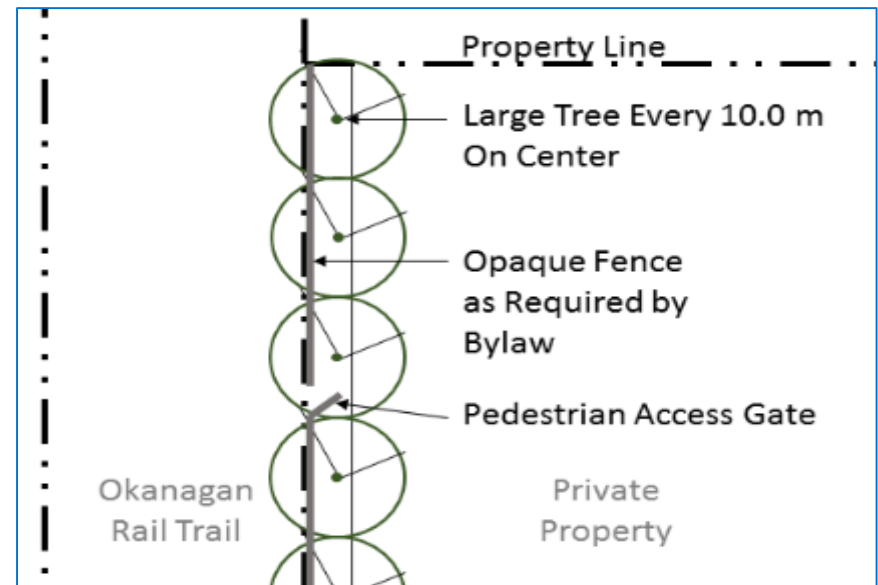


Figure 2- Level 6 Landscape Buffer with Opaque Barrier

Proposed Amendments

Exemptions

- ▶ Properties within the Agricultural Land Reserve (ALR)
- ▶ Properties zoned P₃ – Parks and Open Space

Proposed Amendments

Clarification of Treatment Levels

- ▶ Intent of these landscape buffers is to provide a minimum 3.0m width buffer which **must** be planted with vegetation and **may** include a continuous barrier (such as a fence).
- ▶ Remove the diagrams which are outdated and do not contribute to clarifying the intent of the buffers

Supporting Policy

- ▶ Pedestrian & Bike Master Plan
- ▶ Linear Parks Master Plan
- ▶ OCP Chapter 7: Infrastructure
 - ▶ Objective 7.6 – Place **increased emphasis on sustainable modes of transportation** (walking, cycling, transit) while maintaining automobile, commercial goods and emergency vehicle mobility.
 - ▶ Objective 7.13 – Provide a city-wide linear park and trail network.
 - ▶ Policy 7.13.1 identifies the **ORT as one of the top six linear park priorities**

Supporting Policy

- ▶ OCP Chapter 14: Urban Design Development Permit Areas
 - ▶ Guideline 7.5 - **Design industrial developments to include** outdoor break areas, green space, bicycle racks, skylights and windows in work areas, and **linkages to recreational opportunities** (e.g. linear parks).
 - ▶ Guideline 14.8.1 - Prioritize the **safe and convenient movement of pedestrians** above all other modes of transportation.
 - ▶ Guideline 14.8.2 - **Promote the use of alternative modes of transportation** in site design.

Staff Recommendation

- ▶ Staff are recommending support for the new minimum landscape buffer treatment Level 6 for properties abutting the Transportation Corridor (TC) Future Land Use designation and amendments to the Minimum Landscape Buffer Treatment Levels.



Conclusion of Staff Remarks

Minimum Landscape Buffer Treatments – Level 6

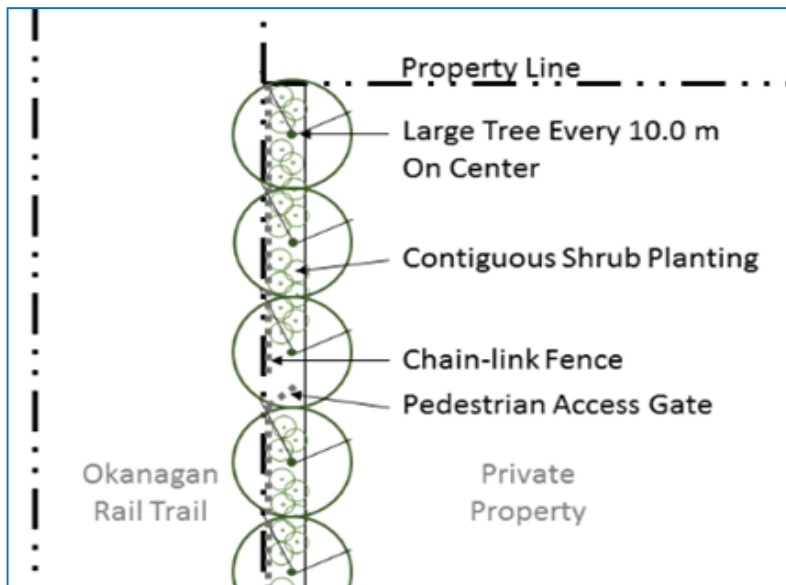


Figure 1 - Level 6 Minimum 3.0m Landscape Buffer

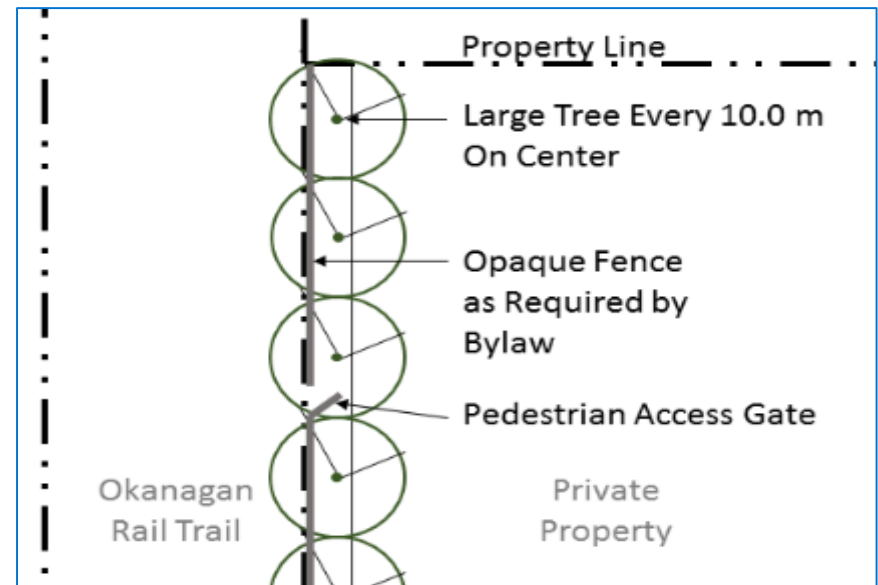


Figure 2- Level 6 Landscape Buffer with Opaque Barrier

CITY OF KELOWNA
BYLAW NO. 11970
TA19-0004 – Section 7 Landscaping & Screening

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 7 – Landscaping and Screening, 7.1 Required Landscaping, 7.1.1** be deleted and replaced with:

"The minimum level of **landscaping** required in each **zone** along all front, rear and **side yards** shall be determined from the **Minimum Landscape Buffer Treatment Levels Schedule (Table 7.1)** and **landscaping** details entitled Minimum Landscape Buffer in Section 7.6;"
2. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.1 Required Landscaping, Landscaping Standards 7.2.2** be deleted and replaced with:

"Required landscape buffers in Section 7.6 shall be continuous along the affected property boundaries, except that they may be interrupted only by walkways and driveways providing access to the property and running perpendicular to the property line;"
3. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.2 Landscaping Standards, 7.2.10** be deleted and replaced with:

"Urban plazas are permitted as a substitute for a **front yard** or **side yard street** landscape buffers according to the provisions of Section 7.4 and Section 7.6;"
4. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.5 Fencing and Retaining Walls, 7.5.3** be deleted and replaced with:

"No **fence** constructed at the **natural grade** in rural residential or **residential zones** shall exceed 2.0 m in **height**, except where **abutting** an **agricultural** or **commercial zone**, the maximum **height** is 2.4 m. Where fences are constructed adjacent to the front lot line or a flanking street, the maximum fence height shall be 1.06 m;
5. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.6 Minimum Landscape Buffers, 7.6.1(b)** be deleted and replaced with:

"**Level 2:** a minimum 3.0 m landscape buffer is required to separate **uses** from **adjacent** properties;"
6. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.6 Minimum Landscape Buffers, 7.6.1(c)** be deleted and replaced with:

"**Level 3:** a minimum 3.0 m landscape buffer is required to separate **uses** from **adjacent** properties. The buffer will consist of a vegetative buffer and may include a continuous barrier;"
7. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.6 Minimum Landscape Buffers, 7.6.1(d)** be deleted and replaced with:

"**Level 4:** a minimum 3.0 m landscape buffer is required to separate **uses** from **adjacent** properties. The buffer will consist of coniferous tree species or native vegetation to provide a continuous opaque screen for parking areas; and;"

8. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, 7.6 Minimum Landscape Buffers, 7.6.1(f)** be added as follows:

“Level 6: a minimum 3.0 m landscape buffer is required along all **lot lines abutting** a Future Land Use designation of Transportation Corridor (TC) in the **Official Community Plan**.

The minimum landscape buffer will include trees which are to be planted every 10.0 m on center within the landscape buffer area. Without limiting Section 7.5.5, any fencing within the minimum landscape buffer must be a black chain link fence, or other materials approved by the Divisional Director of Planning and Development Services, with a maximum height of 2.0 m and with a minimum of one pedestrian access gate along the **lot line** abutting the TC designation. The fence is to be located at least 0.15 m from the **lot line** abutting the TC designation. The pedestrian gate will be a minimum 1.6 m wide and may be lockable and controlled by the subject property owner.

Only where the bylaw requires a continuous opaque barrier may the chain link fence be substituted for the opaque barrier and a minimum of one pedestrian access gate is required within an opaque barrier.

Lands within the Agricultural Land Reserve and lots zoned P3 – Parks and Open Space are exempt from Level 6 requirements;”

9. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, Table 7.1 – Minimum Landscape Buffer Treatment Levels Schedule** be amended, by adding in its appropriate location the following column heading:

Location	Front or Flanking Yard	Rear Yard	Side Yard	Urban Plaza Permitted (see 7.4)

10. AND THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening, Table 7.1 – Minimum Landscape Buffer Treatment Levels Schedule** be amended, by adding in its appropriate location the following text:

Location	Front or Flanking Yard	Rear Yard	Side Yard	Urban Plaza Permitted (see 7.4)
All lots abutting a Future Land Use designation of Transportation Corridor (TC)	6			

11. AND FURTHER THAT City of Kelowna Zoning Bylaw No. 8000, **Section 7 – Landscaping and Screening** be amended, by deleting **Diagram 7.3, 7.4, 7.5 and 7.6**.

12. 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 this

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: January 27, 2020

To: Council

From: City Manager

Department: Development Planning

Application: DP19-0144

Owner: The Board of Education of
School District No. 23 (Central
Okanagan)

Address: 950 Dilworth Dr.

Applicant: Carscadden Stokes McDonald
Architects Inc.

Subject: Development Permit Application

Existing OCP Designation: Educational/Major Institutional (EDINST)

Existing Zone: P2- Education and Minor Institutional

1.0 Recommendation

THAT Council authorizes the issuance of Development Permit No. DP19-0144 for Lot G, Section 28, Township 26 Osoyoos Division Yale District Plan 31716 located at 950 Dilworth Dr, Kelowna, BC subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in accordance with Schedule "A,"
2. The exterior design and finish of the building to be constructed on the land, be in accordance with Schedule "B,"
3. Landscaping to be provided on the land be in accordance with Schedule "C";
4. The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a Registered Landscape Architect

AND THAT the applicant be required to complete the above noted conditions of Council's approval of the Development Permit Application in order for the permits to be issued,

AND FURTHER THAT this Development Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

2.0 Purpose

To issue a Development Permit for the form and character of a child care centre.

3.0 Development Planning

Development Planning are supportive of the Development Permit application for a child care centre, major, as the proposal meets the intent of the Official Community Plan (OCP) and P2- Education and Minor Institution zone. This includes:

- Integrate new development with existing site conditions and preserve the character amenities of the surrounding area;
- Incorporate architectural features and detailing of buildings and landscapes that define an area's character;
- Design for human scale and visual interest in all building elevations;
- Use materials in combination to create contrast, enhance human scale, and reduce the apparent bulk of a building; and
- Incorporate landscaping that retains healthy, mature trees and vegetation.

The proposed building is sited at the northern portion of the property and is accessed off Dilworth Rd. A paved parking lot with 23 stalls, including a drop off and turn around zone, will serve the development. Existing informal gravel parking that currently serves the Dilworth Soccer Park will remain. The proposed parking plan is beneficial for the Dilworth Soccer Park as it creates formalized stalls, a paved drive aisle, and an opportunity for shared parking between the two uses during off hours.

The main entry to the building is visible and pedestrian accessible from Dilworth Dr. A second entry and child drop off area is located at the SW corner of the building. The proposal is sensitive to the existing site conditions as it retains mature vegetation and purposefully sites the building to reduce negative impacts on the natural environment.

Staff are confident that the unique form and character of the building and proposed use will positively contribute to the Dilworth neighbourhood.

4.0 Proposal

4.1 Background

The subject property contains the Dilworth Soccer Park on the southern portion of the site. The YMCA has secured a lease with School District No. 23 and plans to construct a new child care centre (major) and office area (260m²) on the northern portion of the site.

4.2 Project Description

The site has significant slope and ample vegetation on the northern portion of the property. The proposed two storey building is designed to take advantage of the natural slope. An outdoor play area is located at the northwest corner of the building and will utilize the natural vegetation for shelter.

Building materials include cement shingles, wood trim and prefinished metal cladding. The building uses mixed shingles to add in pops of color, which creates visual interest and distinguishes the building as an institutional use. The building aims to achieve passive house and energy efficiency targets through various design strategies such as a simplified building form. The sloped roof forms are designed to fit within the existing residential neighbourhood context.

The proposal includes the construction of a 23-stall parking lot that may also be used by the sports fields during peak usage (typically Spring and Fall).



The applicant is proposing two potential scenarios for the overall use of the building:

Scenario 1: Child care on level one and two

Scenario 2: Child care on level two with office use on level one (+/-260 sqm)

Zoning bylaw parking requirements are met for both scenarios.

