

**REGULAR MEETING
OF THE TOWN OF LADYSMITH COUNCIL
AGENDA
7:00 P.M.**

**Tuesday, October 5, 2021
Council Chamber**

Pages

1. CALL TO ORDER AND ACKNOWLEDGEMENT

The Town of Ladysmith acknowledges with gratitude that this meeting takes place on the traditional, unceded territory of the Stz'uminus First Nation.

Members of the public may attend meetings in person in accordance with COVID-19 safety protocols. Masks are mandatory. Since space in the Council Chamber is limited, public attendance will be on a first-come, first-served basis as space permits.

View the livestream on YouTube:

<https://www.youtube.com/channel/UCH3qHAExLiW8YrSuJk5R3uA/featured>.

2. AGENDA APPROVAL

Recommendation

That Council approve the agenda for this Regular Meeting of Council for October 5, 2021.

3. RISE AND REPORT- Items from Previous Closed Session

Items from the Closed Meeting of Council held September 21, 2021

CE 2021-120

That Council:

1. Direct staff to submit the necessary renewal applications for Crown Land Lease 1400950;
2. Direct staff to inform the Province of the Town's intention to abandon Crown Land Lease 1400684;
3. Rise and report on Recommendation Nos. 1 and 2 immediately.

That Council:

1. Approve the five-year lease renewal agreement with the Ladysmith Seniors Centre Society for the property located at 630 2nd Avenue as presented, effective August 1, 2021 and authorize the Mayor and Corporate Officer to execute the lease renewal;
2. Direct staff to give notice of the Town's intent to enter into a lease agreement with the Ladysmith Seniors Centre Society as per the *Community Charter*, and
3. Rise and report on Recommendation Nos. 1 and 2 immediately.

4. MINUTES

4.1. Minutes of the Regular Meeting of Council held September 21, 2021 8

Recommendation

That Council approve the minutes of the Regular Meeting of Council held September 21, 2021.

5. PROCLAMATIONS

5.1. Waste Reduction Week in Canada 16

Mayor Stone has proclaimed October 18-24, 2021 as "Waste Reduction Week" in the Town of Ladysmith.

6. BYLAWS- OFFICIAL COMMUNITY PLANNING AND ZONING

6.1. OCP Amendment, Rezoning and Housing Agreement Bylaws 1260 Churchill Place 17

Recommendation

That Council:

1. Having considered section 475 of the *Local Government Act*, and in particular the matters set out in subsections (2)(a) and (b), resolve that :
 - a. the Stz'uminus First Nation is the only entity that is appropriate to consult in connection with "Official Community Plan Bylaw 2003, No. 1488, Amendment Bylaw (No. 68) 2021, No. 2087";
 - b. consultation should be early but need not be ongoing;
 - c. the consultation process described in the staff report to

Council dated October 5, 2021 is sufficient in respect to the proposed Official Community Plan amendment; and

- d. staff be directed to refer Bylaw No. 2087 to the Stz'uminus First Nation as set out in resolution 1(a) for consultation in the manner described in the October 5, 2021 staff report to Council;
2. Give first and second reading to Bylaw No. 2087;
3. Consider Bylaw No. 2087 in conjunction with the Town's Financial Plan, the Town's Liquid Waste Management Plan, and the Cowichan Valley Regional District Solid Waste Management Plan, pursuant to section 477(3) of the *Local Government Act*;
4. Direct staff to refer Bylaw No. 2087 to School District 68 pursuant to section 476 of the *Local Government Act*;
5. Give first and second reading to "Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No.44) 2021, No. 2088";
6. Give first, second and third readings to "Housing Agreement Bylaw 2021, No. 2089";
7. Direct that staff, following third reading and prior to adoption of Bylaw Nos. 2087, 2088 and 2089:
 - a. Refer Bylaw No. 2088 to the Ministry of Transportation for approval pursuant to section 52 of the *Transportation Act*; and
 - b. File the necessary dedication plans with the Land Title and Survey Authority to dedicate the areas shown as park and road on the subdivision plan provided as Attachment E to the staff report dated October 5, 2021; and
8. Direct that staff, following adoption of Bylaw Nos. 2087, 2088 and 2089:
 - a. Register the right of first refusal, in Attachment D to the October 5, 2021 staff report to Council on the title of property;
 - b. Apply for a Preliminary Layout Approval of the subdivision plan provided as Attachment E to the staff report dated October 5, 2021; and
 - c. List the property for sale, once a Preliminary Layout Approval has been issued by the Subdivision Approving Officer.

7. COMMITTEE MINUTES

7.1. Parks, Recreation and Culture Advisory Committee - September 15, 2021 62

Recommendation

That Council receive for information the minutes of the September 15, 2021 meeting of the Parks, Recreation and Culture Advisory Committee.

7.2. Committee of the Whole Recommendations - September 28, 2021 65

For convenience, a link to the September 28, 2021 Committee of the Whole agenda is provided below:

<https://pub-ladysmith.escribemeetings.com/FileStream.ashx?DocumentId=1713>

Recommendation

That Council direct staff to amend “Waterworks Regulations Bylaw 1999, No. 1298” to include:

1. A single family dwelling with a suite rate structure based on 1.5 times the single family dwelling charge and allowing an initial consumption of 37.5m³ per quarter; and
2. A new step rate for water consumption greater than 200m³ for single family dwellings for only the quarters April to June and July to September, at a rate of \$3.1701 per cubic metre subject.

Recommendation

That Council direct staff to prepare amendments to “Council Procedure Bylaw 2009, No. 1666” as identified in the staff report dated September 28, 2021, including:

1. Various housekeeping amendments;
2. Scheduling specifications to ensure that a meeting is not held during the first week of January and that only one meeting is held in August;
3. Changing the Regular Council Meeting start time to 6:30 p.m.;
4. Removing the section on Public Hearings and preparing a Public Hearing Policy; and
5. Adding wording to reflect recent amendments to the *Community Charter* related to electronic meetings.

Recommendation

That Council direct staff to:

1. Bring forward amendments to:

- “Official Community Plan Bylaw 2003, No. 1488”,
- “Town of Ladysmith Zoning Bylaw 2014, No. 1860”; and
- “Ladysmith Officers and Delegation of Authority Bylaw 2016, No. 1905”;

related to coach houses as outlined in the September 28, 2021 staff report; and

2. Develop a design preauthorization program for coach houses as outlined in the September 28, 2021 staff report to the Committee of the Whole.

Recommendation

That Council direct staff to consult with Stz’uminus First Nation and report back to Council regarding the potential for both the inclusion of the Hul’qumi’inum name on the Transfer Beach sign and a Coast Salish Welcoming Figure at Transfer Beach.

8. REPORTS

8.1. Uplands Remediation Proceeding to Certificate of Compliance

71

Recommendation

That Council direct staff to prepare an amendment to the 2021-2025 Financial Plan to increase the Waterfront Remediation – Phase 1 budget by \$87,920 with the funds to come from prior year surplus, in order to accelerate the project and reduce overall project costs related to the Provincial Certificate of Compliance.

8.2. Encroachment Agreement 32 High Street (Temperance Hotel)

75

Recommendation

That Council authorize the Mayor and Corporate Officer to sign an Encroachment Agreement between the Town of Ladysmith and the property owner of 32 High Street to allow for the encroachment of the existing building and ramp into the road rights of way of High Street and 1st Avenue.

8.3. Stocking Lake Meter Valve Construction Project Budget

88

Recommendation

That Council:

1. Increase the budget for the Stocking Lake Meter Valve Construction project by \$44,000, with the funds coming from the Water Reserve; and
2. Amend the 2021 to 2025 Financial Plan accordingly.

8.4. Stocking Lake Dam Remediation Selection

90

Recommendation

That Council:

1. Select Option 2 as the preferred option, outlined in the “Stocking Lake Remediation Conceptual Design” report dated August 2021 as prepared by Ecora;
2. Direct staff to instruct Ecora to complete the preliminary design of Option 2 as outlined in the scope of work for the project; and
3. Instruct staff to investigate funding opportunities that may be available to facilitate the next phase of the project, design and construction.

8.5. Request for Noise Bylaw Exemption – 107 Rollie Rose Drive

112

Recommendation

That Council:

1. Grant Westmark Construction Ltd. an exemption to Town of Ladysmith “Noise Suppression Bylaw 2003, No. 1478” to permit construction noise at 107 Rollie Rose Drive, until 7:00pm Monday to Saturday, beginning October 6, 2021 until April 5, 2022; and
2. Direct staff to ensure that neighbouring residents receive written notification.

9. BYLAWS

9.1. Bylaw Status Sheet

126

10. NEW BUSINESS

10.1. Appointment to the Board of Education of School District 68 Long Range Facilities Planning Advisory Committee

Recommendation

That Council appoint one Council member to serve as liaison to the Board of Education of School District 68 Long Range Facilities Planning Advisory Committee.

11. QUESTION PERIOD

- A maximum of 15 minutes is allotted for questions.
- Persons wishing to address Council during "Question Period" must be Town of Ladysmith residents, non-resident property owners, or operators of a business.
- Individuals must state their name and address for identification purposes. Alternately, questions can be submitted via email at info@ladysmith.ca during the meeting.
- Questions put forth must be on topics which are not normally dealt with by Town staff as a matter of routine.
- Questions must be brief and to the point.
- Questions shall be addressed through the Chair and answers given likewise. Debates with or by individual Council members or staff members are not allowed.
- No commitments shall be made by the Chair in replying to a question. Matters which may require action of the Council shall be referred to a future meeting of the Council.

12. ADJOURNMENT



MINUTES OF A REGULAR MEETING OF COUNCIL

Tuesday, September 21, 2021

7:00 P.M.

This meeting was held electronically as per Ministerial Order No. M192

Council Members Present:

Mayor Aaron Stone
Councillor Amanda Jacobson
Councillor Rob Johnson
Councillor Tricia McKay

Councillor Duck Paterson
Councillor Marsh Stevens
Councillor Jeff Virtanen

Staff Present:

Erin Anderson
Chris Barfoot
Jake Belobaba

Geoff Goodall
Donna Smith
Mike Gregory

1. CALL TO ORDER

Mayor Stone called this Regular Meeting of Council to order at 6:31 p.m., in order to retire immediately into Closed Session.

2. CLOSED SESSION

CS 2021-290

That, in accordance with section 90(1) of the *Community Charter*, Council retire into closed session in order to consider items related to the following:

- negotiations and related discussions respecting the proposed provision of a municipal service - section 90(1)(k).