4.3 Site Context

The subject property is located in the Glenmore-Clifton-Dilworth City Sector on the corner of Dilworth Dr. and Summit Dr. The surrounding area is predominantly single-family housing with multiple-dwelling housing to the south. The property is known as Dilworth Park, and currently contains sports fields and a gravel parking lot.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	P ₃ - Parks and Open Space	Public Park
East	P ₃ - Parks and Open Space	Public Park
South	RM ₄ - Transitional Low-Density Housing	Multiple Dwelling Housing
West	P ₃ - Parks and Open Space	Public Park

Subject Property Map:**4.4 Zoning Analysis Table**

Zoning Analysis Table		
CRITERIA	ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Min. Lot Area	660m ²	26,907m ²
Min. Lot Width	18m	+/- 260m
Min. Lot Depth	30m	+/- 90m
Development Regulations		
Max. Site Coverage (buildings)	40%	+/- 2%
Max. Site Coverage (buildings, parking, driveways)	60%	+/- 14%
Max. Height	13.5m	9.6m
Min. Front Yard	6.0m	7.7m
Min. Side Yard (south)	4.5m	200m
Min. Side Yard (north)	4.5m	26m
Min. Rear Yard	7.5m	50m
Other Regulations		

Min. Parking Requirements	1 stall per 10 children, plus 1 stall per 2 employees on duty (minimum 4 stalls) 2.5 stalls per 100m ² office 1 car loading space for 26 or more children	Scenario 1: 124 children plus 8 employees =23 stalls proposed 1 loading stall Scenario 2: 50 children plus 8 employees 260m ² office =21 stalls proposed 1 loading stall
Min. Bicycle Parking	Class II- 5 per building public entrance Less than 25 employees 1 Class I per 2 building entrances	10 Class II proposed

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Chapter 1: Introduction

Goals for a Sustainable Future:

Include Distinctive and Attractive Neighbourhoods. Develop distinctive and attractive neighbourhoods and urban centres with safe, accessible public spaces that enhance investment.

Chapter 5: Development Process

Objective 5.2 Develop sustainably.

Policy .3 Complete Suburbs. Support a mix of uses within Kelowna's suburbs in accordance with "Smart Growth" principles to ensure complete communities. Uses that should be present in all areas of the City (consistent with Map 4.1- Future Land Use Map), at appropriate locations include: commercial, institutional, and all types of residential uses.

6.0 Technical Comments

6.1 Development Engineering Department

See Schedule A

7.0 Application Chronology

Date of Application Received: July 8, 2019

Date Public Consultation Completed: n/a

Report prepared by: Jocelyn Black, Planner Specialist

Reviewed by: Wesley Miles, Acting Community Planning and Development Manager

Approved for Inclusion: Terry Barton, Development Planning Department Manager

Attachments:

Schedule A: Development Engineering Memo

Attachment A: Draft Development Permit DP19-0144

Schedule A: Site Plan

Schedule B: Elevations

Schedule C: Landscape Plan

Attachment B: Applicant Design Rationale

Development Permit & Development Variance Permit DP19-0144



This permit relates to land in the City of Kelowna municipally known as
950 Dilworth Dr.

and legally known as

Lot G, Section 28, Township 26 Osoyoos Division Yale District Plan 31716

and permits the land to be used for the following development:

Child care centre, major

USE as per Zoning Bylaw

The present owner and any subsequent owner of the above described land must comply with any attached terms and conditions.

Date of Council Decision Monday, January 27

Decision By: COUNCIL OR COMMUNITY PLANNING DEPARTMENT MANAGER

Development Permit Area: Fire Hazard DP Area

Existing Zone: P2- Education and Minor Institutional

Future Land Use Designation: Educational/Major Institutional (EDINST)

This is NOT a Building Permit.

In addition to your Development Permit, a Building Permit may be required prior to any work commencing. For further information, contact the City of Kelowna, Development Services Branch.

NOTICE

This permit does not relieve the owner or the owner's authorized agent from full compliance with the requirements of any federal, provincial or other municipal legislation, or the terms and conditions of any easement, covenant, building scheme or agreement affecting the building or land.

Owner: The Board of Education School District No. 23 (Central Okanagan)

Applicant: Carscadden Stokes McDonald Architects Inc.

Terry Barton
Community Planning Department Manager
Planning & Development Services

Date

1. SCOPE OF APPROVAL

This Development Permit applies to and only to those lands within the Municipality as described above, and any and all buildings, structures and other development thereon.

This Development Permit is issued subject to compliance with all of the Bylaws of the Municipality applicable thereto, except as specifically varied or supplemented by this permit, noted in the Terms and Conditions below.

The issuance of a permit limits the permit holder to be in strict compliance with regulations of the Zoning Bylaw and all other Bylaws unless specific variances have been authorized by the Development Permit. No implied variances from bylaw provisions shall be granted by virtue of drawing notations that are inconsistent with bylaw provisions and that may not have been identified as required Variances by the applicant or Municipal staff.

2. CONDITIONS OF APPROVAL

- a) The dimensions and siting of the building to be constructed on the land be in accordance with Schedule "A";
- b) The exterior design and finish of the building to be constructed on the land be in accordance with Schedule "B";
- c) Landscaping to be provided on the land be in accordance with Schedule "C"; and
- d) The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a Registered Landscape Architect.

This Development Permit is valid for two (2) years from the date of approval, with no opportunity to extend.

3. PERFORMANCE SECURITY

As a condition of the issuance of this Permit, Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Developer and be paid to the Developer or his or her designate if the security is returned. The condition of the posting of the security is that should the Developer fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the Municipality may use enter into an agreement with the property owner of the day to have the work carried out, and any surplus shall be paid over to the property own of the day. Should the Developer carry out the development permitted by this Permit within the time set out above, the security shall be returned to the Developer or his or her designate. There is filed accordingly:

- a) An Irrevocable Letter of Credit in the amount of **\$34,425.00**
- b) A certified cheque in the amount of **\$34,425.00**

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

5. INDEMNIFICATION

Upon commencement of the works authorized by this Permit the Developer covenants and agrees to save harmless and effectually indemnify the Municipality against:

- a) All actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and by whomsoever brought, by reason of the Municipality said Permit.

All costs, expenses, claims that may be incurred by the Municipality where the construction, engineering or other types of works as called for by the Permit results in damages to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly in any way or to any degree, to construct, repair, or maintain.

**The PERMIT HOLDER is the CURRENT LAND OWNER.
Security shall ONLY be returned to the signatory of the
Landscape Agreement or their designates.**

**MEMORANDUM**

Date: July 24, 2019
File No.: DP19-0144
To: Community Planning (JB)
From: Development Engineering Manager (JK)
Subject: 950 Dilworth Dr.

A major Development Permit application for the form and character of a proposed child care centre, major. The Development Engineering Technologist for this project is Ryan O'Sullivan.

1. Domestic Water and Fire Protection

- a. This property is located within the City of Kelowna service area. Only one service will be permitted to this property. The applicant, at their cost, will arrange for the removal of the existing service and the installation of a new larger metered water service if required.

2. Sanitary Sewer

- a. Our records indicate that this property is currently serviced with a 200mm-diameter sanitary sewer service. An inspection manhole onsite will be required, c/w an access easement in favor of the City up to and including the manhole.

3. Storm Drainage

- a) The developer must engage a consulting civil engineer to provide a storm water management plan for this site which meets the requirements of the City Subdivision Development and Servicing Bylaw 7900. 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) Provide the following drawings:
 - i. A detailed Stormwater Management Plan for this development that is based off the original grading plan of the subdivision; and,
 - ii. An Erosion and Sediment Control Plan.

4. Road Improvements

- a. Existing driveway letdown on Dilworth Rd must be removed replaced with a concrete letdown (SS-C7), to a max width of (9m).and irrigated landscaped boulevard,

- b. The developer is required to complete and submit for review a parking lot flow analysis.
- c. Dilworth Rd left-in turning lane analysis with road paint line markings improvements and concrete medians alterations is required with signs/pavement marking design drawing.

5. Other Engineering Comments

- a. Boulevard landscaping complete with street trees is required on Dilworth Rd complete with underground irrigation systems. A landscape & irrigation design drawing for approval is required in accordance with bylaw 8000.
- b. Existing offsite trees must be protected as per bylaw 8042, Tree Barrier Installation and Inspection.

6. Electric Power and Telecommunication Services

- a. The electrical and telecommunication services to this building must be installed in an underground duct system, and the building must be connected by an underground service. 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.
- b. The developer must coordinate safe separation with Fortis prior to BP.

7. 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.

8. Servicing Agreement 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.

9. Geotechnical Report

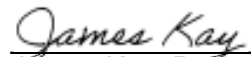
Provide a comprehensive geotechnical report, prepared by a Professional Engineer competent in the field of geotechnical engineering to address the items below: **NOTE: The City is relying on the Geotechnical Engineer's report to prevent any damage to property and/or injury to persons from occurring as a result of problems with soil slippage or soil instability related to this proposed subdivision.**

The Geotechnical report must be submitted prior to submission of Engineering drawings or application for subdivision approval.

- (i) Area ground water characteristics, including any springs and overland surface drainage courses traversing the property. Identify any monitoring required.
- (ii) Site suitability for development.
- (iii) Site soil characteristics (i.e. fill areas, sulphate content, unsuitable soils such as organic material, etc.).
- (iv) Any special requirements for construction of roads, utilities and building structures.
- (v) Suitability of on-site disposal of storm water and sanitary waste, including effects upon adjoining lands.
- ii) Any special requirements that the proposed subdivision should undertake so that it will not impact the bank(s). The report must consider erosion and structural requirements.
- iii) Any items required in other sections of this document.
- iv) Recommendations for erosion and sedimentation controls for water and wind.
- v) Recommendations for roof drains and perimeter drains.
- vi) Recommendations for construction of detention or infiltration ponds if applicable.

10. Charges and Fees

- a) Development Cost Charges (DCC's) are payable.
- b) Fees per the "Development Application Fees Bylaw" include:
 - i) Survey Monument, Replacement Fee: \$1,200.00 (GST exempt) – only if disturbed.
 - ii) Engineering and Inspection Fee: 3.5% of construction value (plus GST).



James Kay, P. Eng.
Development Engineering Manager

RO

This forms part of application

DP19-0144

Planner Initials JB

City of Kelowna
DEVELOPMENT PLANNING



PROPOSED

1 SITE PLAN SCALE 1:250

ROCKFALL SAFETY SET BACK LINE SHOWN FOR REFERENCE. CONFIRM WITH GEOTECH REPORT
HEAT PUMPS C/W ENCLOSURE

NON-CUMULABLE CHAINLINK FENCE 5' TALL ROUTE TBC WITH SITE CONDITIONS
E.G. 444.00 (DERIVED)
B.G. 445.15

ENTRY
E.G. 444.00 (DERIVED)
B.G. 445.35
E.G. 443.50 (DERIVED)
B.G. 445.20
E.G. 443.90 (DERIVED)
B.G. 443.30

PLAY AREA BOUNDARY AND FENCE
TREES IN PLAY AREA THINNED AS REQUIRED FOR PLAY FEATURES, ALLOW UP TO 50% REMOVAL
RETAINING/PLAY ELEMENT C/W LANDSCAPE LIGHTS

GRAVEL PATH SLOPES 8%
CONCRETE BENCH 450MM HIGH
PLAN 31716

3 STAIRS @ 180MM RISE, 300MM RUN
TRENCH DRAIN, SEE CIVIL ALSO
CONCRETE BENCH 450MM HIGH

SLOPE STABILIZATION
PARKING LIGHT, SEE ELECTRICAL ALSO
GARBAGE ENCLOSURE
PAD MOUNTED TRANSFORMER, LOCATION TBC WITH PORTS

SITE AND ZONING INFORMATION

ADDRESS: 950 DILLWORTH DRIVE
LEGAL DESCRIPTION: LOT 6, TOWNSHIP 28, COSSVOOS
COSSVOO VALLEY DISTRICT P.L. 31716
SITE AREA: 26,807 M²
ZONING: P-2 EDUCATIONAL AND MINOR INSTITUTIONAL
BUILDING AREA:

PARKING

CURRENT PROPOSED YMCA EXPANSION + EXISTING GRAVEL

ACCESSIBLE PARKING (3.7M X 6.0M)	= 1
FULL SIZE PARKING (2.5M X 6.0M)	= 35
MEDIUM SIZE PARKING (2.3M X 4.8M)	= 8
TOTAL PARKING	= 55
EXISTING PARKING	= 34 +/-

PARKING / LOADING - REQUIRED

CITY OF KELLOWNA PARKING AND LOADING BYLAW SECTION 8:

PARKING TABLE 8.1
CHILD CARE CENTRE - MAJOR -
1 PER 10 CHILDREN, PLUS 1 PER 2 EMPLOYEES ON DUTY; MINIMUM OF 4
74 CHILDREN / 10 X 1 = 7.4 (8)
13 EMPLOYEES / 2 X 1 = 6.5 (7)
14 SPACES

SCENARIO 1: WITH FULL LOWER FLOOR CHILDCARE (50 CHILDREN)
(50 CHILDREN / 10) + (8 EMPLOYEES / 2) = 5+4 = 9 SPACES

SCENARIO 2: WITH FULL LOWER OFFICES - 2.5 PER 100 M² GFA =
280m²/100m² x 2.5 = 6.5 (7)
7 SPACES

UPPER CHILDCARE + FULL LOWER CHILDCARE 14 + 9 = 23 PARKING SPACES

UPPER CHILDCARE + FULL LOWER OFFICES 14 + 7 = 21 PARKING SPACES

LOADING TABLE 8.2
CHILD CARE CENTRE, MAJOR

FOR 8 - 15 CHILDREN 0 CAR LOADING SPACE
FOR 16 - 25 CHILDREN 0 CAR LOADING SPACE
FOR 26 OR MORE CHILDREN 1 CAR LOADING SPACE

74 CHILDREN = 1 LOADING

BICYCLE PARKING TABLE 8.3

INSTITUTIONAL USES (EXCEPT EDUCATIONAL USES)

CLASS I: 1 PER 25 EMPLOYEES
CLASS II: 5 PER BUILDING PUBLIC ENTRANCE

LESS THAN 25 EMPLOYEES = 1 CLASS I
2 BUILDING ENTRANCES = 10 CLASS II

APPROXIMATE OUTLINE OF STORMWATER TANK. SEE CIVIL FOR DETAILS

E.G. 445.50 (DERIVED)
B.G. 445.00

E.G. 446.00 (DERIVED)
B.G. 445.00

2ND FLOOR ENTRY
E.G. 443.50 (DERIVED)
B.G. 445.60

E.G. 444.50 (DERIVED)
B.G. 445.00

2ND FLOOR ENTRY
E.G. 443.90 (DERIVED)
B.G. 445.55

SITE SIGN APPROX 6'W X 2'H TBC WITH YCMA

SITE GRADE E.G. 445.45

SITE GRADE E.G. 445.17

14 RISERS @ 180MM RISE, 300MM RUN STAIR C/W GALVANIZED METAL HANDRAILS EACH SIDE

E.G. 443.25 (DERIVED)
SITE GRADE 443.0 +/-

E.G. 443.00 (DERIVED)
B.G. 442.85

WORKPOINT #1 CL. 6A

SITE GRADE +/-443.10

SITE GRADE +/-443.80

1ST FLOOR ENTRY
E.G. 442.70 (DERIVED)
B.G. 442.70

GENERAL NOTES:

1. SURVEY DATA PREPARED BY ALLTERRA LAND SURVEYING LTD. JAN 29 2019

2. TOPOGRAPHY AND TREE SURVEY DOES NOT INCLUDE FULL EXTENT OF PROPERTY AND IS LIMITED TO AREAS AROUND THE PROPOSED BUILDING LOCATION.

SITE LEGEND KEY

- GRAVEL
- CONCRETE
- ASPHALT
- ASPHALT (FUTURE EXPANSION)
- FEATURE PAVING
- AREA WHERE FILL REQUIRED +/- 0.0M-1.6M
- EXISTING TREE TO REMAIN
- EXISTING TREE REMOVED
- NEW TREE/LANDSCAPE
- APPROXIMATE OUTLINE, SEE CIVIL
- PARKING LIGHT
- LANDSCAPE LIGHT (LOW BOLLARD)

Mt. Sanitary
Rm. Elev. = 438.45

North Invert = 438.50

East Invert = 438.52

South Invert = 438.57

West Invert = 438.61

APPROXIMATE OUTLINE OF EXCAVATION AT ROAD FOR SERVICE CONNECTION. SEE CIVIL FOR DETAILS.

ASPHALT DRIVE AISLE

TURNING LANE, SEE CIVIL AND OFFSITE

Mt. Sanitary
Rm. Elev. = 438.45

North Invert = 438.50

East Invert = 438.52

South Invert = 438.57

West Invert = 438.61

Mt. Sanitary
Rm. Elev. = 438.45

North Invert = 438.50

East Invert = 438.52

South Invert = 438.57

West Invert = 438.61

DP7



SITE PLAN - PROPOSED

KELOWNA YMCA
CHILDCARE CENTRE

950 DILLWORTH DR
KELOWNA BC

Canadian

REVISIONS
REVISION NO. DESCRIPTION
DATE

REDUCED SIZE
NOT TO SCALE

GENERAL NOTE:
SITE PLAN
ROTATED FOR FIT.



This forms part of application

#DP19-0144

Planner Initials JB



City of
Kelowna
DEVELOPMENT PLANNING

CIRCULATION

1 SITE PLAN
SCALE 1:250

CIRCULATION NOTES:
1. INDICATIVE CIRCULATION DIAGRAMS
SHOWN FOR REFERENCE.

G
PLAN 31716

3 STAIRS @ 180MM
RISE, 300MM RUN

GARBAGE ENCLOSURE
PAD MOUNTED TRANSFORMER,
LOCATION TBC WITH PORTS

SITE AND ZONING INFORMATION

ADDRESS: 950 DILLWORTH DRIVE
LEGAL DESCRIPTION: LOT 6, TOWNSHIP 28, COSSYWOODS
COSSYWOODS DISTRICT PL 31716
SITE AREA: 26,807 M²
ZONING: P-2 EDUCATIONAL AND MINOR
INSTITUTIONAL
BUILDING AREA:

GENERAL NOTES:
1. SURVEY DATA PREPARED BY ALLTERRA LAND
SURVEYING LTD. JAN 29 2019
2. TOPOGRAPHY AND TREE SURVEY DOES NOT INCLUDE
FULL EXTENT OF PROPERTY AND IS LIMITED TO
AREAS AROUND THE PROPOSED BUILDING LOCATION.

SITE LEGEND KEY

- GRAVEL
- CONCRETE
- ASPHALT
- ASPHALT (FUTURE EXPANSION)
- FEATURE PAVING
- AREA WHERE FILL REQUIRED
-/+ 0.0M-1.6M
- EXISTING TREE TO REMAIN
- EXISTING TREE REMOVED
- NEW TREE/LANDSCAPE
- APPROXIMATE CUT LINE,
SEE CIVIL
- PARKING LIGHT
LANDSCAPE LIGHT
(LOW BOLLARD)
- *LIGHT

Mt. Sanitary
Rim Elev = 438.45
North Invert = 438.50
East Invert = 438.52
South Invert = 438.37
West Invert = 438.41

APPROXIMATE OUTLINE OF
EXCAVATION AT ROAD FOR
SERVICE CONNECTION,
SEE CIVIL FOR DETAILS.

ASPHALT DRIVE AISLE

Mt. Storm
Rim Elev = 433.05
North Invert = 433.08
East Invert = 432.98
South Invert = 432.85
West Invert = 432.27

Mt. Sanitary
Rim Elev = 438.45
North Invert = 438.50
East Invert = 438.52
South Invert = 438.37
West Invert = 438.41



GENERAL NOTE:
SITE PLAN
ROTATED FOR FIT.

REDUCED SIZE
NOT TO SCALE

950 DILLWORTH DR
KELOWNA BC
Kelowna

KELOWNA YMCA
CHILDCARE CENTRE

SITE PLAN - PROPOSED

1800

DP7C



SCHEDULE

B

This forms part of application
DP19-0144

Planner
Initials JB



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Vancouver, BC V6A 1E3
604 633 1830
h@caracadden.ca
@CaracaddenCA
caracadden.ca

- ① PAINTED CEMENTIOUS SHINGLE - MULTICOLOURED
- ② PREFINISHED METAL CLADDING/ROOFING - LIGHT GREY
- ③ STUCCO - LIGHT GREY
- ④ DOORS/WINDOWS - WOOD GRAIN
- ⑤ PREFINISHED METAL FLASHING - TO MATCH ROOF
- ⑥ METAL RWL - GALVANIZED
- ⑦ METAL MECHANICAL VENT - GALVANIZED
- ⑧ TRIM - WOOD GRAIN

REDUCED SIZE
NOT TO SCALE

ISSUED FOR DP BY: JAN 3 2019
ISSUED FOR DEVELOPMENT PERMIT: JUNE 24 2019

Caracadden

950 DILWORTH DR
KELOWNA BC

KELOWNA YMCA
CHILDCARE CENTRE

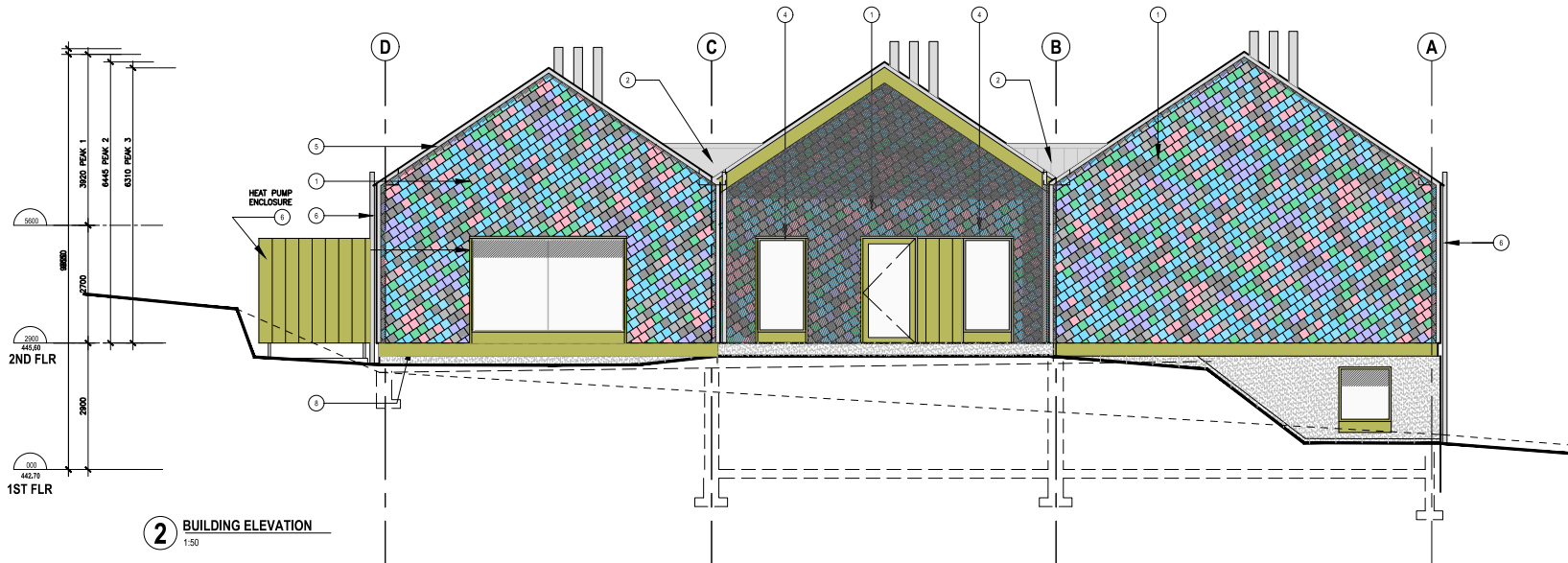
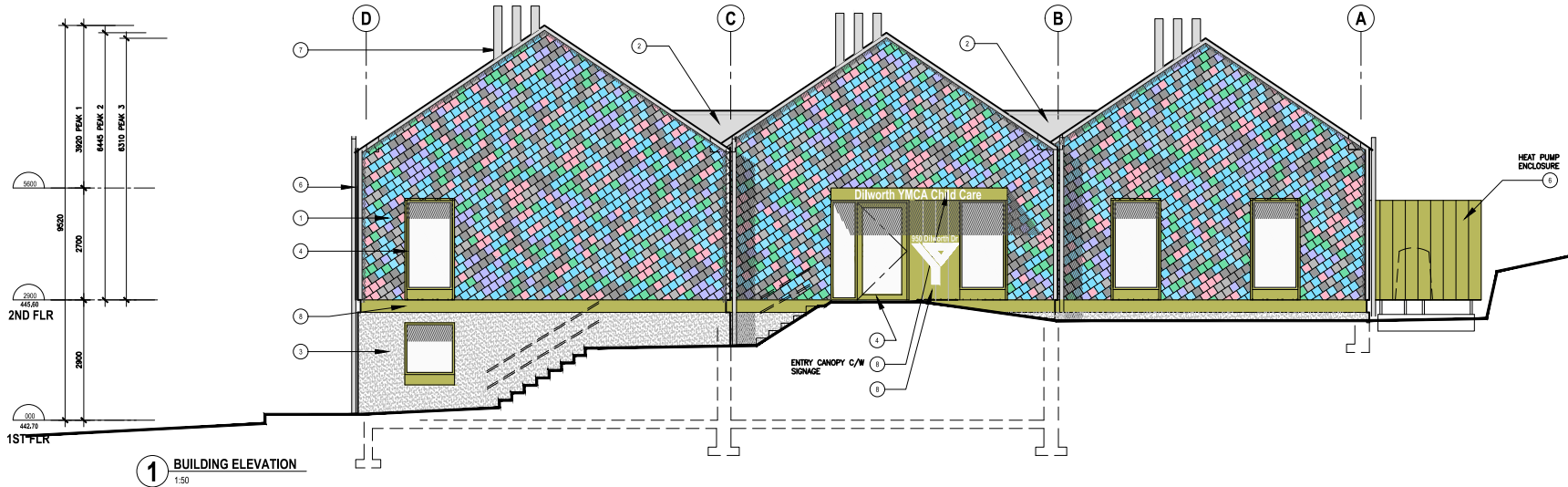
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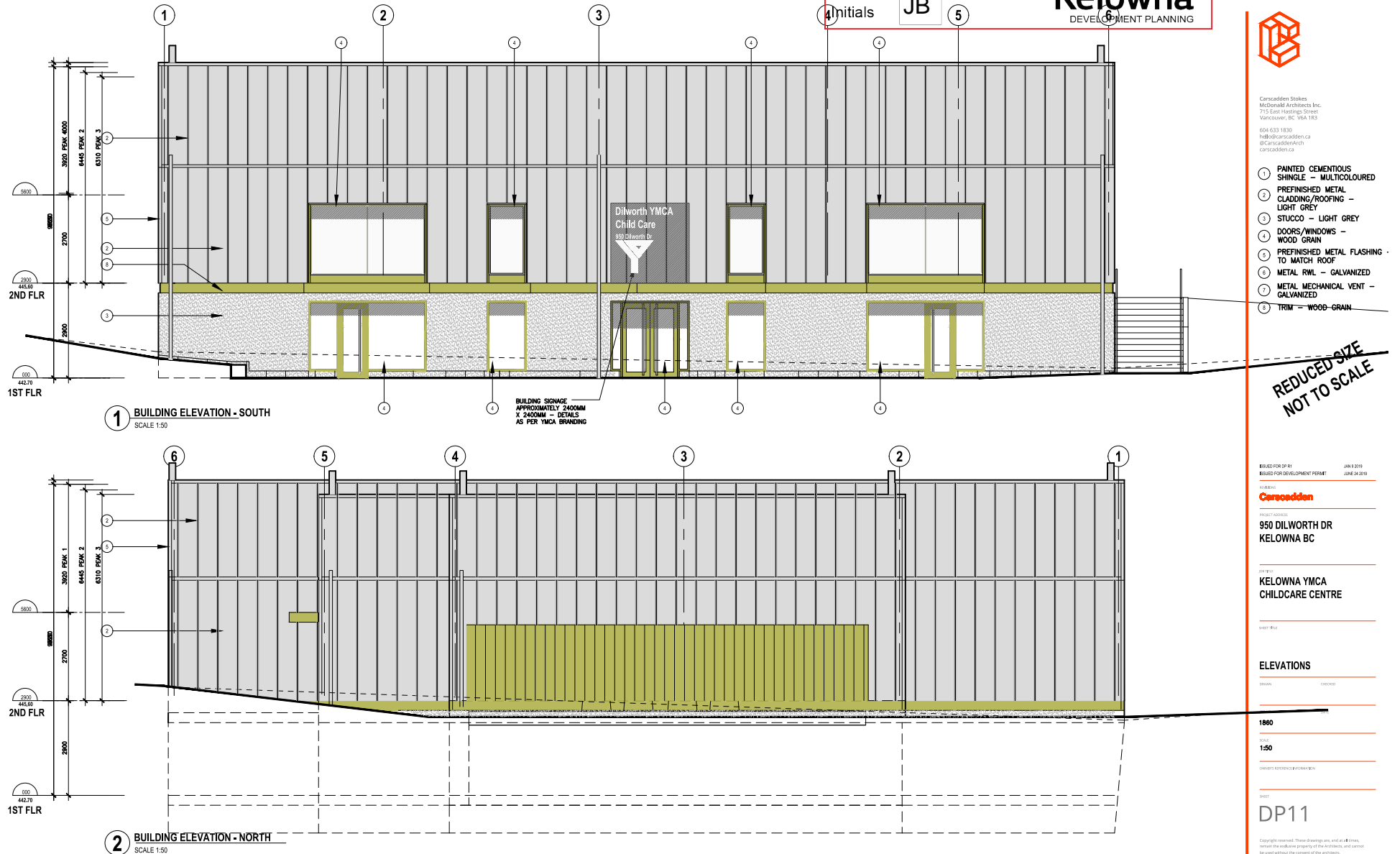
ELEVATIONS

NO.	DATE
1860	
1:50	
DRAWN BY: J. B. / J. B.	