Motion Carried

3. OPEN MEETING AND ACKNOWLEDGEMENT (7:00 P.M.)

Mayor Stone called this Regular Meeting of Council to order at 7:00 p.m., recognizing with gratitude that it was taking place on the traditional unceded territory of the Stz'uminus First Nation.

4. AGENDA APPROVAL

CS 2021-291

That Council approve the agenda for this Regular Meeting of Council for September 21, 2021.

Motion Carried

5. RISE AND REPORT- Items from Previous Closed Session

The following items from the Closed Meeting of Council held September 7, 2021 were reported:

CE 2021-113

That Council:

1. Receive with regret Bruce Laxdal's resignation as a Director of the Board of DL2016 Holdings Corporation and request that the Mayor send a letter of appreciation to him for his years of service;
2. Appoint Allison McCarrick, Chief Administrative Officer as a Director on the DL2016 Holdings Corporation Board; and
3. Rise and report on Recommendation Nos. 1 and 2 immediately.

CE 2021-114

That Council:

1. Approve the five-year lease renewal agreement with the Ladysmith Resources Centre Association for the property located at 630 2nd Avenue as presented, effective August 1, 2021 and authorize the Mayor and Corporate Officer to execute the lease renewal;
2. Direct staff to give notice of the Town's intent to enter into a lease agreement with the Ladysmith Resources Centre Association as per the *Community Charter*; and
3. Rise and report on Recommendation Nos. 1 and 2 immediately.

6. MINUTES

6.1 Minutes of the Regular Meeting of Council held September 7, 2021

CS 2021-292

That Council approve the minutes of the Regular Meeting of Council held September 7, 2021.

Motion Carried

7. DELEGATIONS

7.1 BC Housing and Ladysmith Resources Centre Association

Heidi Hartman of BC Housing, and Vicky Stickwood-Hislop, LRCA President, Karen Laing, LRCA Executive Director and Aaron Hungar, LRCA Manager of Housing/Outreach Services addressed Council and requested that they extend the Temporary Use Permit for the Islander Hotel to allow for its continued use as an overnight shelter for Ladysmith's vulnerable population. They responded to Council's questions.

CS 2021-293

That Council amend the agenda to consider item 9.1, "Temporary Use Permit Renewal Request" prior to item 8, "Proclamations" and renumber the agenda accordingly.

Motion Carried

8. DEVELOPMENT APPLICATIONS

8.1 Temporary Use Permit Renewal Request - 440 1st Avenue

CS 2021-294

That Council:

1. Deny the request by BC Housing to renew Temporary Use Permit 3340-21-01.
2. Direct staff to request BC Housing to provide a report, by September 28, 2021, outlining how BC Housing will meet section 4(h) of Temporary Use Permit 3340-21-01.

Motion Defeated Unanimously

CS 2021-295

That Council renew Temporary Use Permit 3340-21-01 until March 31, 2022.

CS 2021-296

AMENDMENT:

That Council amend Resolution CS 2021-295 to include the following as Recommendation No. 2:

Direct BC Housing to provide a report to Council by January 31, 2022 outlining how they will meet condition 4(h) of Temporary Use Permit 3340-21-01, which requires BC Housing to "ensure the safe and dignified relocation of the occupants".

Amendment Carried

Resolution CS 2021-295, as amended, reads:

That Council:

1. Renew Temporary Use Permit 3340-21-01 until March 31, 2022; and
2. Direct BC Housing to provide a report to Council by January 31, 2022 outlining how they will meet condition 4(h) of the Temporary Use Permit 3340-21-01, which requires BC Housing to "ensure the safe and dignified relocation of the occupants".

Main Motion, as Amended, Carried

9. PROCLAMATIONS

9.1 Foster Family Month, October 2021

Mayor Stone proclaimed the month of October 2021 as Foster Family Month in the Town of Ladysmith.

9.2 Fire Prevention Week, October 3-9, 2021

Mayor Stone proclaimed October 3-9, 2021 as Fire Prevention Week in the Town of Ladysmith.

10. COMMITTEE MINUTES

10.1 Community Planning Advisory Committee - September 1, 2021

CS 2021-297

That Council receive for information the minutes of the September 1, 2021 meeting of the Community Planning Advisory Committee.

Motion Carried

11. REPORTS

11.1 DL2016 Holdings Corporation Annual General Meeting

CS 2021-298

That Council, as the sole shareholder of the DL2016 Holdings Corporation entitled to vote at an annual general meeting resolve that:

1. The financial statements of the Company for the period ended December 31, 2020 are hereby approved;

2. All lawful acts, contracts, proceedings, appointments and payments of money by the directors of the Company since the last annual reference date of the Company, and which have previously been disclosed to the shareholders, are hereby adopted, ratified and confirmed;
3. The number of directors of the Company is hereby fixed at five;
4. The following persons, each of whom has consented to act as a director, are hereby elected as directors of the Company, to hold office until the next annual general meeting of the Company (or unanimous resolutions consented to in lieu of holding an annual general meeting) or until their successors are appointed:
 - Jake Belobaba
 - Rob Hutchins
 - Allison McCarrick
 - Alan Newell
 - Richard Wiefelspuett
5. Grant Thornton, LLP, Certified Public Accountants are hereby appointed auditors for the Company until the next annual reference date of the Company or until a successor is appointed, at a remuneration to be fixed by the directors; and
6. September 21, 2021 is selected as the annual reference date for the Company for its current annual reference period.

These resolutions shall be deemed to be effective as at September 21, 2021.

Motion Carried

11.2 Community Planning Advisory Committee Terms of Reference

CS 2021-299

That Council amend the Terms of Reference for the Community Planning Advisory Committee to remove the requirement that meetings take place in the Council Chamber for the reasons outlined in the staff report dated September 21, 2021.

Motion Carried

11.3 Request for Cowichan Valley Regional District Bylaw Amendment, Fireworks Sale and Discharge Regulation

CS 2021-300

That Council direct staff to request that the Cowichan Valley Regional District Board amend "Cowichan Valley Regional District Bylaw No. 39 – Fireworks Sale and Discharge Regulation Bylaw, 1970" to include the following Ladysmith-specific special events:

- a. the last Thursday of November; and
- b. the Sunday directly preceding BC Day, where the drought level rating established by the Cowichan Valley Regional District is no greater than Level 3.

Motion Carried

12. BYLAWS

12.1 Bylaw No. 2060 (670 Farrell Road)

CS 2021-301

That Council adopt "Official Community Plan Bylaw 2003, No. 1488, Amendment Bylaw (No. 63) 2021, No. 2060".

Motion Carried

12.2 Bylaw No. 2061 (670 Farrell Road)

CS 2021-302

That Council adopt "Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No. 33) 2021, No. 2061".

Motion Carried

12.3 Bylaw No. 2064 (630 Farrell Road)

CS 2021-303

That Council adopt "Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No. 35) 2021, No. 2064".

Motion Carried

OPPOSED: Councillor Johnson

12.4 Bylaw No. 2084 (Permissive Tax Exemptions for 2022)

CS 2021-304

That Council give first, second and third readings to "Town of Ladysmith 2022 Permissive Tax Exemptions Bylaw 2021, No. 2084".

Motion Carried

12.5 Bylaw No. 2086 (Community Centre Fees and Charges)

CS 2021-305

That Council adopt "Community Centre Fees and Charges Bylaw 2021, No. 2086".

Motion Carried

12.6 Bylaw Status Sheet

13. CORRESPONDENCE

13.1 Request by Dyslexia Canada to Illuminate City Hall with red lights on October 18th

CS 2021-306

That Council approve the request from Dyslexia Canada to illuminate City Hall with red lights on Monday, October 18, 2021 in support of Dyslexia awareness.

CS 2021-307

AMENDMENT:

That Council amend resolution CS 2021-306 to alter the dates of illumination to the week of October 18-22, 2021.

Amendment Carried

Resolution CS 2021-306, as amended, reads:

That Council approve the request from Dyslexia Canada to illuminate City Hall with red lights October 18-22, 2021 in support of Dyslexia awareness.

Main Motion, as Amended, Carried

14. QUESTION PERIOD

There were no questions submitted by the public.

15. ADJOURNMENT

CS 2021-308

By unanimous consent Council agreed to adjourn this Regular Meeting of Council at 8:55 p.m.

Motion Carried

CERTIFIED CORRECT:

Mayor (A. Stone)

Corporate Officer (D. Smith)



PROCLAMATION

WASTE REDUCTION WEEK
OCTOBER 18-24, 2021

- WHEREAS:** *As a municipality, the Town of Ladysmith is committed to conserving resources, protecting the environment and educating the community; and*
- WHEREAS:** *The Town recognizes the generation of solid waste and the needless waste of water and energy resources as global environmental problems; and*
- WHEREAS:** *The Town endeavours to take the lead in in our community toward environmental sustainability;*
- THEREFORE,** *I, Aaron Stone, Mayor of the Town of Ladysmith, do hereby proclaim October 18-24, 2021 as "Waste Reduction Week" in the Town of Ladysmith, British Columbia.*

Mayor A. Stone

September 1, 2021

STAFF REPORT TO COUNCIL

Report Prepared By: Jake Belobaba, Director of Development Services.
Ryan Bouma, Senior Engineering Technologist
Meeting Date: October 5, 2021
File No: 3360-21-07
Re: OCP Amendment, Rezoning and Housing Agreement Bylaws
1260 Churchill Place.

RECOMMENDATION:

That Council:

1. Having considered section 475 of the *Local Government Act*, and in particular the matters set out in subsections (2)(a) and (b), resolve that :
 - a. the Stz'uminus First Nation is the only entity that is appropriate to consult in connection with "Official Community Plan Bylaw 2003, No. 1488, Amendment Bylaw (No. 68) 2021, No. 2087";
 - b. consultation should be early but need not be ongoing;
 - c. the consultation process described in the staff report to Council dated October 5, 2021 is sufficient in respect to the proposed Official Community Plan amendment; and
 - d. staff be directed to refer Bylaw No. 2087 to the Stz'uminus First Nation as set out in resolution 1(a) for consultation in the manner described in the October 5, 2021 staff report to Council;
2. Give first and second reading to Bylaw No. 2087;
3. Consider Bylaw No. 2087 in conjunction with the Town's Financial Plan, the Town's Liquid Waste Management Plan, and the Cowichan Valley Regional District Solid Waste Management Plan, pursuant to section 477(3) of the *Local Government Act*;
4. Direct staff to refer Bylaw No. 2087 to School District 68 pursuant to section 476 of the *Local Government Act*;
5. Give first and second reading to "Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No.44) 2021, No. 2088";
6. Give first, second and third readings to "Housing Agreement Bylaw 2021, No. 2089";
7. Direct that staff, following third reading and prior to adoption of Bylaw Nos. 2087, 2088

and 2089:

- a. Refer Bylaw No. 2088 to the Ministry of Transportation for approval pursuant to section 52 of the *Transportation Act*; and
 - b. File the necessary dedication plans with the Land Title and Survey Authority to dedicate the areas shown as park and road on the subdivision plan provided as Attachment E to the staff report dated October 5, 2021; and
8. Direct that staff, following adoption of Bylaw Nos. 2087, 2088 and 2089:
- a. Register the right of first refusal, in Attachment D to the October 5, 2021 staff report to Council on the title of property;
 - b. Apply for a Preliminary Layout Approval of the subdivision plan provided as Attachment E to the staff report dated October 5, 2021; and
 - c. List the property for sale, once a Preliminary Layout Approval has been issued by the Subdivision Approving Officer.