DP10

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SCHEDULE

B

This forms part of application

DP19-0144



City of
Kelowna
DEVELOPMENT PLANNING

Planner
Initials **JB**



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- ① PAINTED CEMENTIOUS SHINGLE - MULTICOLOURED
- ② PREFINISHED METAL CLADDING/ROOFING - LIGHT GREY
- ③ STUCCO - LIGHT GREY
- ④ DOORS/WINDOWS - WOOD GRAIN
- ⑤ PREFINISHED METAL FLASHING - TO MATCH ROOF
- ⑥ METAL RWL - GALVANIZED
- ⑦ METAL MECHANICAL VENT - GALVANIZED
- ⑧ TRIM - WOOD GRAIN

REDUCED SIZE
NOT TO SCALE

DESIGNED FOR DP BY JAN 3 2019
DESIGNED FOR DEVELOPMENT PERMIT JUNE 24 2019

Caracadden

950 DILWORTH DR
KELOWNA BC

KELOWNA YMCA
CHILDCARE CENTRE

DATE: 01/03/2019

ELEVATIONS

DESIGNED: CHECKED:

DATE: 01/03/2019

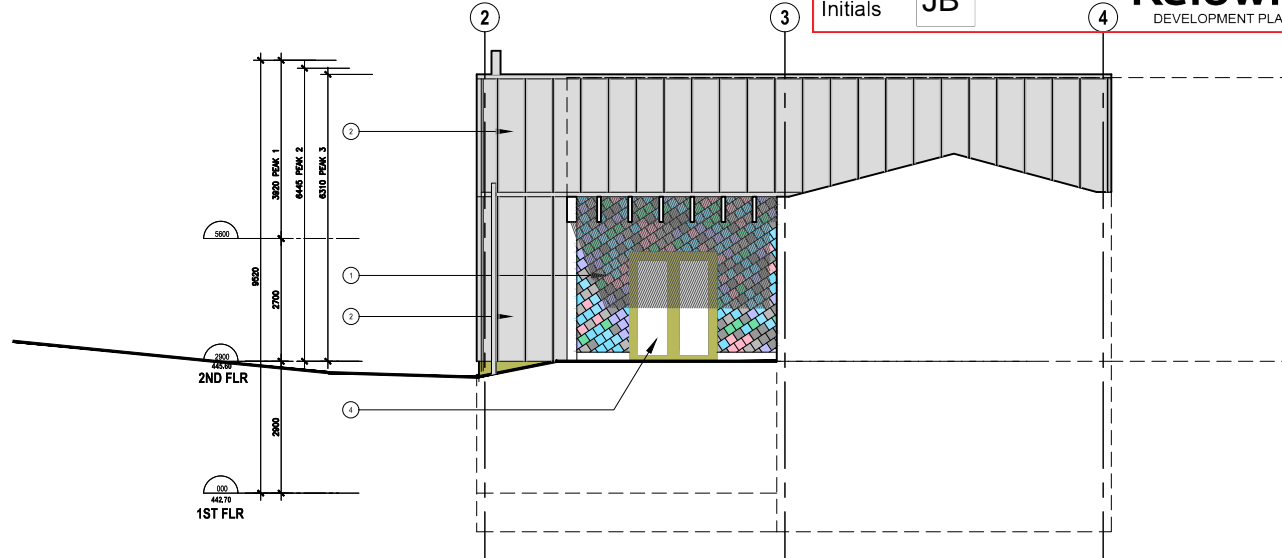
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DESIGNED: CHECKED: DATE:

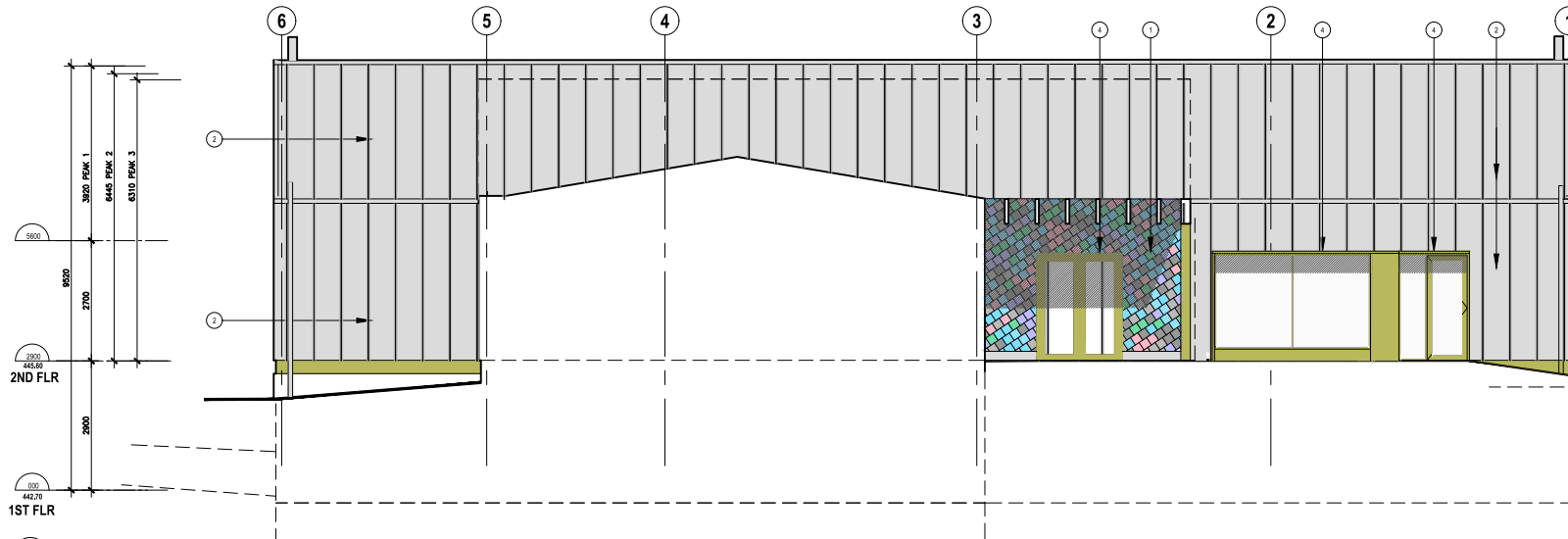
SHEET

DP12

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① PARTIAL BUILDING ELEVATION
SCALE 1:50



② PARTIAL BUILDING ELEVATION
SCALE 1:50

PRELIMINARY PLANT LIST

Magnolia stellata 'Royal Star'	Star magnolia	Tree form 60 mm cal
Acer rubrum 'Red Sunset'	Red Sunset Maple	75 mm cal
Aster frikartii Monch	Frikarts Aster	blue Aug to Oct
Calamagrostis 'Karl Foerster'	Karl Foerster Reed grass	
Cornus sericea	Red Twig Dogwood	red twigs winter
Echinacea purpurea 'Ruby Star'	Ruby Star Coneflower	purple July to Sept
Euonymus alata compacta	Dwarf Burning Bush	bright red foliage in fall
Festuca ovina Elijah Blue	Elijah Blue Fescue	
Forsythia 'Mindor'	Show Off Forsythia	bright yellow March
Fountain Grass	Pennisetum alopecuroides	
Helictotrichon sempervirens	Blue Oat Grass	
Hermocallis 'Stella d'Oro' (yellow)	Stella D'Oro Daylily	yellow may to aug
Hibiscus syriacus	Blue Satin Rose of Saron	blue july to sept
Hosta 'Regal Splendor'	Regal Splendor Hosta	white july/Aug
Lavandula angustifolia 'Munstead'	Munstead Lavender	purple late june thru August
Leucanthemum x superbum 'Snow Lady' (white)	Snow Lady Shasta Daisy	white summer to fall
Mahonia aquifolium	Oregon Grape	Mahonia aquifolium
Orange Flame grass	Miscanthus sinensis purpurascens	
Perovskia atriplicifolia	Russian sage	purple late spring to fall
Philadelphus lewisii 'Blizzard'	Blizzard Mockorange	fragrant white April /May
Pinus mugo pumilio	Dwarf Mugo Pine	evergreen
Rudbeckia hirta 'Goldsturm'	Goldsturm Gloriosa Daisy	golden yellow late summer into fall

Shrubs, perennials and ornamental grasses MIN # 2 POT



Provide year round color and interest for the children and staff

SCHEDULE C

This forms part of application # DP19-0144

City of Kelowna DEVELOPMENT PLANNING

Planner Initials JB

Notes

- The illustrated landscape plan is conceptual only...not for construction.
- All plants, material and planting practices to conform to the Canadian Landscape Standard - Current Edition
- Contractor to provide a warranty and maintenance period of 1 year on all plants and materials. Plants and materials that fail before end of the warranty period shall be replaced by the contractor.
- Contractor to confirm location of all utilities prior to construction
- All planting areas to receive 300 mm of topsoil. Seeded areas 75 mm of topsoil.
- Prior to delivery to site, a representative sample and test results of topsoil should be made available to the consultant for approval.
- Plant material selections are conceptual only. Final planting selections may vary depending on availability. No plant species substitution will be accepted without the written consent of the consultant.
- All planting beds to receive 50 mm depth of Ogo - Grow mulch or approved equivalent..
- All planting beds and lawn areas to be irrigated.
- Bike racks to be Maglin MBR500-S. Color Black. Surface mount to Concrete Pad

Sodded lawn area

Existing trees - typ

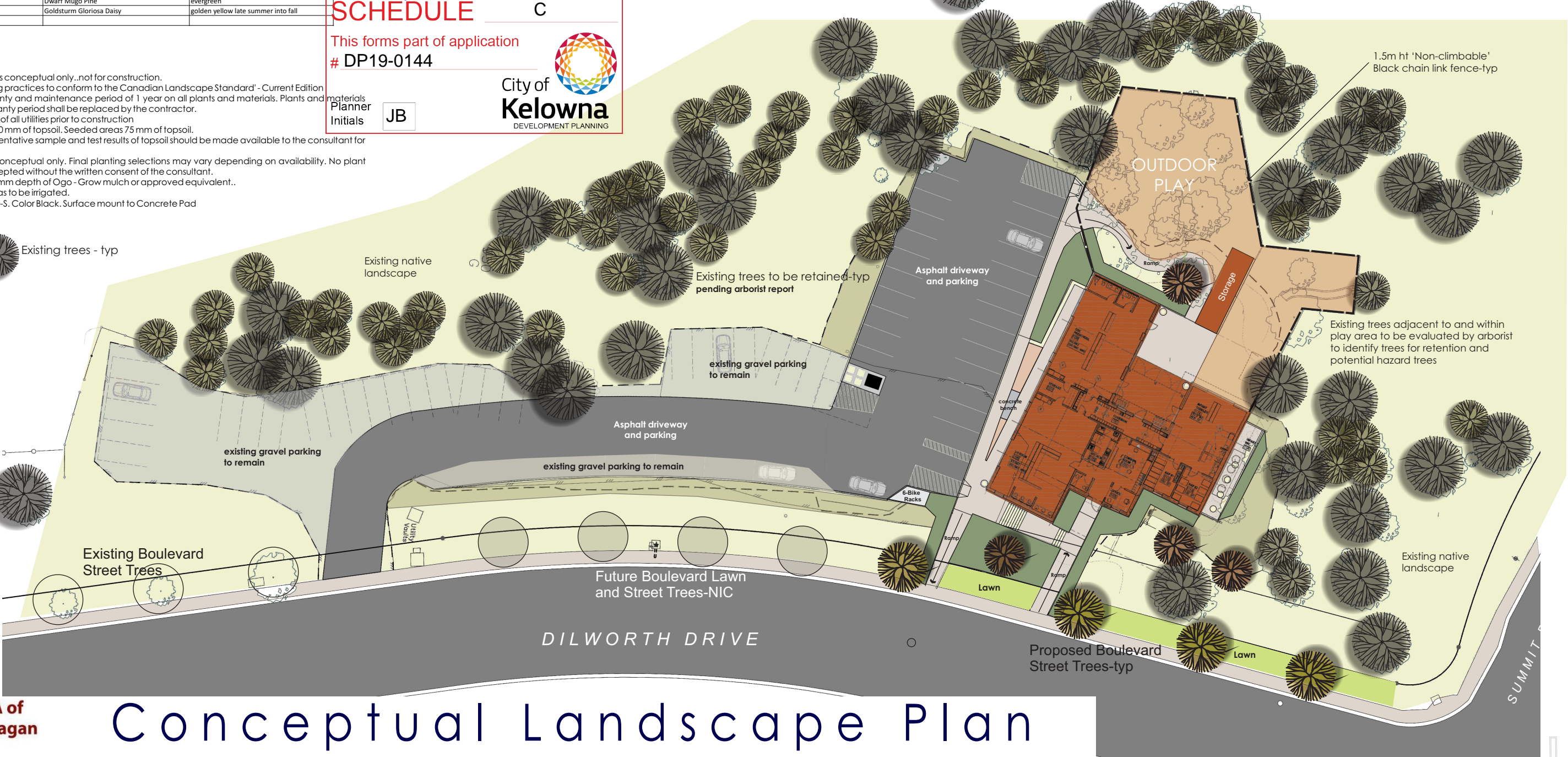
Massed planting shrubs, perennials, ornamental grasses

Dryland Grass Mix for all disturbed areas

Dryland Grass Mix Seed Blend (% by weight)

Application Rate 150kg/ha	
Crested Wheat Grass	20
Perennial Rye	15
Slender Wheat Grass	10
Tall Wheat Grass	10
Hard Fescue	10
Creeping Red Fescue	10
Annual Rye	10
Fall Rye	15

Seed mix to be certified #1 Grade.





ATTACHMENT		B
This forms part of application # DP19-0144		
Planner Initials	JB	 City of Kelowna <small>DEVELOPMENT PLANNING</small>

MEMO 950 DILWORTH DRIVE KYMCA CHILDCARE CENTRE DP APPLICATION

☐ FAX
☐ POST
☒ EMAIL PAGE(S) INCLUDING THIS PAGE

TO **Jocelyn Black** Planner Specialist, City of Kelowna *jblack@kelowna.ca*

CC **Sharon Peterson**, President/CEO YMCA of Okanagan *peterson@ymcaokanagan.ca*

FROM **Stewart Burgess**, ASSOCIATE ARCHITECT AIBC *stewart@carscadden.ca*

PROJECT 950 Dilworth Drive KYMCA Childcare Centre

DATE July 5, 2019

Design Rationale:

As per request received via telephone please see the following written copy of our design rationale as outlined on pages DP 1, 2,3 of our development permit submission.

This development permit submission is for a new YMCA childcare facility located in Dilworth Park in Kelowna BC. The building is about 9500sf spread over two storeys and takes advantage of the natural slope to make this two storey facility appear lower than this as some of the lower floor is buried into the hillside. At this time only the upper floor will be occupied with the lower floor being roughed in as storage with allowances for a future expansion of childcare capacities or other YMCA programming. Parking capacities have been calculated so as to allow either future office or childcare, refer to site plan DP7.

The building uses a four-part design strategy:

1. TARGET PASSIVE HOUSE

A simplified building layout and form helps with energy efficiency and the passive house target. Entry and support are centralized so as to service both childcare spaces. Future childcare or other ymca program will be accounted for in a roughed in lower floor. This project is targeting the passive house energy efficiency standard and will employ passive house design strategies (ie additional insulation at exterior of substructure, careful air tightness/detailing, electrical heat pumps and energy recovery ventilators, etc) although will not be certifying.

2. PLAYFUL AND CHILD FOCUSED

Childcare rooms are shifted around the common entry and support areas to provide a sheltered courtyard space centred around existing trees. The play area is located behind the building away from



ATTACHMENT		B
This forms part of application		
# DP19-0144		
Planner Initials	JB	 City of Kelowna <small>DEVELOPMENT PLANNING</small>

traffic pollution and uses existing trees for shelter and play centres where possible. Day to day entry will be by the rear through the courtyard while the general public can access the facility from a street facing "front door" this double sided entry strategy will help to provide security for children and give them a place to play while waiting for their caregivers.

3. ECONOMICAL BUILDING STRATEGY

The YMCA proposes to use wood-based standard building technologies in keeping with the Kelowna area industrial and trades capacities. The resulting sloped roof forms will fit in with the neighbourhood context while being arranged to provide a distinctive "look" to the structure from afar. Materials consist of cementitious shingles, wood trim and prefinished metal cladding.

4. CONTEXTUAL YET DIFFERENT

These economical and straightforward materials will be tweaked to provide visual interest (ie colour mixed shingles). The building will be contextual to the mostly suburban neighbourhood yet still act as a "landmark" at this important gateway moment on Dilworth Drive. Wood trim and coloured shingles will provide a warm counterpoint to the modern and bright prefinished metal roof and cladding.

Do not hesitate to be in touch with additional questions or concerns.