EXECUTIVE SUMMARY:

This report presents Bylaw Nos. 2087, 2088 and 2089 for Council consideration. The bylaws apply to the Town-owned parcel of land at 1260 Churchill Place and will change the permitted land uses on the property from single-unit residential to a mix of multi-family residential, single family residential and park. Bylaw No. 2089, a housing agreement under section 483 of the *Local Government Act*, will also establish a housing agreement and covenant scheme that will require a future developer to build an affordable housing unit that will be sold to qualifying purchasers at less than market value, in perpetuity.

Staff are also recommending that the proposed subdivision plan be secured by dedicating park and road prior to third reading and that a Preliminary Layout Approval (PLA) be obtained prior to sale of the lot.

PREVIOUS COUNCIL DIRECTION:

Resolution	Meeting Date	Resolution
CE 2021-092	06/15/2021	<p>That Council:</p> <ol style="list-style-type: none">1. Direct staff to prepare and bring forward for Council consideration in an open meeting, a rezoning proposal, road reserve covenant, housing agreement and park dedication plan for 1260 Churchill Place to:\<ol style="list-style-type: none">a. Dedicate as park the eastern, low-lying portion of the property;b. Establish a future road allowance connecting Churchill Place and McKinley Road;c. Secure a future affordable housing unit to be sold in perpetuity at less than market rates to qualifying purchasers;d. Rezone the western portion of the property to R-1-C;e. Rezone the eastern plateau of the property to R-3;f. Add the property to the Multi-Unit Residential Development Permit Area; and2. Rise and report on Recommendation No. 1 immediately.

INTRODUCTION/BACKGROUND:

The replacement of the 4th Avenue culvert during the summer of 2019 highlighted the limited access to the northwest area of Town, especially during an emergency. In order to provide access and complete the project, Council approved the purchase of 1260 Churchill Place.

With the completion of the 4th Avenue culvert, Council directed staff in June of 2021 to prepare the property for sale by bringing forward a proposal to rezone the property for a mix of multi-family and single-family use, dedicate the low lying riparian areas as park and dedicate the required road connection from Churchill Place to McKinley Road. Council also supported placing instruments on the title that would secure an affordable housing unit as part of a future development.

PROPOSAL:

Park and Road Dedication

The subdivision plan (Attachment E) will dedicate 0.33 hectares on the eastern side of the property as park. Much of this area is undevelopable as it is within the Riparian Area Assessment Area under provincial stream protection regulations. The subdivision plan will also dedicate a 15.5 meter road right of way connecting Churchill Place to McKinley Road. Staff are recommending that the road right of way and parkland be dedicated prior to subdivision and sale. This will have the effect of securing the development concept endorsed by Council, because the Town will retain ownership of the park and road areas when the land is sold. Once the road dedication is registered, the subject property will become a “hooked” parcel¹ and road and infrastructure construction will be a requirement of a future owner as part of subdivision. The park shown in the subdivision plan will not be counted towards the 5% parkland dedication requirement at time of subdivision. The future developer will likely be required to provide cash in lieu to meet this requirement.

Bylaw No. 2087

Bylaw No. 2087 will amend the OCP to designate the area between the proposed road and the newly created park as multi-family residential and add this area to the multi-family development permit area. The area west of the proposed road will remain in the single-family designation.

Bylaw No. 2088

Bylaw No. 2088 will rezone the portion of the parcel west of the proposed road to ‘Single Dwelling Residential Small Lot C’ (R-1-C) and the area between the proposed road and the newly created park as ‘Medium Density Residential’ (R-3). Under this zoning, 10 lots can be created in the area zoned R-3 and approximately 27 multi-family units could be built on the multi-family area. However, additional site restrictions may limit the number of multi-family

¹ This is a parcel with a road running through it, as opposed to two separate parcels divided by a road.

units that can actually be built. The R-3 zone allows apartments and townhouses. The R-1-C zone allows single family dwellings but not secondary suites or carriage houses.

Bylaw No. 2089 - Housing Agreement with First Right of Refusal

Bylaw No. 2089 is both a housing agreement pursuant to section 483 of the *Local Government Act* and Covenant under section 219 of the *Land Title Act*². The agreement requires a future developer to build an affordable housing unit that must be sold to qualifying buyers, at below market rates, in perpetuity. The housing agreement will be registered in conjunction with a right of first refusal (Attachment D), which creates the mechanisms by which the Town will enforce the agreement. Combined, these documents create the following conditions and requirements:

Construction of Affordable Housing Unit

- The land cannot be developed unless the owner constructs and designates a dwelling unit as an “affordable housing unit”. If the owner develops the land without designating an affordable housing unit, the Town can designate a dwelling unit of its choosing as the affordable housing unit.
- The unit must have at least two bedrooms and be a minimum of 111 square meters (1,200 square feet) in size.
- Once the affordable housing unit has been designated and the land has been subdivided or stratified, the Town must release the instrument from the titles of all the other parcels/dwelling units.
- The affordable housing unit can be either a multi-family unit or single family unit.

Sale of Affordable Housing Unit

- The housing agreement requires that the affordable unit can only be sold to a “qualified person”. Neither this person nor a member of their household, can own real property, must have total assets valued at less than \$65,849 (with adjustments for inflation) and their income (from all sources) must be no higher than 10% above the median household income for Ladysmith³. There are clauses that allow the Town to adjust this requirement to account for market conditions (e.g. if it is not possible for a household meeting the maximum income criteria to obtain a mortgage).
- At least one member of the household must be employed in Ladysmith. The Town can waive this clause where appropriate.
- The affordable housing unit must be sold to a qualified person for 30% less than market value. An appraisal is required to sell the unit to determine the amount it can be sold for. There are criteria on how disputes between the Town and seller related to the unit’s value will be resolved.

² Certain clauses of the document must be registered under a covenant instead of a housing agreement and vice versa, hence the two types of documents.

³ E.g. if the current median household income for Ladysmith is \$67,674, the maximum allowable household income to be eligible to purchase the unit is \$67,674 + 10% or \$74,441.

- Every time the affordable housing unit is sold, the Town has the ability to exercise right of first refusal. This requires the seller to notify the Town of a potential sale and provide proof the buyer is a qualified person. The Town can exercise its right to purchase the unit if the buyer is not a “qualified person”. In the event the Town does buy the unit, it can be resold to a qualified person. The reason for using a right of first refusal to validate the purchase criteria is because the Land Title Office will not accept a transfer of land that is subject to a right of first refusal unless it has proof that the holder of the right of first refusal (in this case the Town) has consented to the sale. This makes it impossible to sell the unit without the Town’s knowledge and consent. The right of first refusal also contains clauses dealing with foreclosure which are intended to make it easier for a prospective purchaser to get a mortgage.

Occupancy, Maintenance and Rentals

- The purchaser must occupy the affordable housing unit as their principle residence. There are exceptions for circumstances where there is a hardship.
- Renting the affordable housing unit is also allowed in cases of hardship and with the approval of the Town. The unit can only be rented to a qualified person.
- There are provisions in the instrument that outline how the unit can be transferred in the event of the owner’s death. The unit can be willed to children and spouses and held in trust in cases where their children are under the age of 19. In order to take possession of the unit, children must meet the definition of a “qualified person” under the agreement.
- The housing agreement requires the unit to be kept in good repair and prohibits certain activities that may diminish the resale value or lifespan of the unit (e.g. indoor smoking or cannabis cultivation).

Penalties

- The owner is subject to a daily penalty of \$500/day for using the affordable housing unit contrary to the housing agreement. The \$500 “daily amount” automatically adjusts for inflation each year. As a daily charge this can result in substantial penalties if the unit is used for purposes other than affordable housing (e.g., as a vacation rental)
- If the affordable housing unit is sold for more than what is allowed under the housing agreement, the seller must pay the Town the excess amount.

Administration and amendments

The housing agreement will be administered by the Town’s CAO (e.g.. the CAO will confirm if a buyer meets the definition of a “qualified person”). Under the *Local Government Act* the agreement can only be amended by bylaw and with the consent of the owner.

Preliminary Layout Approval (PLA)

Staff are recommending that the subdivision plan in Attachment E be submitted for Preliminary Layout Approval following adoption of the proposed bylaws and that a PLA be obtained prior to listing the property for sale. The reasons for this recommendation are twofold: 1) an approved

PLA makes it more likely the developer will follow the lot layout plan preferred by the Town; and 2) the sale price will be higher as a PLA creates a “turnkey” development opportunity where the purchaser can start building infrastructure and pre-sell lots. Although this process pushes back the sale date of the property slightly, it can be expected to increase the sale value and secure a better development.

ANALYSIS:

The proposed bylaws and park and road dedication plans are consistent with Council’s direction on June 15, 2021. The housing agreement is a way of leveraging the Town’s current ownership position to secure a future affordable housing unit without incurring a significant reduction in the sale price. A future developer will build the affordable housing unit and be able to sell it at a reduced price. At minimum, the developer will be able to recover most of the construction costs of building the affordable housing unit; meaning the net impact on the sale price the Town will receive will be minimal (see ‘Financial Implications’)

The purchase and sale restrictions created from the housing agreement require minimal oversight from the Town and the Town is not required to manage the sale or rental of the unit. Given the current state of housing in Ladysmith, staff see little chance that qualified buyers cannot be found to purchase or (if necessary) rent the unit. The shortage of affordable housing is clearly articulated in the Town’s Housing Needs Assessment, and the benefits of securing an affordable housing unit are therefore substantial.

The proposed bylaws and recommendations for park and road dedication and subdivision application provide a simple and effective path to not only recovering the cost of acquiring 1260 Churchill Place, but also making progress towards the Town’s development and housing objectives.