Best regards,



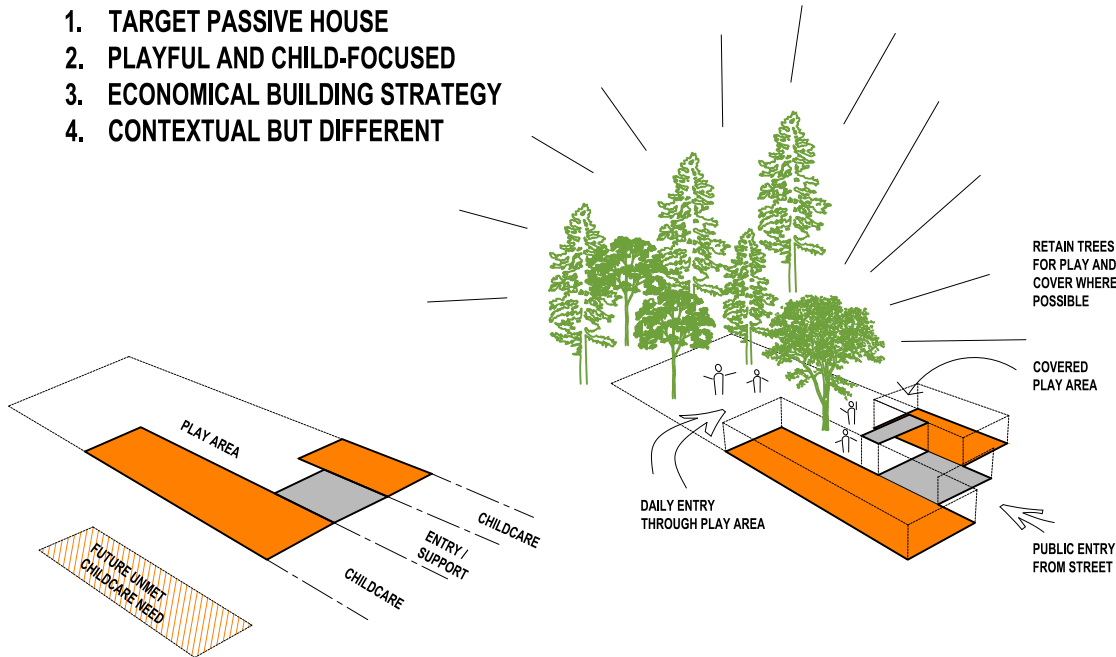
Stewart Burgess ASSOCIATE, ARCHITECT AIBC

DISTRIBUTION Authority, Owner, File

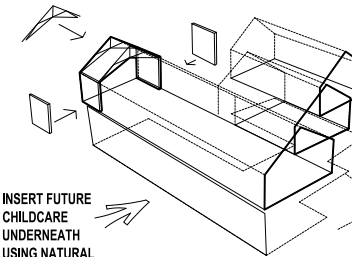


PROJECT RATIONALE

1. TARGET PASSIVE HOUSE
2. PLAYFUL AND CHILD-FOCUSED
3. ECONOMICAL BUILDING STRATEGY
4. CONTEXTUAL BUT DIFFERENT



STANDARD TRUSSES AND S.I.P.S.
WITH "OUTSULATION"



INSERT FUTURE
CHILDCARE
UNDERNEATH
USING NATURAL
SLOPE



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REDUCED SIZE
NOT TO SCALE

ISSUED FOR DEVELOPMENT PERMIT JUNE 26, 2019

FILE #

Caracadden

950 DILWORTH DR
KELOWNA BC

KELOWNA YMCA
CHILDCARE CENTRE

PROJECT RATIONALE

ISSUED FOR DEVELOPMENT PERMIT JUNE 26, 2019

SE/BC BC

1860 JAN 2019

NTS

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DP2



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1. TARGET PASSIVE HOUSE

A SIMPLIFIED BUILDING FORM HELPS WITH ENERGY EFFICIENCY AND PASSIVE HOUSE TARGET. ENTRY AND SUPPORT ARE CENTRAL SO AS TO SERVICE BOTH CHILDCARE SPACES. FUTURE CHILDCARE OR OTHER YMCA PROGRAM NEEDS CAN BE ACCOUNTED FOR IN A ROUGHED IN LOWER FLOOR.

2. PLAYFUL AND CHILD FOCUSED

PROGRAM ELEMENTS ARE SHIFTED PROVIDE A SHELTERED COURTYARD SPACE CENTRED AROUND EXISTING TREES, THE PLAY AREA IS LOCATED BEHIND THE BUILDING AWAY FROM TRAFFIC POLLUTION AND USES EXISTING TREES FOR SHELTER AND PLAY CENTRES WHERE POSSIBLE. A DOUBLE SIDED ENTRY STRATEGY WILL HELP TO PROVIDE SECURITY FOR CHILDREN AND GIVE THEM A PLACE TO PLAY WHILE WAITING FOR THEIR CAREGIVERS

3. ECONOMICAL BUILDING STRATEGY

THE YMCA PROPOSES TO USE WOOD-BASED STANDARD BUILDING TECHNOLOGIES IN KEEPING WITH THE KELOWNA AREA INDUSTRIAL AND TRADES CAPACITIES, THE RESULTING SLOPED ROOF FORMS WILL FIT IN WITH THE NEIGHBOURHOOD CONTEXT WHILE BEING ARRANGED TO PROVIDE A DISTINCTIVE "LOOK" TO THE STRUCTURE FROM AFAR.

This forms part of application

DP19-0144

Planner
Initials JBCity of
Kelowna
DEVELOPMENT PLANNING

4. CONTEXTUAL YET DIFFERENT

STANDARD BUILDING MATERIALS SUCH AS FIBRE CONCRETE SHINGLES WILL BE DEPLOYED IN UNUSUAL WAYS TO MAKE THE BUILDING APPEARS CONTEXTUAL TO THE MOSTLY SUBURBAN NEIGHBOURHOOD YET STILL ACT AS A "LANDMARK" AT THIS IMPORTANT GATEWAY MOMENT ON DILWORTH DRIVE. WOOD TRIMS WILL PROVIDE A WARM COUNTERPOINT TO THE ECONOMICAL YET BRIGHT PREFINISHED METAL ROOF AND CLADDING.



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REDUCED SIZE
NOT TO SCALE

ISSUED FOR DEVELOPMENT PERMIT JUNE 24, 2019

100-8-010

Caracadden

950 DILWORTH DR
KELOWNA BC

KELOWNA YMCA
CHILDCARE CENTRE

PROJECT RATIONALE

ISSUED	ISSUED BY
SB/BC	BC
JOB NO.	DATE
1860	JAN 2019
SCALE	
NTS	

DESIGNER: 100-8-010 (100-8-010)

DP3



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CITY OF KELOWNA
BYLAW NO. 11520
Z17-0080 – 588 Radant 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 3, Section 6, Township 26, ODYD, Plan 9002 located on Radant 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 4th day of December, 2017.

Considered at a Public Hearing on the 9th day of January, 2018.

Read a second and third time by the Municipal Council this 9th day of January, 2018.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Report to Council



Date: January 27, 2020
To: Council
From: City Manager
Subject: License of Occupation – Swim Area, Dock and Water Intake
Department: Partnerships and Investments

Recommendation:

THAT Council approve the City entering into a License of Occupation with the Province of British Columbia for a term of 30-years for all that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on District Lots 3457 except Plan 33137, District Lot 5296 and Lot 1 KAP 46717 all of Osoyoos Division Yale District, containing 3.3 hectares, more or less, more commonly known as the area in front of Waterfront Park for swimming and boating control buoy purposes, in the form attached to the Report of the Manager, Property Management dated January 27, 2020;

AND THAT Council approve the City entering into a License of Occupation with the Province of British Columbia for a term of 30-years for all that unsurveyed Crown foreshore being part of Okanagan Lake and fronting on District on Lot 1 of District Lots 139, 4041, 4082 and 5199, Osoyoos Division of Yale District, Plan KAP46717 containing 0.2945 hectares, more or less, more commonly known as the dock near the locks at Waterfront Park for the purpose of moorage, in the form attached to the Report of the Manager, Property Management dated January 27, 2020;

AND THAT Council approve the City entering into a sub-license agreement with the Delta Grand Hotel for at term of 10-years at market rates determined by the Manager of Property Management;

AND THAT Council approve the City entering into a License of Occupation with the Province of British Columbia for a term of 10-years for the surveyed Crown land with the legal description of Block A, District Lot 1720A and 5246, Osoyoos Division Yale District, and containing 17.40 hectares, for the purposes of water intake and all the associated works, in the form attached to the Report of the Manager, Property Management dated January 27, 2020;

AND THAT the Manager, Property Management be authorized to execute all documents necessary to complete the sublease agreement;

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the attached Licenses of Occupation and Management Plans.

Purpose:

To execute the renewal of three Licenses of Occupation with the Province of British Columbia to secure tenure of the swim area in front of Waterfront Park, and dock in front of the Delta Grand Hotel and a water intake in Hydraulic Creek.

Background:

As part of the City's on-going mandate to optimize the community benefit and user experience associated with waterfront parks and beaches, the City proactively seeks to maximize the land tenure (in the form of Water Lots or Licenses of Occupations) for the associated foreshore areas.

These types of land tenure grant the City care and control over the waterfront areas adjacent to key municipal assets and allows the City to actively manage these areas through the installation of infrastructure.

Three License of Occupation with the Province of British Columbia require renewal:

Waterfront Park Swim Area

The first tenure is for the swim area of +/-3.3 hectares in front of Waterfront Park. The term of the proposed license is for a period of 30 years, with a nominal fee of \$1. The tenure allows the City to install infrastructure (such as swimming and boating buoys) and by enforcing regulations regarding undesired uses (such as the moorage of houseboats).

Dock in front of Delta Grand

The second tenure is for the small dock near the locks at the Delta Grand Hotel (DG). The term of the proposed license is for a period of 30 years, with an annual fee of \$2,500. As the City is the upland owner, only the City can hold the license for the dock. The license is then subleased to the DG for their use. With the approval of the License of Occupation, we request agreement to enter into another sublease with the DG for a period of 10 years. The new sublease will be structured the same as the previous lease where DG will pay a sublease fee based on market rents, as well as reimbursement for the City's fee to the Province.

Water Intake

The third tenure is for a 17.40-hectare parcel of land near Hydraulic Creek. The term of the proposed license is for a period of 30 years, with a nominal fee of \$1. The property and its facilities associated with the South East Kelowna Irrigation District, now integrated into the City of Kelowna water supply system. The integration of the system will be completed in 2020 and this work will provide City of Kelowna drinking water for domestic consumption in the service area and will maintain the SEKID water supply for irrigation and firefighting purposes. The land and facilities at the Intake are critical elements to the irrigation supply system. The operation and maintenance of this infrastructure is carried out by the Civic Operations Division.

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Submitted by: J. Adamson, Manager, Property Management

Approved for inclusion: J. Säufferer, Department Manager, Real Estate

Attachments 1. Schedule A - License of Occupation # 3403815
 2. Schedule B - Management Plan #3403815
 3. Schedule C - License of Occupation #3407115
 4. Schedule D - Management Plan #3407115
 5. Schedule E- License of Occupation # 3402739
 6. Schedule F - Management Plan #3402739
 7. Schedule G - PowerPoint



LICENCE OF OCCUPATION

Licence No.:

File No.: 3403815

Disposition No.: 925141

THIS AGREEMENT is dated for reference August 24, 2017 and is made under the *Land Act*.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

AND:

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4

(the "Licensee")

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**Commencement Date**" means August 24, 2017;

"**disposition**" has the meaning given to it in the *Land Act* and includes a licence of occupation;

"**Fees**" means the fees set out in Article 3;

"**Hazardous Substances**" means any substance which is hazardous to persons, property or the environment, including without limitation

(a) waste, as that term is defined in the *Environmental Management Act*; and

- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

“Improvements” includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

“Land” means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled “Legal Description Schedule” except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*) and land covered by water;

“Management Plan” means the most recent management plan prepared by you in a form approved by us, signed and dated by the parties, and held on file by us;

“Market Value of the Land” means the value of the Land as determined, from time to time, by us in our sole discretion;

“Realty Taxes” means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

“Security” means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

“Term” means the period of time set out in section 2.2;

“we”, “us” or “our” refers to the Province alone and never refers to the combination of the Province and the Licensee: that combination is referred to as **“the parties”**; and

“you” or “your” refers to the Licensee.

- 1.2 In this Agreement, “person” includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.

- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such

guideline of general application.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for public swimming and boating control buoy purposes, and you acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 30th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - FEES

- 3.1 The Fee for the Term is \$1.00, the receipt of which we acknowledge.

ARTICLE 4 - COVENANTS

- 4.1 You must
 - (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
 - (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
 - (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and

- (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place, anchor, secure or affix any Improvement in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan (where applicable) or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
 - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any such riparian right of access;
- (h) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act* for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not cut or remove timber on or from the Land without

- (i) our prior written consent, and
 - (ii) being granted the right under the *Forest Act* to harvest Crown timber on the Land;
 - (k) not deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;
 - (l) not alter, repair or add to any Improvement without our prior written consent;
 - (m) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
 - (n) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;
 - (o) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,
- and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and
- (p) on the termination of this Agreement,
 - (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,

- (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
- (v) restore the surface of the Land as nearly as may reasonably be possible, to the condition that the Land was in at the time it originally began to be used for the purposes described in this Agreement, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this

section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) in addition to the other reservations and exceptions expressly provided in this Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Sustainability Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under the *Land Act* or the *Ministry of Lands, Parks and Housing Act*; such interests may exist as of the Commencement Date; following the Commencement Date we may grant such interests (including fee simple interests, leases, statutory rights of way and licences); you acknowledge that your use of the Land may be affected by such interests and the area or boundaries of the Land may change as a result of the granting of such interests;
- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
- (f) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);
- (g) you will not dredge or displace beach materials on the Land unless you have obtained our prior written approval;

- (h) you will not interrupt or divert the movement of water or of beach materials by water along the shoreline unless you have obtained our prior written approval;
- (i) this Agreement is subject to the prior rights of the holder of the right of way granted to Fortis Energy Inc as defined on Plan A13429 on the file in the Kamloops Land Title Office;
- (j) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (k) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(p)(ii), (iii) or (iv) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(p)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(p)(iii); and
- (l) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$0.00 which will
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.

6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.

6.5 You acknowledge that we may, from time to time, notify you to

- (a) change the form or amount of the Security; and
- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
 - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

- 6.7 We may, acting reasonably, from time to time, require you to
- (a) change the amount of insurance set out in subsection 6.6(a); and
 - (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;
- and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.
- 6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.
- 6.9 You waive all rights of recourse against us with regard to damage to your own property.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and your default or failure continues for 60 days after we give written notice of the default or failure to you,
 - (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in

this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;

- (c) if you transfer or assign your interest in fee simple in all that parcel or tract of land more particularly described as District Lot 5297 Osoyoos Division Yale District, PID 025-726-820; Lot 1 District Lot 139, 4041, 4082 and 5199 Osoyoos Division Yale District Plan KAP46717, PID 017-684-048; District Lot 3454 Osoyoos Division Yale District Except Plans A817, 33137 and 42174, PID 011-842-466;
- (d) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enter into an arrangement with your creditors;
- (e) if you are a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (f) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent;
- (g) if this Agreement is taken in execution or attachment by any person; or
- (h) if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you 60 days' written notice of such requirement or opinion;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have

complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Kamloops, British Columbia, and if we or our authorized representative have no office in Kamloops, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Kamloops, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL
DEVELOPMENT
441 Columbia Street

Kamloops, BC V2C 2T3;

to you

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs,

executors, administrators, successors and permitted assigns.