ALTERNATIVES:

Council can choose to:

1. Amend one or more of the proposed bylaws and then give first and second reading.
2. Give no readings to the proposed bylaws.
3. Refer the proposal back to staff for further review as specified by Council.

FINANCIAL IMPLICATIONS:

The proposed bylaws and PLA will allow the Town to put the property on the market and recover some of the land purchase costs. The right of first refusal creates a small liability as the Town may, in the future, need to exercise its right to purchase the unit at a price allowed under the housing agreement. However, not only is this scenario unlikely, its financial impacts are expected to be negligible, as the unit can be resold or rented by the Town.

The sale price of the property can be expected to be decreased by the requirement to construct an affordable housing unit and sell it at a reduced price. This reduction is expected to be marginal, as only one unit in the development will be an affordable housing unit and the price

reduction allows for the recovery of some, if not all, construction costs of the unit⁴. Subsequently, the price the Town will receive from the sale of the subject property can be expected to be the market value of the property, with a small reduction equal to 30% of the market value of a 1,200 square foot two bedroom unit. Based on current real estate sales, this price reduction can be estimated to be about \$120,000. This is expected to be a small fraction of the price the Town will receive for the land, and excellent value, given that the cost to the Town of bringing a comparable affordable housing unit onto the market (e.g., buying or building one and placing the same housing agreement on the title) would likely be over \$400,000.

LEGAL IMPLICATIONS:

The proposed housing agreement and right of first refusal were drafted by the Town's solicitor.

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

A Public Hearing and mail notification is required prior to adoption of Bylaw Nos. 2087 and 2088.

Section 475 of the *Local Government Act* requires Council, when considering an amendment to the OCP, to provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected. To meet this obligation, Council must specifically consider whether consultation should be "early and ongoing", and specifically consider whether consultation is required with:

1. The Board of the Cowichan Valley Regional District.
2. The Board of the Regional District of Nanaimo.
3. The Council of the District of North Cowichan.
4. First Nations, including the Stz'uminus First Nation, Hul'qumi'num Treaty Group and the Snuneymuxw First Nation.
5. The Board of School District 68.
6. The Provincial and Federal Governments and their agencies.

The Naut'sa Mawt Community Accord and Memorandum of Understanding between the Town and Stz'uminus First Nation require the Town to refer all OCP amendments to the Stz'uminus First Nation for comment. Similarly, section 476 of the *Local Government Act* requires the Town to refer the proposed OCP amendment to School District 68 for comments related to the impact on school facilities.

As the proposed OCP amendments are site-specific, staff see little potential impact on the list of consultees above. For these reasons, staff are recommending that only the required referrals to Stz'uminus First Nation and School Board be carried out and that no further consultation pursuant to section 475 of the *Local Government Act* is required.

⁴ This will be influenced primarily by the relationship between housing prices and construction costs at the time of construction and sale.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

Infrastructure Services and Development Services have been working jointly to bring this proposal forward for Council's consideration. The Parks Department has reviewed the proposed park dedication and is supportive of the location and configuration.

ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Complete Community Land Use | <input type="checkbox"/> Low Impact Transportation |
| <input type="checkbox"/> Green Buildings | <input checked="" type="checkbox"/> Multi-Use Landscapes |
| <input checked="" type="checkbox"/> Innovative Infrastructure | <input type="checkbox"/> Local Food Systems |
| <input checked="" type="checkbox"/> Healthy Community | <input type="checkbox"/> Local, Diverse Economy |
| <input type="checkbox"/> Not Applicable | |

ALIGNMENT WITH STRATEGIC PRIORITIES:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Infrastructure | <input type="checkbox"/> Economy |
| <input type="checkbox"/> Community | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Waterfront | |

I approve the report and recommendations.

Allison McCarrick, Chief Administrative Officer

ATTACHMENTS:

- A. Bylaw No. 2087
- B. Bylaw No. 2088
- C. Bylaw No. 2089
- D. Right of First Refusal
- E. Subdivision Plan

ATTACHMENT A

TOWN OF LADYSMITH

BYLAW NO. 2087

A Bylaw to amend "Official Community Plan Bylaw 2003, No. 1488"

The Council of the Town of Ladysmith in open meeting assembled enacts the following amendments to "Official Community Plan Bylaw 2003, No. 1488":

1. Map 1 – Land Use: Is amended to change the Land Use Designation for of the eastern portion of The West 1/2 of the South 1/2 Of District Lot 97, Oyster District, Except Parts in Plans 24414, 26836, 27412 And VIP60630 (1260 Churchill Place) from Single Family Residential to Multi-family Residential and Parks and Open Spaces as shown on Schedule A attached to and forming a part of this bylaw.
2. Map 2 Development Permit Areas: Is amended to apply the Multi-Unit Residential Development Permit Area to the portion of The West 1/2 of the South 1/2 Of District Lot 97, Oyster District, Except Parts in Plans 24414, 26836, 27412 And VIP60630 (1260 Churchill Place) to be designated Multi-family Residential as noted in section 1 and shown on Schedule A attached to and forming a part of this bylaw.

Citation

3. This Bylaw may be cited for all purposes as "Official Community Plan Bylaw 2003, No. 1488, Amendment Bylaw (No. 68) 2021, No. 2087".

READ A FIRST TIME on the day of ,
READ A SECOND TIME on the day of ,
PUBLIC HEARING held pursuant to the provisions of the *Local Government Act*
on the day of ,
READ A THIRD TIME on the day of ,
ADOPTED on the day of ,

Mayor (A. Stone)

Corporate Officer (D. Smith)

“Official Community Plan Bylaw 2003, No. 1488, Amendment Bylaw (No. 68) 2021, No. 2087
Page 2

Map showing land parcels and designated zones around 1260. The map includes a north arrow, a scale bar (0 to 40 meters), and a legend. The legend indicates that the yellow-shaded area is 'Multi-Family Residential & DPA 4 Multi-unit Residential' and the green-shaded area is 'Parks and Open Spaces'. The map shows various land parcels with numbers, roads like Alderwood Dr, Churchhill Pl, and Cowichan Valley Rd, and a water body. The map is titled 'Cowichan Valley, Regional District of Nanaimo, Bureau of Land Management, Province of British Columbia, Esri Canada, Esri, HERE, Garmin, USGS, EPA, USDA'.

ATTACHMENT B

TOWN OF LADYSMITH

BYLAW NO. 2088

A Bylaw to amend "Town of Ladysmith Zoning Bylaw 2014, No. 1860"

The Council of the Town of Ladysmith in open meeting assembled enacts the following amendments to "Town of Ladysmith Zoning Bylaw 2014, No. 1860":

1. Schedule B – Zoning Bylaw Map is amended to change the zoning for The West 1/2 of the South 1/2 Of District Lot 97, Oyster District, Except Parts in Plans 24414, 26836, 27412 And VIP60630 (1260 Churchill Place) from Single Dwelling Residential (R-1) to Single Dwelling Residential Small Lot C (R-1-C), Medium Density Residential (R-3) and Nature Park (P-3) as shown on Schedule A, attached to and forming a part of this bylaw.

Citation

2. This Bylaw may be cited for all purposes as "Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No. 44) 2021, No. 2088".

READ A FIRST TIME on the day of ,
READ A SECOND TIME on the day of ,
PUBLIC HEARING held pursuant to the provisions of the *Local Government Act*
on the day of ,
READ A THIRD TIME on the day of ,
APPROVED by the Ministry of Transportation & Infrastructure
on the day of ,
ADOPTED on the day of ,

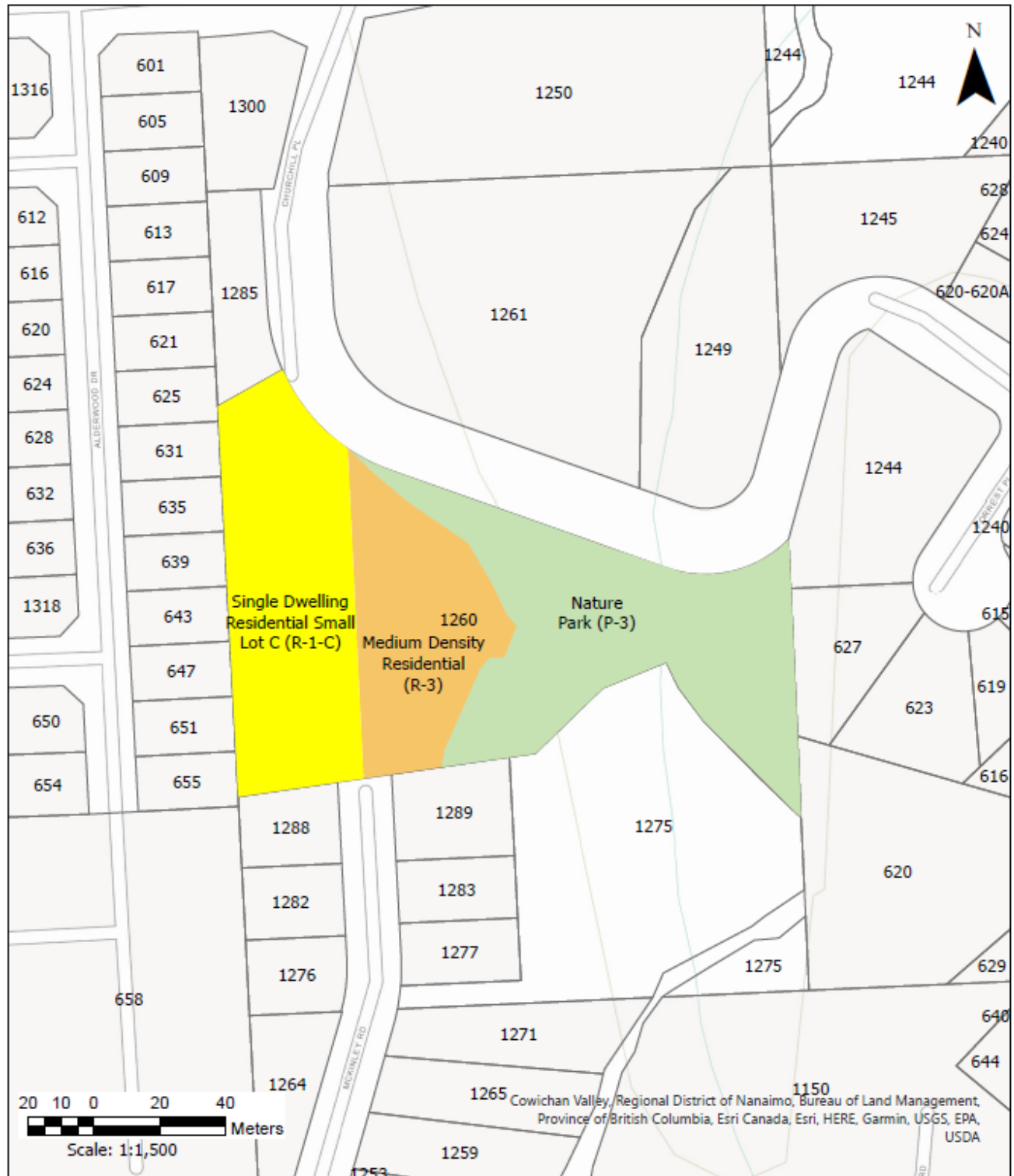
Mayor (A. Stone)

Corporate Officer (D. Smith)

ATTACHMENT B

Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No. 44) 2021, No. 2088
Page 2

Schedule A



TOWN OF LADYSMITH

BYLAW NO. 2089

A Bylaw to Authorize a Housing Agreement.

WHEREAS Section 483 of the *Local Government Act* provides that Council may enter into a Housing Agreement with an owner which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement;

AND WHEREAS the Council wishes to enter into such an Agreement with respect to certain housing units located in the Town of Ladysmith;

NOW THEREFORE the Council of the Town of Ladysmith in open meeting assembled enacts as follows:

1. The Council of the Town of Ladysmith hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the Town of Ladysmith, in substantially the form attached hereto as Schedule A; which sets out terms and conditions of the occupancy of the housing unit identified in the Agreement (the "Housing Agreement"). The land identified in the Agreement is legally described as "The West 1/2 of the South 1/2 Of District Lot 97, Oyster District, Except Parts in Plans 24414, 26836, 27412 And VIP60630".
2. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the Town of Ladysmith, this Agreement shall be validly entered into as authorized by this Bylaw.
3. **Citation**
This bylaw may be cited for all purposes as "Housing Agreement Bylaw 2021, No. 2089".

READ A FIRST TIME on the day of ,
READ A SECOND TIME on the day of ,
PUBLIC HEARING held pursuant to the provisions of the *Local Government Act*
on the day of ,
READ A THIRD TIME on the day of ,
ADOPTED on the day of ,

Mayor (A.Stone)

Corporate Officer (D. Smith)

SCHEDULE A

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT, 219 COVENANT, AND RENT CHARGE

WHEREAS:

- A. The Owner is the registered owner in fee-simple of those lands and premises located within the Town of Ladysmith, in the Province of British Columbia, more particularly described as:
- PID 009-473-505
The West 1/2 Of The South 1/2 Of District Lot 97, Oyster District,
Except Parts In Plans 24414, 26836, 27412 And VIP 6063
- (the "Lands")
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Town of Ladysmith (the "Town") in respect of the use of land or construction on land;
- C. The parties wish to enter into this Agreement to provide for an affordable housing unit on the Land on the terms and conditions set out in this Agreement, and this Agreement is both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by the Town to the Owner, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:
- a. "Affordable Housing Unit" means a Dwelling Unit with no less than two bedrooms and no smaller than one thousand two hundred (1,200) square feet, and designated as an affordable housing unit in accordance with Part II herein to be used, occupied and Disposed of in accordance with this Agreement;
 - b. "Agreement" means this Housing Agreement and Covenant;
 - c. "CCPI" means the Core Consumer Price Index for Canada published from time to time by the Bank of Canada, or its successor in function;

ATTACHMENT C

"Housing Agreement Bylaw 2021, No. 2089"

Page 3

- d. "Daily Amount" means \$500.00 per day as of December 31, 2021 adjusted thereafter by an amount determined by multiplying \$500.00 by the percentage change in the CCPI since December 31, 2021 to January 1 of the year that a written notice is delivered to the Owner by the Town pursuant to section 21 herein;
- e. "Dispose" means to transfer land by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- f. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided (hereinafter defined);
- g. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulation, to which this Agreement is attached;
- h. "General Instrument Parcel" means the area of the legal parcel described in Item 2 of the General Instrument as at the date of registration of the General Instrument in the LTO;
- i. "Interest" means the property interest of the Owner in the Affordable Housing Unit;
- j. "LTO" means the Victoria Land Title Office, or its successor;
- k. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of the Affordable Housing Unit from time to time;
- l. "Qualified Person" means an individual who meets the criteria stated in Schedule "A" to this Agreement;
- m. "Permitted Encumbrances" means the permitted encumbrances listed in Schedule "B" to this Agreement;
- n. "RFR" means a right of first refusal and option to purchase the Land granted or to be granted by the Owner to the Town;
- o. "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Act*;
- p. "Tenancy Agreement" means a tenancy agreement, lease, licence or other agreement granting rights to occupy the Affordable Housing Unit; and
- q. "Tenant" means an occupant of the Affordable Housing Unit by way of a Tenancy Agreement.

PART II – USE OF LAND AND CONSTRUCTION OF AFFORDABLE HOUSING UNIT

2. The Owner covenants and agrees with the Town that:
 - a. the Land will not be developed and no building or structure will be constructed on the Land unless:
 - i. as part of the construction and development of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by the Town and in accordance with any development permit issued by the Town, an Affordable Housing Unit on the Land; and
 - ii. an RFR is fully registered against title to the Land in the LTO, with priority as set out in section 2(c) herein;
 - b. the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the Town and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws; and
 - c. the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement and the RFR will be registered against title to the Land in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by the Town or in favour of the Town.
3. The Owner will not apply for a discharge of this Agreement pursuant to section 6 in respect of any Dwelling Unit, and the Town will be under no obligation to provide such discharge, unless at the time that the Owner applies for the discharge the Owner is not in breach of any of its obligations under this Agreement and there is a Dwelling Unit on the Land which is designated as an Affordable Housing Unit pursuant to section 4 and for which occupancy permits have been issued by the Town and which are and always have been used, occupied and Disposed of in compliance with this Agreement.
4. An application for Affordable Housing Unit designation must be made by the Owner by written notice delivered to the Town and is irrevocable by the Owner upon receipt by the Town of the written notice, but no designation is effective unless and until the Town confirms in writing that the location and the size of the Dwelling Unit is approved by the Town for an Affordable Housing Unit, acting reasonably as a local government. If in the sole discretion of the Town the Owner has failed within a reasonable time to make application for an Affordable Housing Unit designation as required by this Agreement, the Town may in its sole discretion make such designation.
5. The Parties agree that once the Owner has complied with section 2(a), and provided the Owner is in compliance with section 3 and 4, this Agreement is intended only to apply to that portion of the Lands or any parcel into which the Lands have been Subdivided that contains the Affordable Housing Unit.

6. Subject to section 3, at the request of the Owner and at the Owner's sole expense, the Town will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit within the General Instrument Parcel:
 - a. that is a separate legal parcel; and
 - b. is not an Affordable Housing Unit.

PART III – USE AND OCCUPANCY OF AFFORDABLE HOUSING UNIT

7. Unless the Town has permitted the Owner to rent out the Affordable Housing Unit in accordance with section 16 of this Agreement, the owner of the Affordable Housing Unit must occupy the unit for six months plus a day out of each calendar year. Those owners who wish to leave for a finite time of more than 12 months over two calendar years will have the opportunity to apply for an exemption to the Town, such exemption not to be unreasonably withheld.

PART IV – DISPOSITION OF THE AFFORDABLE HOUSING UNIT

8. In this Part, the following words have the following meanings:
 - a. "Affordable Rate" means a rate determined from time-to-time by the Town's corporate officer in its sole discretion with reference to BC Government guidelines, if any;
 - b. "Appraisal Review Period" has the meaning stated in section 13(c) of this Agreement;
 - c. "Appraiser" means an appraiser accredited by the Appraisal Institute of Canada and duly qualified to appraise the Affordable Housing Unit;
 - d. "Below Market Value" means seventy (70%) percent of the Fair Market Value of the Affordable Housing Unit from time to time;
 - e. "Fair Market Value" of the Affordable Housing Unit means the purchase price from time to time which a willing purchaser would pay to a willing vendor, dealing at arm's length from each other, for the "Affordable Housing Unit, unencumbered with the exception of Permitted Encumbrances, as determined in accordance with section 13 of this Agreement;
9. The Owner will not Dispose of its Interest in the Affordable Housing Unit except in accordance with the terms and conditions set out in this Agreement and the RFR.
10. The Owner will only sell, assign, or otherwise transfer the Interest in the Affordable Housing Unit:
 - a. to a Qualified Person;
 - b. for price that is Below Market Value; and
 - c. subject to this Agreement and the RFR.

11. The Owner will give prior written notice of this Agreement and the RFR to any person to whom it proposes to Dispose of the Interest in the Affordable Housing Unit.
12. If at any time the Owner wishes to sell, assign or otherwise transfer the Affordable Housing Unit, the Owner will do so in accordance with a bona fide arm's length agreement of purchase and sale (or as a court may order in a proceeding to enforce a mortgage of the Affordable Housing Unit) and the Owner will, prior to:
 - a. listing or offering the Affordable Unit for sale; or
 - b. accepting an offer to purchase the Affordable Unit,

deliver to the Town written notice of their intention to sell the Affordable Housing Unit, such notice to be in the form required by the Town.
13. Fair Market Value and Below Market Value will be determined in accordance with the following:
 - a. Within 7 days after the Owner notifies the Town of their intention to sell the Affordable Housing Unit, the Owner will select an Appraiser to be retained by the Owner to undertake an appraisal (the "**Owner Appraisal**") of the Fair Market Value of the Affordable Unit. The Owner will deliver a copy of the Owner Appraisal to the Town within 7 days after the Owner receives the Owner Appraisal.
 - b. If the Owner and the Town agree within 7 days after the Owner Appraisal is delivered to the Town that the Fair Market Value of the Affordable Housing Unit is as stated in the Owner Appraisal, the Fair Market Value stated in the Owner Appraisal, less thirty (30) percent will be the maximum price at which the Owner will be permitted to sell the Affordable Housing Unit during a period of 6 months commencing on the effective date of the Owner Appraisal.
 - c. If the Owner and the Town do not agree within 7 days (the "**Appraisal Review Period**") after the Owner Appraisal is delivered to the Town that the Fair Market Value of the Affordable Unit is as stated in the Owner Appraisal, the Town will retain its own Appraiser at its own expense to undertake an appraisal (the "**Town Appraisal**") of the Fair Market Value of the Affordable Housing Unit in which case the average of the Fair Market Value stated in the Owner Appraisal and the Town Appraisal, less thirty (30) percent will be the maximum price at which the Owner will be permitted to sell the Affordable Housing Unit during a period of 6 months commencing on the effective date of the Town Appraisal.
 - d. The Town will deliver a copy of the Town Appraisal to the Owner within 7 days after the Town receives the Town Appraisal.
 - e. If the Town Appraisal is not delivered to the Owner within 30 days after the end of the Appraisal Review Period, the Fair Market Value stated in the Owner Appraisal, less thirty (30) percent will be the maximum price at which the Owner will be permitted to sell the Affordable Housing Unit during a period of 6 months commencing on the effective date of the Owner Appraisal.
 - f. Each party will be responsible for the cost of its appraisal .