11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as

- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
- (b) you diligently attempt to remove the delay.

11.6 You acknowledge and agree with us that

- (a) this Agreement has been granted to you on the basis that you accept the Land on an "as is" basis;
- (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
 - (v) the application of any federal or Provincial enactment or law to the Land;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;

- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a "site profile" under the *Environmental Management Act* or any regulations made under that act;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.

11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.

11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

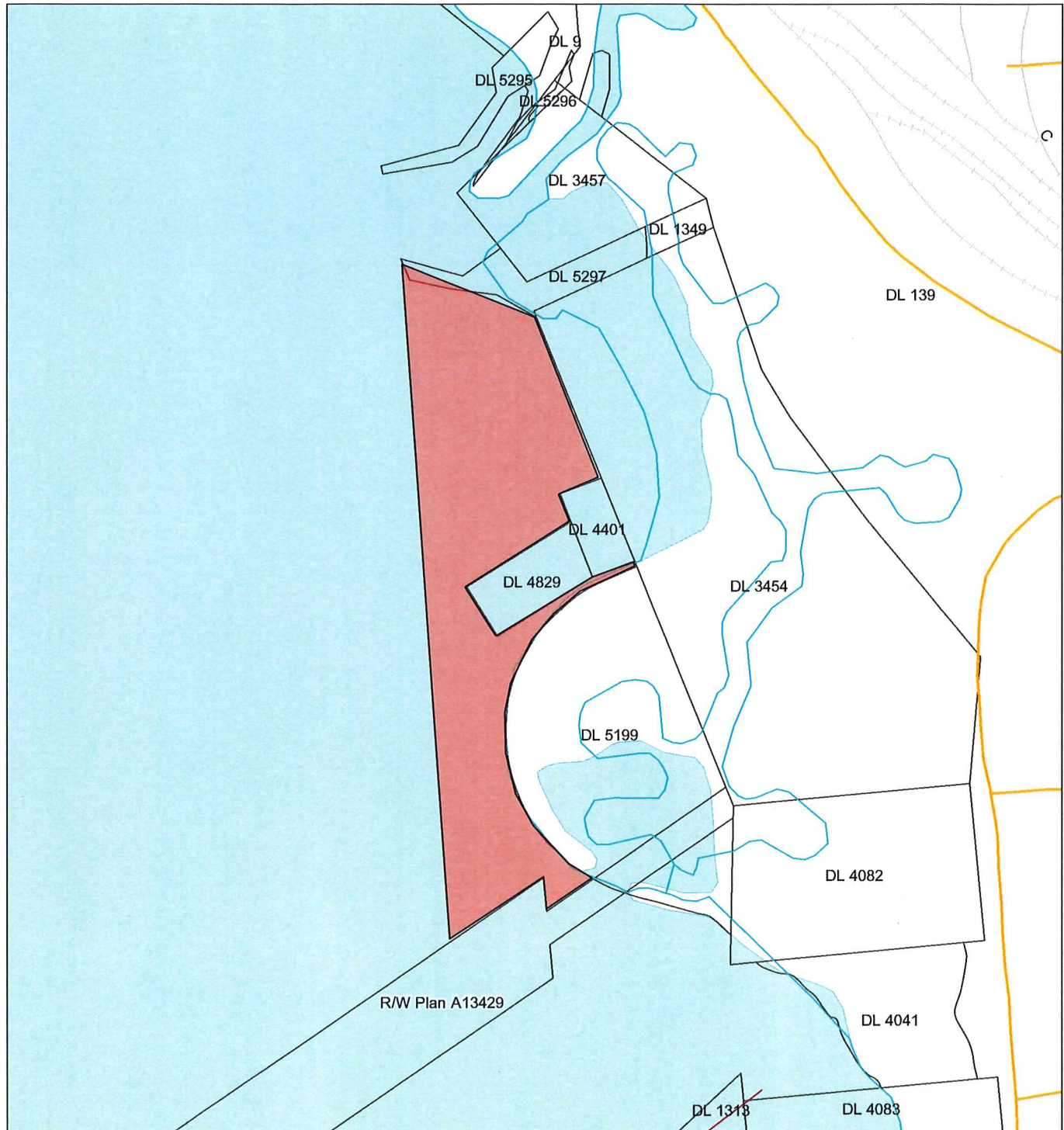
SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by the minister responsible for the *Land Act*
or the minister's authorized representative

Minister responsible for the *Land Act*
or the minister's authorized representative

SIGNED on behalf of
CITY OF KELOWNA
by a duly authorized signatory

Authorized Signatory

All that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on District Lots 3457 ex Plan 33137, District Lot 5296 and Lot 1 KAP46717 all of Osoyoos Division Yale District, containing 3.3 hectares, more or less



Scale: 1:4,000
BCGS Mapsheet(s):82E 083



MANAGEMENT PLAN

FILE # 3403815

DID #: 925141

PURPOSE: Swimming and Boating Control Buoys

LEGAL DESCRIPTION: All that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on District Lots 3457 ex Plan 33137, District Lot 5296 and Lot 1 KAP46717 all of Osoyoos Division Yale District, containing 3.3 hectares, more or less

There is no infrastructure associated with this tenure, as illustrated on Page 2 of this Management Plan.

Any future alterations or additions to the improvements will require our prior written consent.

You must not restrict or impede access over or on this site.

This document supersedes any earlier Management Plans. The signature of the Province's authorized representative is solely for the purpose of acknowledging the Province's acceptance of this document as the Management Plan for community and institutional purposes and does not represent a certification by the Province or its signatory of any factual content or acceptance of professional responsibility by the Province's signatory for any advice or analysis contained in this document.

ACCEPTED and SIGNED by City of
Kelowna

This Management Plan has been approved
by the Ministry of Forest, Lands, Natural
Resource Operations and Rural
Development :

Authorized Signatory

Authorized Signatory

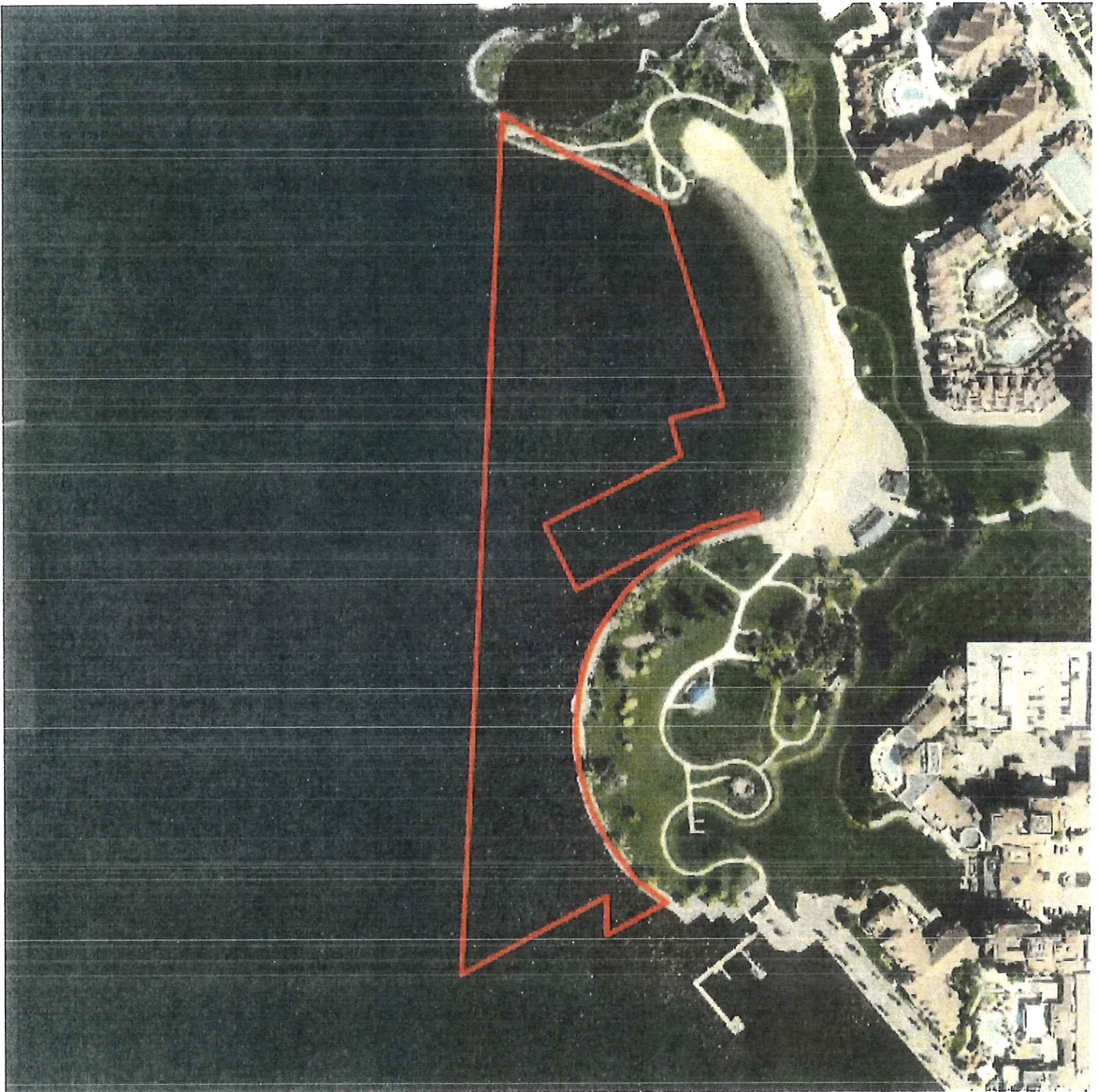
PRINT NAME:

DATE:

DATE:

MANAGEMENT PLAN

All that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on District Lots 3457 ex Plan 33137, District Lot 5296 and Lot 1 KAP46717 all of Osoyoos Division Yale District, containing 3.3 hectares, more or less



Scale: 1:5,000

BCGS Mapsheet(s): 82E 083

Licence No.:

File No.: 3407115

Disposition No.: 925148

THIS AGREEMENT is dated for reference August 10, 2016 and is made under the *Land Act*.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

AND:

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4

(the "Licensee")

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**Commencement Date**" means August 10, 2016;

"**disposition**" has the meaning given to it in the *Land Act* and includes a licence of occupation;

"**Fees**" means the fees set out in Article 3;

"**Hazardous Substances**" means any substance which is hazardous to persons, property or the environment, including without limitation

(a) waste, as that term is defined in the *Environmental Management Act*; and

- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

"Improvements" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"Land" means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled "Legal Description Schedule" except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*);

"Management Plan" means the most recent management plan prepared by you in a form approved by us, signed and dated by the parties, and held on file by us;

"Realty Taxes" means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

"Security" means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

"Term" means the period of time set out in section 2.2;

"we", "us" or "our" refers to the Province alone and never refers to the combination of the Province and the Licensee: that combination is referred to as **"the parties"**; and

"you" or "your" refers to the Licensee.

- 1.2 In this Agreement, "person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.

- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such guideline of general application.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for commercial moorage purposes, as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 30th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - FEES

- 3.1 You will pay to us
- (a) for the first year of the Term, Fees of \$2,500.00, payable in advance on the Commencement Date; and
 - (b) for each year during the remainder of the Term, the Fees either determined by us under section 3.2 or established under section 3.3, payable in advance on each anniversary of the Commencement Date.
- 3.2 We will, not later than 15 days before each anniversary of the Commencement Date during the Term, give written notice to you specifying in our sole discretion the Fees payable by you under subsection 3.1(b) for the subsequent year of the Term and we will establish such Fees in accordance with our policies applicable to your use of the Land under this Agreement.
- 3.3 If we do not give notice to you under section 3.2, the Fees payable by you under subsection 3.1(b) for the year for which notice was not given will be the same as the Fees payable by you for the preceding year of the Term.

ARTICLE 4 - COVENANTS

- 4.1 You must
- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and

- (iii) all charges for electricity, gas, water and other utilities supplied to the Land for use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
- (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and
 - (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in the Management Plan;
- (g) not construct, place, anchor, secure or affix any Improvement in, on, or to the Land or otherwise use the Land in a manner that will interfere with any person's riparian right of access over the Land and you acknowledge and agree that the granting of this Agreement and our approval of the Improvements under this Agreement, whether through our approval of a Management Plan (where applicable) or otherwise, do not:
 - (i) constitute a representation or determination that such Improvements will not give rise to any infringement of any riparian right of access that may exist over the Land; or
 - (ii) abrogate or authorize any infringement of any riparian right of access that may exist over the Land;

and you remain responsible for ensuring that you will not cause any infringement of any

such riparian right of access;

- (h) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act* for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not deposit on the Land, or any part of it, any earth, fill or other material for the purpose of filling in or raising the level of the Land unless you obtain our prior written approval;
- (k) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
- (l) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (m) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
 - (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (n) on the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
 - (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
 - (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
 - (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
 - (v) restore the surface of the Land as nearly as may reasonably be possible, to the condition that the Land was in at the time it originally began to be used for the purposes described in this Agreement, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply

with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and

- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) in addition to the other reservations and exceptions expressly provided in this Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Sustainability Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under the *Land Act* or the *Ministry of Lands, Parks and Housing Act*; such interests may exist as of the Commencement Date; following the Commencement Date we may grant such interests (including fee simple interests, leases, statutory rights of way and licences); you acknowledge that your use of the Land may be affected by such interests and the area or boundaries of the Land may change as a result of the granting of such interests;
- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
- (f) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land as permitted under this Agreement

that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);

- (g) you will not dredge or displace beach materials on the Land unless you have obtained our prior written approval;
- (h) you will not moor or secure any boat or structure to the Improvements or on any part of the Land for use as a live-aboard facility, whether permanent or temporary;
- (i) you will not interrupt or divert the movement of water or of beach materials by water along the shoreline unless you have obtained our prior written approval;
- (j) you will not use mechanized equipment other than a pile-driver during the construction, operation or maintenance of Improvements on the Land;
- (k) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (l) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(n)(ii), (iii) or (iv) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(n)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(n)(iii); and
- (m) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

6.1 On the Commencement Date, you will deliver to us Security in the amount of \$0.00 which will

- (a) guarantee the performance of your obligations under this Agreement;
- (b) be in the form required by us; and
- (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.

6.2 Despite section 6.1, your obligations under that section are suspended for so long as you

maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.

- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

- 6.6 You must
- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
 - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
 - (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
 - (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";

- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

6.9 You waive all rights of recourse against us with regard to damage to your own property.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

8.1 You agree with us that

- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or

- (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and your default or failure continues for 60 days after we give written notice of the default or failure to you,
- (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
- (c) if you transfer or assign your interest in fee simple in all that parcel or tract of land more particularly described as Lot 1 District Lots 139, 4041, 4082, and 5199, Osoyoos Division Yale District, Plan KAP46717, PID# 017-684-048;
- (d) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,
 - (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
 - (iii) voluntarily enter into an arrangement with your creditors;
- (e) if you are a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (f) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent;
- (g) if this Agreement is taken in execution or attachment by any person; or
- (h) if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you 60 days' written notice of such requirement or opinion;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

- 8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 You agree with us that
- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
 - (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Kamloops, British Columbia, and if we or our authorized representative have no office in Kamloops, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Kamloops, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL
DEVELOPMENT
441 Columbia Street
Kamloops, BC V2C 2T3;

to you

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicence, assignment or transfer of this Agreement does not release you from

your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicence, assignment or transfer of this Agreement.

- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and
 - (b) you diligently attempt to remove the delay.
- 11.6 You acknowledge and agree with us that
- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
 - (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
 - (v) the application of any federal or Provincial enactment or law to the Land;

- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
 - (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a "site profile" under the *Environmental Management Act* or any regulations made under that act;
 - (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
 - (f) we are under no obligation to provide access or services to the Land or to maintain or improve existing access roads.
- 11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.
- 11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by the minister responsible for the *Land Act*
or the minister's authorized representative

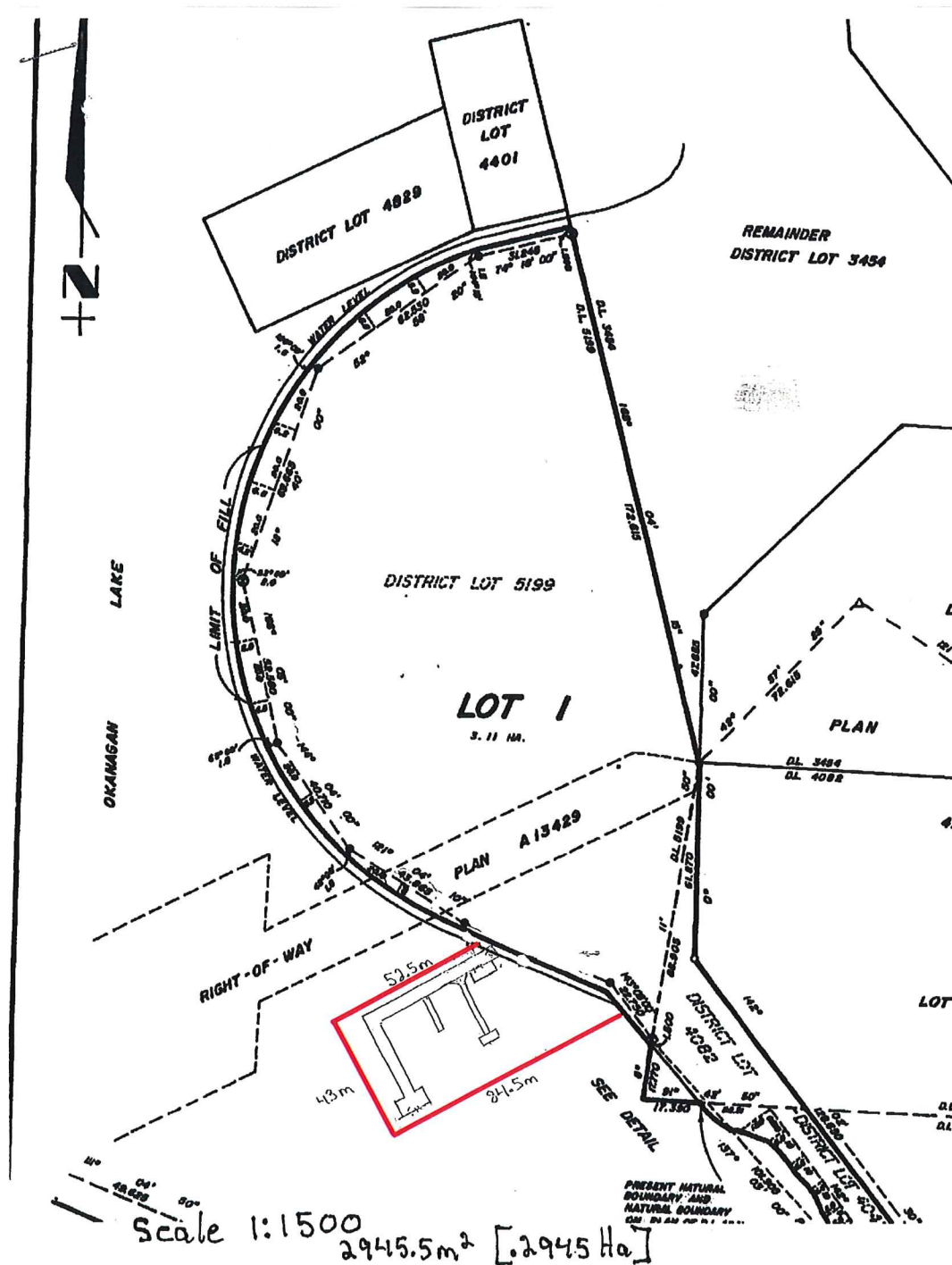
Minister responsible for the *Land Act*
or the minister's authorized representative

SIGNED on behalf of **CITY OF KELOWNA**
By its authorized signatories

Authorized Signatory

Authorized Signatory

All that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on Lot 1 of District Lots 139, 4041, 4082 and 5199, Osoyoos Division of Yale District, Plan KAP46717 shown outlined on sketch containing 0.2945 hectares, more or less for commercial purposes.



MANAGEMENT PLAN

FILE # 3407115

DID #: 925148

PURPOSE: Commercial Moorage

LEGAL DESCRIPTION: Osoyoos div of Yale land district, all that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on Lot 1 of District Lots 139, 4041, 4082 and 5199, Osoyoos Division of Yale District, Plan KAP46717 shown outlined on sketch containing 0.2945 hectares, more or less

The infrastructure at this location includes 65 m long dock with 4 fingers and pilings, as illustrated on Page 2 of this Management Plan.

Any future alterations or additions to the improvements will require our prior written consent.

You must not restrict or impede access over or on this site.

This document supersedes any earlier Management Plans. The signature of the Province's authorized representative is solely for the purpose of acknowledging the Province's acceptance of this document as the Management Plan for community and institutional purposes and does not represent a certification by the Province or its signatory of any factual content or acceptance of professional responsibility by the Province's signatory for any advice or analysis contained in this document.

ACCEPTED and SIGNED by City of
Kelowna

This Management Plan has been approved
by the Ministry of Forest, Lands, Natural
Resource Operations and Rural
Development :

Authorized Signatory

Authorized Signatory

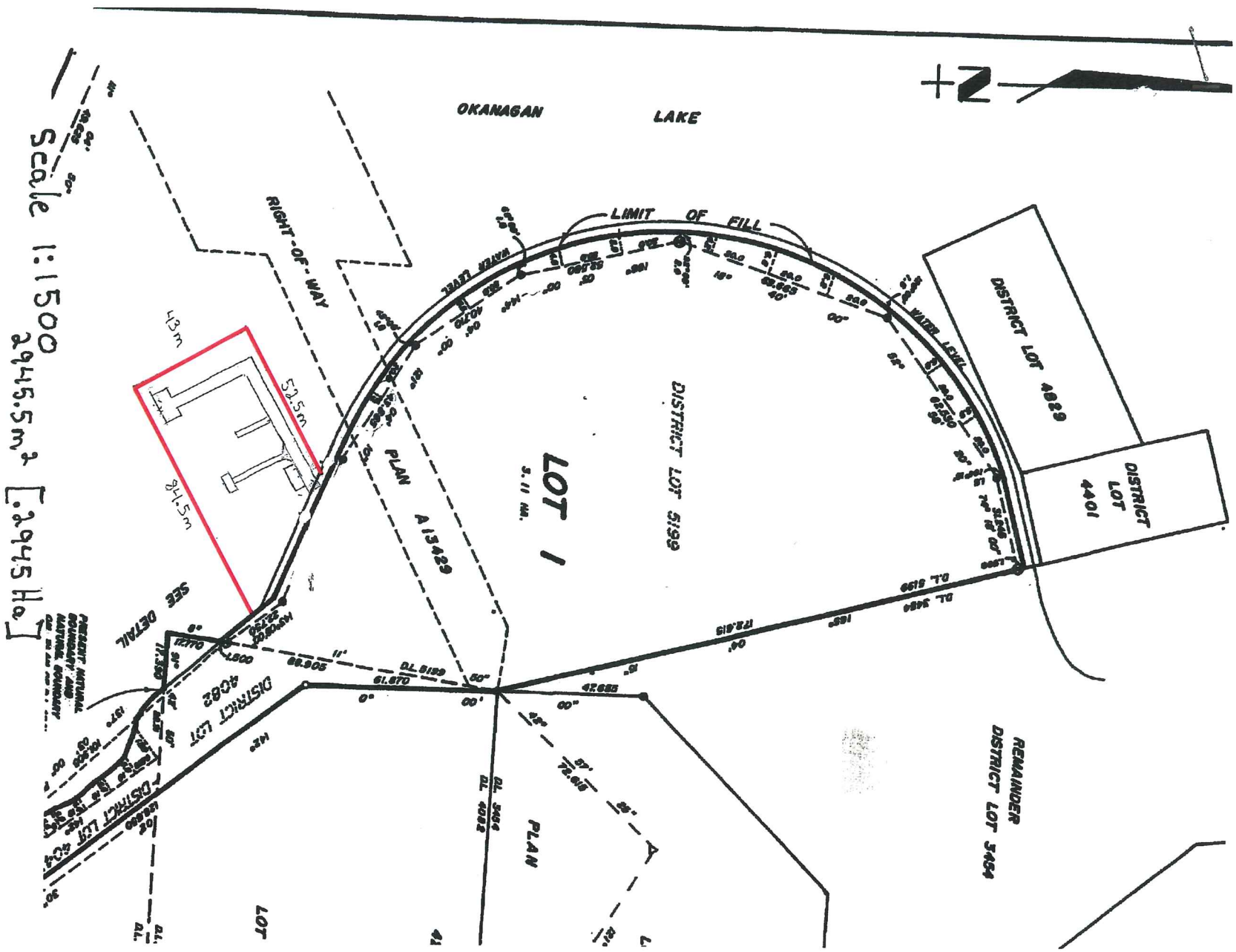
PRINT NAME:

DATE:

DATE:

MANAGEMENT PLAN

Osoyoos div of Yale land district, all that unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on Lot 1 of District Lots 139, 4041, 4082 and 5199, Osoyoos Division of Yale District, Plan KAP46717 shown outlined on sketch containing 0.2945 hectares, more or less



Signed on behalf of
City of Kelowna
by a duly authorized signatory

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA,
by its authorized representative

Date

Date



LEASE

Lease No.:

File No.: 3402739

Disposition No.: 924978

THIS AGREEMENT is dated for reference April 27, 2017 and is made under the *Land Act*.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

AND:

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4

(the "Lessee")

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"**Agreement**" means this lease;

"**Commencement Date**" means April 27, 2017;

"**disposition**" has the meaning given to it in the *Land Act* and includes a licence of occupation;

"**Hazardous Substances**" means any substance which is hazardous to persons, property or the environment, including without limitation

(a) waste, as that term is defined in the *Environmental Management Act*; and

- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

"Improvements" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"Land" means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled "Legal Description Schedule" except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*) and land covered by water;

"Realty Taxes" means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

"Rent" means the rent set out in Article 3;

"Security" means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

"Term" means the period of time set out in section 2.2;

"we", "us" or "our" refers to the Province alone and never refers to the combination of the Province and the Lessee: that combination is referred to as **"the parties"**; and

"you" or "your" refers to the Lessee.

- 1.2 In this Agreement, "person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.

- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such guideline of general application.

- 1.14 Where this Agreement contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words will have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained in this Agreement, unless the context requires another construction of those words.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a lease of the Land for water intake and all the associated works purposes, as set out in the Management Plan.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 30th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.

ARTICLE 3 - RENT

- 3.1 The Rent for the Term is \$1.00, the receipt of which we acknowledge.

ARTICLE 4 - COVENANTS

- 4.1 You must
- (a) pay, when due,
 - (i) the Rent to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
 - (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
 - (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way

to Hazardous Substances, the environment and human health and safety, and

- (ii) the provisions of this Agreement;
- (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
- (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
- (f) use and occupy the Land only in accordance with and for the purposes set out in the Management Plan;
- (g) not construct, place or affix any Improvement on or to the Land except as permitted in the Management Plan;
- (h) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that you are required to hold back under the *Builders Lien Act*;
- (i) if any claim of lien over the Land is made under the *Builders Lien Act*, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
- (j) not cut or remove timber on or from the Land without
 - (i) our prior written consent, and
 - (ii) being granted the right under the *Forest Act* to harvest Crown timber on the Land;
- (k) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
- (l) permit us, or our authorized representatives, to enter on the Land at any time to inspect

the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;

- (m) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
- (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,

and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (n) on the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition,
 - (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,
 - (iii) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
 - (iv) restore the surface of the Land as nearly as may reasonably be possible, to the condition that the Land was in at the time it originally began to be used for the purposes described in this Agreement, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement; and
- (b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land:

- (c) by you; or
- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly

allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

4.7 We will provide you with quiet enjoyment of the Land.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) in addition to the other reservations and exceptions expressly provided in this Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;
- (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Sustainability Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British

Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;

- (c) with your prior consent, which consent you will not unreasonably withhold, we may make other dispositions of or over the Land, or any part of it, by way of easement, right of way or statutory right of way, to any person, including a Crown agency or ministry, and, upon such consent being given you will, if required by us, execute and deliver to us such instrument as may be necessary to subordinate your rights under this Agreement to such easement, right of way or statutory right of way;
- (d) for the purpose of subsection (c), you will be deemed to have reasonably withheld your consent if a disposition made under that subsection would have a material adverse impact on your use of the Land under this Agreement;
- (e) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);
- (f) if a proposed disposition under subsection (c) will not have a material adverse impact on your use of the Land under this Agreement you must not require any payment, whether as compensation or any other charge, as a condition of your consent to that disposition;
- (g) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land under this Agreement that arises as a result of the exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);
- (h) any interference with your use of the Land under this Agreement as a result of the exercise or operation of the interests, rights, privileges and titles described in subsection (a), (b) and (c) will not constitute a breach of our covenant of quiet enjoyment and you release and discharge us from all claims for loss or damage arising directly or indirectly out of any such interference;
- (i) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
- (j) you will not remove or permit the removal of any Improvement from the Land except as

- expressly permitted or required under this Agreement;
- (k) any interest you may have in the Improvements ceases to exist and becomes our property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(n)(ii) or (iii) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(n)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(n)(iii); and
 - (l) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$0.00 which will
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Rent and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and

- (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
 - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

- 6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.
- 6.9 You waive all rights of recourse against us with regard to damage to your own property.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublease, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and your default or failure continues for 60 days after we give written notice of the default or failure to you,
 - (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
 - (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your

creditors,

- (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at our option and with or without entry, terminate, and all of your right, interest and estate in the Land will be absolutely forfeited to us.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

ARTICLE 9 - DISPUTE RESOLUTION

9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to

resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.

- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Kamloops, British Columbia, and if we or our authorized representative have no office in Kamloops, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Kamloops, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS AND RURAL
DEVELOPMENT
441 Columbia Street
Kamloops, BC V2C 2T3;

to you

CITY OF KELOWNA
1435 Water St
Kelowna, BC V1Y 1J4;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublease, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublease, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and

- (b) you diligently attempt to remove the delay.

11.6 You acknowledge and agree with us that

- (a) this Agreement has been granted to you on the basis that you accept the Land on an “as is” basis;
- (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
 - (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
 - (v) the application of any federal or provincial enactment or law to the Land;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a “site profile” under the *Environmental Management Act* or any regulations made under that act;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or

improve existing access roads.