- g. Within 7 days after the Fair Market Value of the Affordable Housing Unit has been determined under subsections (b) or (c), the Town will notify the Owner of the maximum price, at which time the Owner will be permitted to offer to sell the Affordable Housing Unit, which price shall be deemed to be its Below Market Value.
 - h. The Owner will immediately deliver a true copy of any contract of purchase and sale which the Owner may enter into with respect to the sale of the Affordable Housing Unit or any interest therein (the "**Sale Contract**").
- 14. The Sale Contract will be in writing and will:
 - a. be for a selling price not greater than the Below Market Value of the Affordable Housing Unit;
 - b. be subject to the seller notifying the buyer in writing that the Town of Ladysmith has approved the terms of the sale of the Land to the buyer and that the Town has decided not to exercise its right of first refusal or option to purchase the Land with respect to this transaction only;
 - c. be subject to the Town determining and notifying the Owner in writing (within a period of 20 Business Days after the Town has received a true copy of the Sale Contract) that the Owner has complied with the requirements of Part 4 of this Agreement, and that it is satisfied that the buyer is a Qualified Person, failing which the Sale Contract will be null and void; and
 - d. include a statement that the buyer agrees to purchase the Affordable Housing Unit subject to the terms of this Housing Agreement and the RFR.
- 15. The Owner shall ensure that the Town is provided with any and all information it requires in order to satisfy itself that the prospective buyer is a Qualified Person, including but not limited to any information or documents contemplated in Schedule "A" to this Agreement.
- 16. The Town will not be obligated to review or make any determination with respect to a Sale Contract as stated in section 14 above if the date of receipt by the Town of a true copy of the Sale Contract and any other information required by the Town under section 15 is after the expiry of the 6 month period during which the Owner is permitted to sell the Affordable Housing Unit at the agreed upon Below Market Price. If the 6 month period has expired, the process under this Part IV of the Agreement will begin again, with the Owner giving fresh notice to the Town of their intention to sell the Affordable Housing Unit.
- 17. Upon notice from the executor of the Owner's estate, the Town may, at its sole discretion, waive the RFR and consent to a transfer of the Affordable Housing Unit to the children of the deceased Owner, provided that the children of the deceased Owner are of legal age and meet all of the requirements of a Qualified Person, including planning to reside in the unit as their primary residence. If the children of the deceased Owner own market real estate, they must agree to sell the market real estate within 6 months of taking ownership of the Affordable Housing Unit.
- 18. An Affordable Housing Unit cannot be transferred to an Owner's beneficiary under the age of 19. If the Owner's child or children are not yet of legal age, another family member or legal guardian may reside in the Affordable Housing Unit with the child or children until the child or children reach legal age.

19. Where an executor is holding title to an Affordable Housing Unit in trust, not living or intending to live in the Affordable Housing Unit with the child or children, and waiting for the Owner's beneficiary of the estate to come of age to inherit for the beneficiary's own use as their primary residence, the owner occupancy requirements set out in Part III will not be waived until the Owner's beneficiary is 19 years of age, provided the Affordable Housing Unit is rented in accordance with Part V of this Agreement.

PART V- RENTAL

20. The Owner will not rent or lease the Affordable Housing Unit except in accordance with the following additional conditions:
- a. in the case of hardship, as decided by the Town's chief administrative officer and upon making to the chief administrative officer in the form provided by the chief administrative officer, if any, the Affordable Housing Unit may be rented at an Affordable Rate for a period of no shorter than six months;
 - b. if a Qualified Person cannot be located to purchase the Affordable Housing Unit, as decided by the chief administrative officer in its sole discretion, and on making an application to the chief administrative officer in the form provided by the chief administrative officer, if any, the Affordable Housing Unit may be rented at an Affordable Rate for a period no shorter than six months.
 - c. where an executor is holding title to an Affordable Housing Unit in trust, not living or intending to live in the Affordable Housing Unit with the child or children, and waiting for the Owner's beneficiary of the estate to come of age to inherit for the beneficiary's own use as their primary residence in accordance with section 19 of this Agreement,
 - d. The maximum term of any rental shall be two years, at which point the Affordable Unit must be listed for sale. As an exception, In the circumstances governed by section 20(c), rental may continue until the beneficiary comes of age. Rental may continue at an Affordable Rate at the discretion of the chief administrative officer. If hardship continues or a qualified buyer cannot be located after this listing, additional sales listings may be required at any time at intervals decided by the chief administrative officer at its discretion.
 - e. Rental shall be to an individual who meets the income and place of work requirement to be a Qualified Person.
 - f. Any tenancy shall be governed by an agreement under the *Residential Tenancy Act* (BC), and shall include the following provisions:
 - i. Permitting the Owner to terminate the tenancy agreement in accordance with the *Residential Tenancy Act* if the tenant uses or occupies, or allows use or occupation of, the Affordable Housing Unit in breach of the use or occupancy restrictions contained in this Agreement;
 - ii. Explicitly prohibiting the assignability, sub-letting, and use of the Affordable Housing Unit for short term vacation rentals;

- iii. Explicitly specifying that only persons named in the tenancy agreement may occupy the Affordable Housing Unit;
- iv. Providing that the Owner will have the right, at its option, to terminate the tenancy agreement should the tenant remain absent from the Affordable Housing Unit for three consecutive months or longer, notwithstanding the timely payment of rent; and
- v. Prohibiting guests residing in the Affordable Housing Unit for more than 30 days, whether or not consecutive, in any 12 month period without prior written consent of the Owner;
- g. The Owner shall terminate the tenancy if the tenant uses or occupies, or allows use or occupancy in breach of the use and occupancy restrictions in this Agreement.
- h. the Owner will not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities or property taxes. For clarity, this section does not apply to cable television, telephone, Internet, other telecommunications, gas utility or electricity utility fees or charges; provided, however, that the Owner may charge a maximum of an additional \$75.00 per month if the Affordable Housing Unit is fully furnished and an additional \$25.00 per month if the Affordable Housing Unit contains a fully functioning washer and dryer.
- i. the Owner will attach a copy of this Agreement to the Tenancy Agreement; and
- j. the Owner will deliver a copy of the Tenancy Agreement to the Town upon demand.
- 21. The Owner will terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of an Affordable Housing Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
- 22. The Town may, in its sole discretion, provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Agreement, on such terms and conditions as the Town considers desirable.
- 23. The Owner will be solely responsible for screening Tenants to determine whether or not they qualify to occupy the Affordable Housing Unit in accordance with this Agreement.

PART VI – DEMOLITION OF AFFORDABLE HOUSING UNIT

- 24. The Owner will not demolish the Affordable Housing Unit unless:
 - a. the Owner has obtained the written opinion of a professional engineer or architect who is at an arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Affordable Housing Unit, and the Owner has delivered to the Town a copy of the engineer's or architect's report; or

- b. the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of their value above their foundations, as determined by the Town in its sole discretion, acting reasonably, and
- c. a demolition permit for the Affordable Housing Unit has been issued by the Town (unless the building has, or the Dwelling Units have been destroyed by an accident, act of God, or sudden and unanticipated force) and the Affordable Housing Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy the replacement Dwelling Unit in compliance with this Housing Agreement, and sections 2(c) herein will apply to the construction of the replacement Dwelling Unit to the same extent and in the same manner as those sections apply to the construction of the original Dwelling Unit, and the Dwelling Unit must be approved by the Town as an Affordable Housing Unit in accordance with section 4.

In the event of damage or destruction to the Affordable Housing Unit, the Owner shall ensure that all insurance proceeds under the insurance policy required by section 32 of this Agreement are used to repair or replace the Affordable Dwelling Unit.

PART VII – DEFAULT AND REMEDIES

- 25. The Owner agrees that, in addition to any other remedies available to the Town under this Agreement or at law or equity, if the Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge under section 25, the Daily Amount to the Town for each day of the breach of this Agreement. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount of the previous January 1 by the percentage increase in the CCPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the Town for the same.
- 26. The Owner hereby grants to the Town a rent charge under s. 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the Town of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the Town, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the Town in law or in equity.
- 27. If the Affordable Housing Unit is sold for a purchase price that is not Below Market Value in contravention of this Agreement, the Owner will pay the excess (the "**Excess Amount**") to the Town within 30 days after written demand is made by the Town. The amount remaining unpaid after the 30 days will bear interest at 10 percent calculated from the due date until the date paid, compounded annually not in advance. The Owner further acknowledges and agrees that the Town's Excess Amount is fair and reasonable and is not to be construed as a penalty or forfeiture but as liquidated damages. Whether a purchase price was not Below Market Value in contravention of this Agreement will be determined by an Appraiser retained by the Town for this purpose.

PART VIII – INTERPRETATION

28. In this Agreement:

- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- e. reference to any enactment is a reference to an enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f. the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g. time is of the essence;
- h. all provisions are to be interpreted as always speaking;
- i. reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes employees, agents, officers and invitees of the party;
- j. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- k. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

PART IX- MISCELLANEOUS

29. **Housing Agreement.** The Owner acknowledges and agrees that this:

- a. Agreement constitutes a covenant under s. 219 of the *Land Title Act* and a housing agreement entered into under s. 483 of the *Local Government Act* (British Columbia);
- b. where an Affordable Housing Unit is a separate legal parcel the Town may file a notice of housing agreement under s. 483 of the *Local Government Act* in the LTO against title to the Affordable Housing Unit; and

- c. where the Affordable Housing Unit is not a separate legal parcel, or has not yet been constructed, or where the land has not yet been Subdivided to create the Affordable Housing Unit, the Town may file a notice of housing agreement under s. 483 of the *Local Government Act* in the LTO against title to the Land.
30. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the Town, if it is signed by the Town and a person who is the current registered owner of the Land.
31. **Management.** The Owner covenants and agrees that it will permit representatives of the Town to inspect the Affordable Housing Unit at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Unit in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land.
32. **Insurance.** The Owner will at all times ensure that the Affordable Dwelling Unit is insured to its full replacement value, protecting it and any fixtures against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include boilers and pressure vessels, protecting against usual and unusual perils, including damage caused by rupture of steam pipes.
33. **Indemnity.** The Owner will indemnify and save harmless the Town and each of its elected officials, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- a. any act or omission of the Owner, or its officers, directors, employees, agents, contractors or other persons for whom at law the Owner is responsible;
 - b. the Owner's ownership, lease, operation, management or financing of the Land or the Affordable Housing Unit; or
 - c. any act or omission of the Town or any of its elected officials, board members, officers, directors, employees, agents or contractors in carrying out or enforcing this Agreement, except where such act or omission constitutes a breach of this Agreement by the Town or by any other person for whom at law the Town is responsible.
34. **Release.** The Owner by this Agreement releases and forever discharges the Town and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or any Affordable Housing Unit which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them.
35. **Survival.** The obligations of the Owner set out in sections 33 and 34 will survive termination of this Agreement.

36. **Municipalities Power Unaffected.** This Agreement does not:
- affect or limit the discretion, rights, duties or powers of the Town under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - impose on the Town any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - affect or limit any enactment relating to the use or subdivision of the Land; or
 - relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
37. **Agreement for Benefit of Town only.** The Owner and the Town agree that:
- this Agreement is entered into only for the benefit of the Town;
 - this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any Affordable Housing Unit;
 - the Town may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
38. **No Public Law Duty.** Where the Town is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Town is under no public law duty of fairness or natural justice in that regard and agrees that the Town may do any of those things in the same manner as if it were a private party and not a public body.
39. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the Town addressed:
- To: Town of Ladysmith
410 Esplanade
PO Box 220
Ladysmith, BC V9G 1A2
- or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
40. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
41. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

42. **Waiver.** All remedies of the Town will be cumulative and may be exercised by the Town in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the Town exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
43. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the Municipality and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as set forth in this Agreement.
44. **Further Assurance.** Upon request by the Municipality the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Municipality to give effect to this Agreement.
45. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
46. **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
47. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the Municipality for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the RFR.
48. **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the Municipality or give the Owner any authority to bind the Municipality in any way.
49. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.
50. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

SCHEDULE A

Qualified Buyer Criteria

A Qualified Buyer means a person who meets the following criteria:

- (a) The person, or any member of the person's household, does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world, from the time that such person enters into an agreement for the purchase of an Affordable Housing Unit until such person completes the purchase of an Affordable Housing Unit, unless:
 - i. the Assessed Value of all the real property he or she owns does not exceed 60% of the Assessed Value of the Affordable Housing Unit (as determined in accordance with Part IV of this Agreement); or
 - iii. the real estate he or she owns is located in the Town of Ladysmith; andthat person enters into an agreement with the Town to sell his or her interest in the real property within the time period specified by the Town, acting reasonably, or that person enters into an agreement with the Town with respect to the real property and the Affordable Housing Unit on terms acceptable to the Town in its sole discretion;
- (b) a person provides Proof of Income that their annual gross household income for each of the past five years is no more than ten percent greater than the median household income for Ladysmith for that year, using the most recent Census information, it being understood and agreed that the Town may, from time to time, grant an exemption from or vary such requirement if, in the opinion of the Town and having regard to prevailing market conditions, such exemption or variation is consistent with the continued use and availability of the Affordable Housing Unit as affordable housing;
- (c) a person who intends to immediately use and occupy the Affordable Housing Unit as their principal residence and not rent or lease the Affordable Housing Unit to any other person, nor leave the unit vacant, use it solely for a business or profession, or use it as a short- term vacation rental property of any kind; and
- (d) the person provides evidence to the satisfaction of the Town's chief administrative officer that the person or a member of the person's household is either employed or self-employed for an average of not less than 10 hours per week on an annual basis at a business located within the boundaries of the Town of Ladysmith

For the purpose of this Schedule:

"Fair Market Value" of real property owned by a purchaser means the purchase price from time to time which a willing purchaser would pay to a willing vendor, dealing at arm's length from each other, for the real property.

"Income" means the total household income before income tax from all sources of all persons intending to live in the Affordable Unit including, without limitation:

- (a) all income from earnings, including commissions and tips;
- (b) all income from all public and private pension plans, old age security and guaranteed income supplement;
- (c) all income received under the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*;
- (d) disabled veteran's allowance;
- (e) alimony;
- (f) child support;
- (g) workers' compensation benefits;
- (h) employment insurance;
- (i) non-repayable training allowances, research fellowships, and similar grants and
- (j) Income from Assets,

but excluding the following:

- i. child tax benefit;
- ii. capital gains, such as insurance settlement, inheritances, disability awards and sale of effects in the year they are received;
- iii. the earnings of a person aged 18 and under;
- iv. student loans, student loan equalization payments, student grants and bursaries
- v. shelter aid for elderly renters (SAFER) or rental assistance program (RAP) payments received prior to purchasing an Affordable Unit;
- vi. GST rebates;
- vii. taxable benefits received through employment;
- viii. government provided day care allowance; and
- ix. payments for foster children, or child in home of relative (CIHR) income under the *Employment and Assistance Act*.

"Income from Assets" means computing income from assets of all persons intending to live in an Affordable Housing Unit at a percentage per annum as determined by Town, excluding the first \$65,849.00 in assets of such persons, based on November 1, 2021 dollars, indexed over time by reference to changes from time to time in the consumer price index (all items, British Columbia) or if such consumer price index is no longer published, such substitute and comparable index as the NPO may designate.

"Proof of Income" means a tax return filed with Canada Revenue Agency or a notice of assessment from Canada Revenue Agency under the *Income Tax Act*.

SCHEDULE "B"
Permitted Encumbrances

Charge Number	Description
M76300	Exception and Reservation in favour of E&N Railway
EF87178	SRW in favour of the Town of Ladysmith
EJ36041	SRW in favour of the Town of Ladysmith
EJ36043	Easement
	Any other encumbrances of a non-financial nature in favour of the Town of Ladysmith registered as a result of any rezoning, development permit, subdivision or building permit application.

TERMS OF INSTRUMENT - PART 2

RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

WHEREAS:

- A. The Owner is the registered owner in fee-simple of those lands and premises located within the Town of Ladysmith, in the Province of British Columbia, more particularly described as:

PID 009-473-505

In The West 1/2 Of The South 1/2 Of District Lot 97, Oyster District, Except Parts
Plans 24414, 26836, 27412 And VIP 6063

(the "Lands")

- B. The Owner has entered into a Housing Agreement with the Town of Ladysmith (the "Town") under section 483 of the *Local Government Act* and has granted to the Town a Covenant under section 219 of the *Land Title Act* relating to certain restrictions on the use of the Land (collectively, the "Housing Agreement");
- C. Pursuant to the terms of the Housing Agreement, the Owner has agreed to build or maintain an Affordable Housing Unit on the Lands; and
- D. In order to ensure that the Affordable Housing Unit is occupied and disposed of in accordance with the Housing Agreement, the Owner agrees to grant to the Town a right of first refusal to purchase and an option to purchase the Affordable Housing Unit on the terms and conditions set out in this Agreement.

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by the Town to the Owner, the receipt of sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:
- a. "Affordable Housing Unit" means a Dwelling Unit designated as an affordable housing unit in accordance with the Housing Agreement, to be used, occupied and Disposed of in accordance with the Housing Agreement;
 - b. "Agreement" means this Agreement together with the General Instrument;
 - c. "Appraiser" means an appraiser accredited by the Appraisal Institute of Canada and duty qualified to appraise an Affordable Housing Unit;

- d. "Appraisal Review Period" has the meaning stated in section 5(b)(ii);
- e. "Below Market Value" means thirty (30) percent below the Fair Market Value of the Affordable Housing Unit from time to time;
- f. "Bona Fide Offer" means an offer to purchase the Owner's Interest in the Affordable Housing Unit:
 - i. in writing;
 - ii. signed by an Outside Offeror;
 - iii. in a form legally enforceable against the Outside Offeror and subject to no conditions except for the Town's Subject;
 - iv. providing for a deposit of not less than 5% of the proposed purchase price within 72 hours of the removal or waiver of the Town's Subject;
 - v. for a purchase price that is Below Market Value
 - vi. providing that if the Town does not exercise its right of first refusal as set forth in this Agreement, the Outside Offeror will grant to the Town a right of first refusal and option to purchase the Lands upon the same terms and conditions as are set forth in this Agreement.
 - vii. providing that the Outside Offeror will not assign or transfer the contract for the purchase of the Affordable Housing Unit; and
 - viii. confirming that the Outsider Offeror has read and understood the terms of this Agreement, the Housing Agreement and all other charges in favour of the Town that are registered in the LTO against the Lands and that the Outside Offeror agrees to be bound by the owner's obligations pursuant to such charges;
- g. "Business Day" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, excluding any date that the LTO is not open for business;
- h. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- i. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided;
- j. "Efforts to Sell" means the best efforts of the Owner to sell the Affordable Housing Unit using all reasonable means including, listing the Affordable Housing Unit for sale with a licensed real estate agent, advertising the Affordable Housing Unit for sale in

the local newspapers, and offering to sell the Affordable Housing Unit to the Town on the following terms:

- i. specifying in a written notice that it is offering to sell the Affordable Housing Unit to the Town in accordance with this Agreement;
- ii. giving the Town the exclusive right for 20 Business Days from the date on which the Town receives the notice from the Owner pursuant to this Agreement, to give a written notice of the Owner agreeing to purchase the Affordable Housing Unit for the purchase price which is Below Market Value, and on the terms that are set out in section 5(b) and 5(g) of this Agreement.
- k. "Fair Market Value" of an Affordable Housing Unit means the purchase price from time to time which a willing purchaser would pay to a willing vendor, dealing at arm's length from each other, for an Affordable Housing Unit, unencumbered with the exception of Permitted Encumbrances;
- l. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulation, to which this Agreement is attached;
- m. "Interest" means the property interest of the Owner in the Affordable Housing Unit;
- o. "Lender" means a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on behalf of such mortgagee;
- p. "LTO" means the Victoria Land Title Office or its successor;
- q. "Town's Subject" mean the following clauses:

The obligation of the seller to complete the transaction contemplated herein is subject to the following (the "Seller's Conditions"):

- i. the seller notifying the buyer in writing not later than _____ that the Town of Ladysmith has approved the terms of the sale of the Land to the buyer and that the Town has decided not to exercise its right of first refusal and option to purchase the Land with respect to this transaction only; and
- ii. the Town of Ladysmith determining and notifying the Owner in writing no later than _____ that the Owner has complied with the requirements of the Housing Agreement regarding the sale, and that Town is satisfied that the buyer is a Qualified Person as defined in the Housing Agreement.