- 11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.
- 11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by the minister responsible for the *Land Act*
or the minister's authorized representative

Minister responsible for the *Land Act*
or the minister's authorized representative

SIGNED on behalf of CITY OF KELOWNA
by a duly authorized signatory

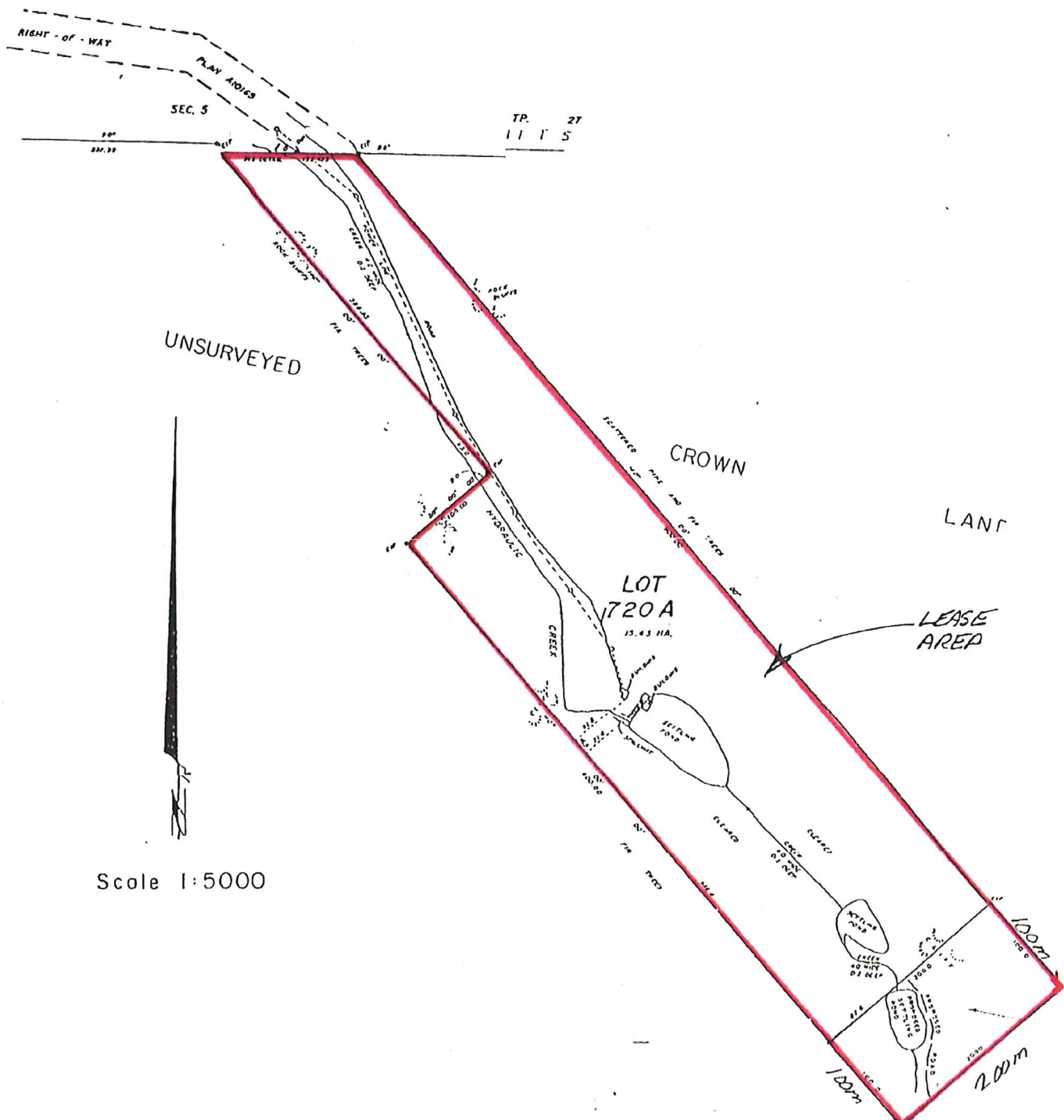
Authorized Signatory

Loose

Legal Description Schedule

File No.: 3402739
Disposition No.: 924978

Block A, District Lot 1720A and 5246, Osoyoos Division Yale District and containing 17.40 hectares.



Scale: 1:5,000

BCGS Mapsheet(s): 082E084



MANAGEMENT PLAN

FILE # 3402739

DID #: 924978

PURPOSE: Water intake and all the associated works.

LEGAL DESCRIPTION: Block A, District Lot 1720A and 5246, Osoyoos Division
Yale District and containing 17.40 hectares.

The infrastructure at this location includes an access road, power line, buildings, spillway, water intake, and settling ponds, as illustrated on Page 2 of this Management Plan.

Any future alterations or additions to the improvements will require our prior written consent.

Any structures impounding water must comply with applicable bylaws and regulations including the Dam Safety Regulation under the *Water Sustainability Act*.

This document supersedes any earlier Management Plans. The signature of the Province's authorized representative is solely for the purpose of acknowledging the Province's acceptance of this document as the Management Plan for community and institutional purposes and does not represent a certification by the Province or its signatory of any factual content or acceptance of professional responsibility by the Province's signatory for any advice or analysis contained in this document.

ACCEPTED and SIGNED by the City of
Kelowna:

This Management Plan has been approved
by the Ministry of Forest, Lands, Natural
Resource Operations and Rural
Development :

Authorized Signatory

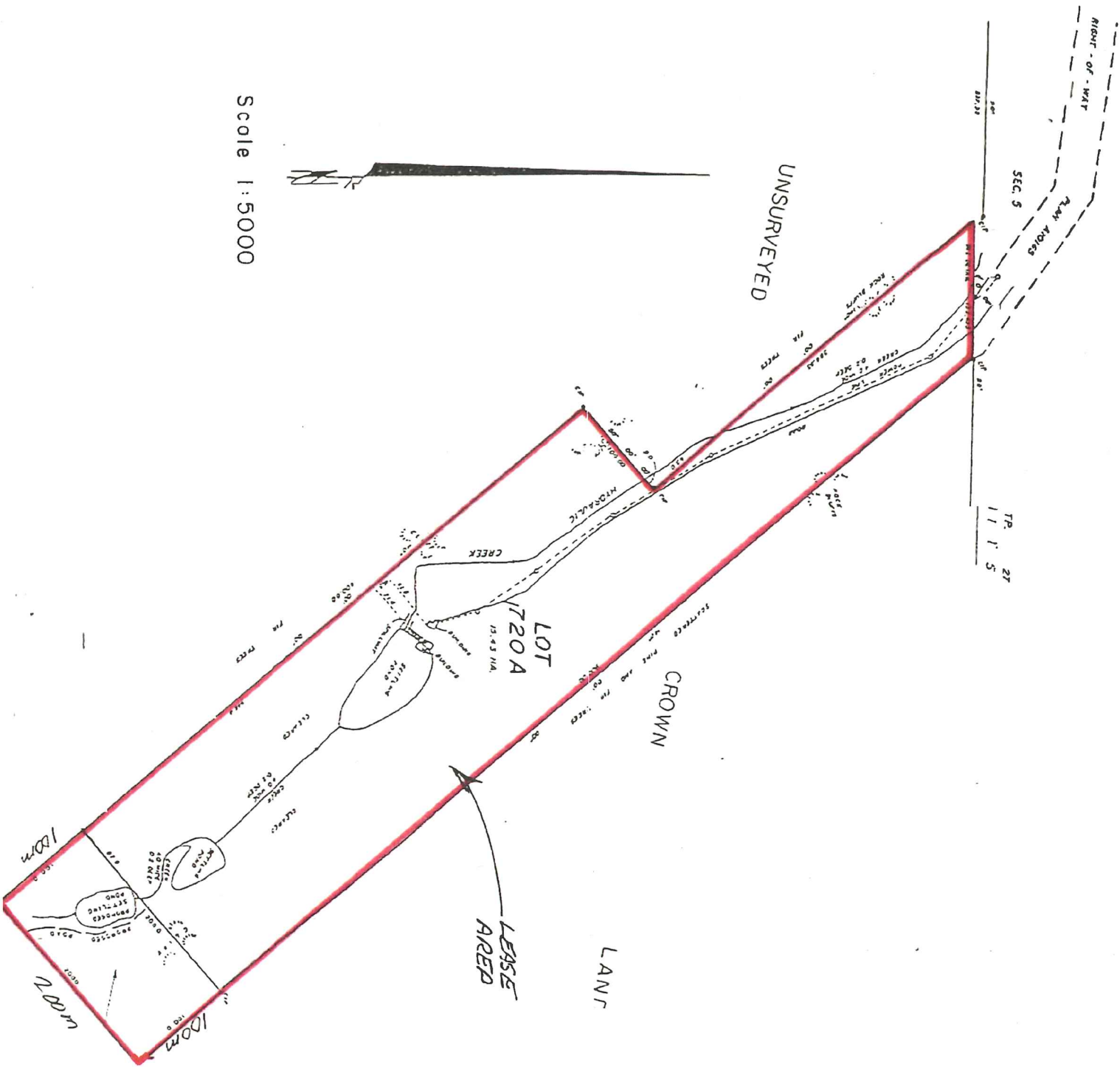
Authorized Signatory

PRINT NAME:

DATE:

DATE:

MANAGEMENT PLAN



Scale 1:5000

Signed on behalf of
The City of Kelowna
by a duly authorized signatory

Date

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH
COLUMBIA,
by its authorized representative

Date



Licenses of Occupation

January 27, 2020



Waterfront Park Swim Area

Term: 30 years

Annual Fee: \$1

Area: +/-3.3 hectares



Dock in front of Delta Grand

Term: 30 years

Annual Fee: \$2,500

Area: +/- 0.2945 hectares

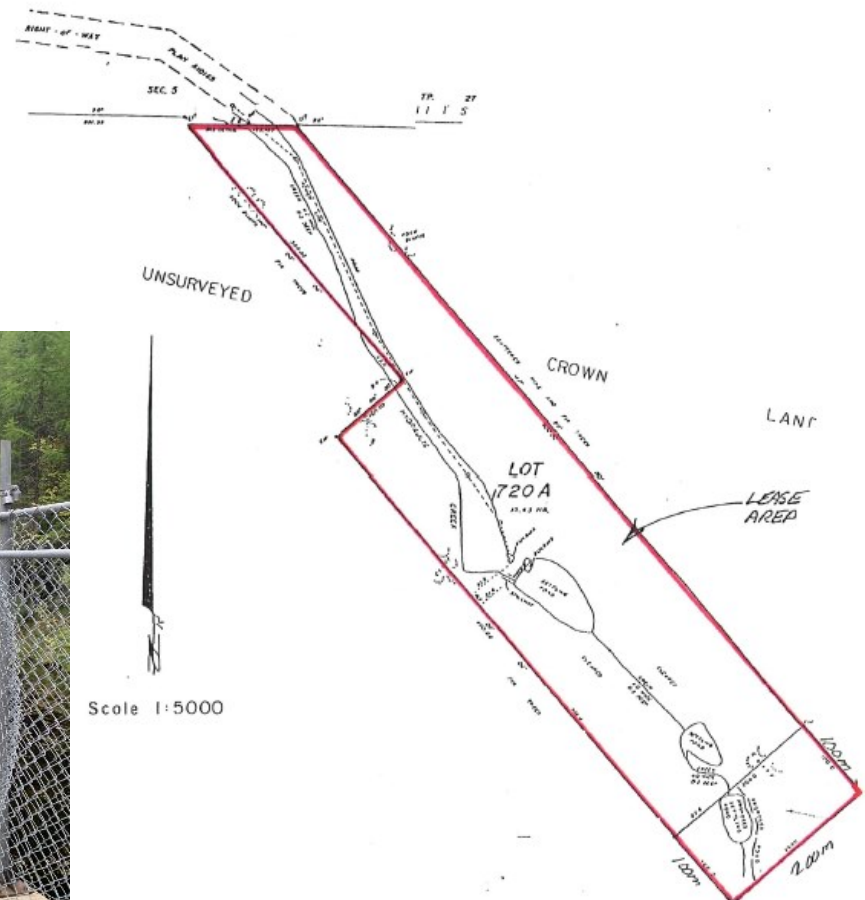


Water Intake

Term: 30 years

Annual Fee: \$1

Area: +/- 17.4 hectares





Questions?

For more information, visit kelowna.ca.

Report to Council



Date: January 27, 2020
To: Council
From: City Manager
Subject: Regional Board Directors Assignment of Votes
Department: Office of the City Clerk

Recommendation:

THAT Council assign votes for the City of Kelowna directors on the Regional District of Central Okanagan's Board of Directors as outlined in the report from the Office of the City Clerk dated January 20, 2020, with respect to assignment of votes.

AND THAT Council direct staff to inform the Regional District of Central Okanagan of the assignment of votes.

Purpose:

To assign distribution of votes for the City of Kelowna directors on the Regional District of Central Okanagan Board of Directors.

Background:

The assignment of votes for City of Kelowna directors on the Regional Board of Directors came up for discussion in conjunction with the Regional District of Central Okanagan's (RDCO) review of the voting unit for the Regional Board. Based on the current voting unit of 4,000, the City is assigned 33 votes on the Regional Board, resulting in seven directors. Votes are to be distributed equally among the City's Regional Board directors. Since votes cannot be distributed equally, Council must assign votes as evenly as possible, with the difference between them being no more than one. Following the appointment of a seventh director in 2017 the distribution of votes was not revisited, resulting in the current uneven distribution.

Discussion:

While there is no statutory requirement or City policy for determining to whom votes are assigned when equal distribution is not possible, it is recommended voting be assigned based on election results from the previous election. This approach is consistent with traditionally how Kelowna RDCO Directors

are determined. The table below shows the current assignment of votes and the recommended assignment of votes based on the 2018 election results.

Regional Board Director	Current	Proposed
Mayor Basran	5	5
Councillor DeHart	5	5
Councillor Given	5	5
Councillor Stack	5	5
Councillor Sieben	5	5
Councillor Hodge	3	4
Councillor Wooldridge	5	4

Should the RDCO voting unit change, staff will review the number of directors and assignment of votes at that time and bring forward a recommendation for Council's consideration.

Conclusion:

Votes for the City's Regional Board directors must be assigned as evenly as possible, as outlined in the table above, to meet the requirements of the *Local Government Act*.

Considerations applicable to this report:

Legal/Statutory Authority:

Local Government Act s. 197(1)

Legal/Statutory Procedural Requirements:

Local Government Act s. 197(3)

Considerations not applicable to this report:

Internal Circulation:

Existing Policy:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Submitted by:

L. Bentley, Deputy City Clerk

Approved for inclusion: S. Fleming, City Clerk



RDCO Board Assignment of Votes



Background

- ▶ Kelowna is assigned 33 votes on the Regional Board
 - ▶ Based on population and the voting unit
 - ▶ City has 7 Regional Board directors
- ▶ Votes are to be distributed as evenly as possible
 - ▶ Currently have an uneven distribution

Proposed Change

Regional Board Director	Current Votes	Proposed Votes
Mayor Basran	5	5
Councillor DeHart	5	5
Councillor Given	5	5
Councillor Stack	5	5
Councillor Sieben	5	5
Councillor Hodge	3	4
Councillor Wooldridge	5	4

Recommendation

- ▶ Assign votes for the City of Kelowna directors based on the proposed breakdown
- ▶ Direct City staff to inform the RDCO of the assignment of votes



Questions?