The Seller's Conditions are for the sole benefit of the seller and may be satisfied by the seller by notice in writing to the buyer. If the Seller's Conditions are not satisfied on or before the date specified for their removal, this agreement will automatically be terminated, the deposit will be returned to the buyer, and neither party will have any further obligation to the other under this agreement;

- r. “Outside Offeror” means a purchaser or prospective purchaser of the Affordable Housing Unit who deals at arm’s length with the vendor of the Affordable Housing Unit;
- s. “Owner” means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;
- t. “Qualified Person” means an individual who meets the criteria stated in Schedule “A” of the Housing Agreement registered against title to the Land; and
- u. “Subdivide” means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative units” or “shared interests in land” as defined in the *Real Estate Act*.

PART II – GENERAL

- 2. The Owner covenants and agrees that the Owner will not dispose of its Interest in any Affordable Housing Unit unless such Interest is Disposed of in accordance with this RFR Agreement and the Housing Agreement. The Owner will not Dispose of its Interest in the Affordable Housing Unit other than to the Town or to an Outside Offeror pursuant to a Bona Fide Offer.
- 3. Provided that the Owner is not in breach of any of its obligations under this Agreement or under the Housing Agreement, at the request of the Owner and the Owner’s sole expense, the Town will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:
 - a. is a separate legal parcel; and is not an Affordable Housing Unit; and
 - b. is not an Affordable Housing Unit.

PART III – RIGHT OF FIRST REFUSAL

- 4. The Owner covenants and agrees as follows:
 - a. the Owner will not sell or offer to sell the Affordable Housing Unit for any consideration not consisting entirely of lawful money of Canada;
 - b. if the Owner receives a Bona Fide Offer to purchase the Affordable Housing Unit which the Owner is willing to accept, that meets the requirements in the Housing Agreement, then the Owner will offer to sell the Affordable Housing Unit to the Town on the terms that are set out in section 5 of this Agreement, by giving to the Town a notice in writing (the “Notice”) attached to a copy of the Bona Fide Offer. The Town will have the exclusive right for twenty (20) Business Days (the “Election Period”)

from the date on which the Town receives from the Owner the Notice and a copy of the Bona Fide Offer within which to purchase the Affordable Housing Unit on the terms set out in section 5 of this Agreement. The Owner agrees that the Town's Election Period to purchase the Affordable Housing Unit will not start to run until the Owner gives to the Town notice of the Bona Fide Offer, with the only condition precedent or subject in the Bona Fide Offer being the Town's Subject;

- c. If the Town wishes to exercise this right of first refusal, the Town will give the Owner written notice of such exercise on or before the end of the Election Period. If the Town exercises this right of first refusal, the Town shall have the right to assign the Bona Fide Offer to a third party designee of its choice;
- d. If the Town does not exercise this right of first refusal with respect to a specific Bona Fide offer, the Town's rights under this right of first refusal with respect to the particular Bona Fide Offer will be waived, but only if the terms of sale between the Outside Offeror and the Owner are in strict compliance with the terms stated in the Bona Fide Offer, and if the Owner complies with the following requirements:
 - i. the Owner delivers to the Town, within 5 business days after the expiry of the Election Period written proof, satisfactory to the Town, in its sole discretion and including but not limited to the information required under Schedule A of the Housing Agreement, that the purchaser is an Outside Offeror and a Qualified Person, and that the person agrees to be bound by all the agreements in favour of the Town which affect the Affordable Housing Unit, including but not limited to the Housing Agreement;
 - ii. the Owner does not remove the second part of the Town's Subject until such time as the Town informs the Owner that it is satisfied with the information provided pursuant to sub-section i herein;
 - iii. at least 5 Business Days before completion of the sale pursuant to the Bona Fide Offer the Owner delivers to the Town the following:
 - (1) written proof, satisfactory to the Town, in its sole discretion, that the purchase price payable under the Bona Fide Offer is Below Market Value;
 - (2) a signed Form C granting to the Town an option to purchase and a right of first refusal to purchase the Affordable Housing Unit (the "New Form C") on substantially the same terms as set out in this Agreement, with such amendments as the Town may reasonably require;
 - (3) a discharge of this Agreement (the "Discharge") for execution by the Town;
 - (4) undertakings from the solicitor or notary for the Outside Offeror (the "Legal Representative") on terms satisfactory to the Town, including that:
 - (a) the Legal Representative will only register the Discharge if it is done concurrently with the registration of the New Form C;

- (b) the Legal Representative will ensure that the New Form C is registered against the Affordable Housing Unit in priority to all mortgages and other financial liens, charges and encumbrances, except for any changes in favour of the Town;
 - (c) forthwith after registration of the New Form C, provide to the Town copies of the Discharge and the New Form C with registration particulars endorsed thereon, and a copy of the State of Title Certificate for the Land confirming registration of the New Form C; and
- (5) a copy of the vendor's statement of adjustments for the Affordable Housing Unit certified to be true by the Legal Representative; and
- iv. upon request by the Town, the Owner delivers to the Town such further evidence as the Town may reasonably require to confirm the purchase price of the Affordable Housing Unit, and to confirm that the Outside Offeror has granted to the Town an option to purchase and a right of first refusal to purchase the Affordable Housing Unit.

PART IV – GRANT OF OPTION

5. The Owner hereby grants to the Town the sole and exclusive irrevocable option to purchase the Affordable Housing Unit (the "Option") effective immediately upon breach of any of the Owner's obligations contained in the Housing Agreement, or this Agreement, or upon the Owner advising the Town in writing of its intention to transfer or sell the Affordable Housing Unit. The Option will be exercised by or on behalf of the Town by a written notice delivered to the Owner in accordance with the following terms:
 - a. subject to adjustments as provided in this Agreement and subject to sections 6 and 7 of this Agreement, for the purchase price (the "Purchase Price") that is the lesser of:
 - i. the purchase price set out in the Bona Fide Offer (if any); and
 - ii. thirty (30) percent below Fair Market Value, as determined in accordance with subsection 5(b) of this Agreement.
 - b. Fair Market Value will be determined as follows:
 - i. Within 7 days after the Town notifies the Owner of its intention to exercise the Option, the Town will select an Appraiser to be retained by the Town to undertake an appraisal (the "Town Appraisal") of the Fair Market Value of the Affordable Unit. The Town will deliver a copy of the Town Appraisal to the Town within 7 days after the Town receives the Town Appraisal.
 - ii. If the Owner and the Town agree within 7 days after the Town Appraisal is delivered to the Owner that the Fair Market Value of the Affordable Housing

Unit is as stated in the Town Appraisal, then this amount will be the Fair Market Value.

- iii. If the Owner and the Town do not agree within 7 days (the "Appraisal Review Period") after the Town Appraisal is delivered to the Owner that the Fair Market Value of the Affordable Housing Unit is as stated in the Town Appraisal, the Owner will retain its own Appraiser to undertake an appraisal (the "Owner Appraisal") of the Fair Market Value of the Affordable Housing Unit in which case the Fair Market Value will be the average of the amount in the two appraisals.
 - iv. The Owner will deliver a copy of the Owner Appraisal to the Town within 7 days after the Owner receives the Owner Appraisal.
 - v. If the Owner Appraisal is not delivered to the Town within 30 days after the end of the Appraisal Review Period, the Fair Market Value will be as stated in the Town Appraisal.
 - vi. The Owner will be responsible for the cost of the Owner Appraisal and the Town will be responsible for the cost of the Town Appraisal.
- c. The purchase of the Affordable Housing Unit by the Town will be completed on the date (the "Completion Date") to be chosen by the Town, acting reasonably, such date not to be later than thirty Business Days after the determination of the Fair Market Value in accordance with subsection 5(b).
- d. On the Completion Date, the Owner will convey the Affordable Housing Unit to the Town, or the Town's designate, free and clear of all mortgages and other financial liens, charges and encumbrances, provided that the Owner is entitled to use the Purchase Price to discharge any mortgage registered against title to the Affordable Housing Unit, in accordance with section 5(h)(vii);
- e. The Owner will give vacant possession of the Affordable Housing Unit to the Town, following payment of the adjusted Purchase Price to the Owner on the Completion Date.
- f. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Affordable Housing Unit, including adjustments of taxes, rates, rents and other matters usually the subject of adjustment between vendor and purchaser, as well as adjustments for any amounts payable by the Owner to the Town pursuant to the terms of this Agreement or the Housing Agreement, will be made as at the Completion Date.
- g. The Owner covenants and agrees that it will, from and after the date of the application to register this Agreement in the LTO, take or cause to be taken all proper steps and actions and corporate proceedings to enable the Owner to vest a good and marketable title to the Affordable Housing Unit in the Town, or Town's designate, at the Completion Date, free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind except for Permitted Encumbrances (if any, as described in the General Instrument) and to enable the Owner to carry out the

sale of the Affordable Housing Unit and to execute and deliver this Agreement as valid and binding obligations of the Owner.

- h. The Owner hereby represents and warrants to, and covenants and agrees with the Town as at the Completion Date that:
- i. the Owner has no indebtedness or obligation to any person which might now or in future constitute a lien, charge or encumbrance on the Affordable Housing Unit;
 - ii. the Owner has not used the Affordable Housing Unit or permitted any use of the Affordable Housing Unit to store, manufacture, dispose of, emit, spill, leak, generate, transport, produce, process, release, discharge, landfill, treat or remediate any explosive, radioactive material, asbestos, urea formaldehyde, chlorobiphenyl, hydrocarbon, underground tank, pollution, contamination, hazardous substance, corrosive substance, toxic substance, special waste, waste, or matter of any kind which is or may be harmful to human safety or health or to the environment, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under any laws applicable to the Affordable Housing Unit ("Contaminant");
 - iii. the Owner has not used the interior of the Affordable Housing Unit or permitted the use of the interior of the Affordable Housing for the growing, production, processing, or manufacture of cannabis or any other drugs, except in accordance with a personal production licence for medical purposes issued by Health Canada;
 - iv. the Owner has not vaped or smoked any combustible material, or permitted the vaping or smoking of any combustible material in the interior of the Affordable Dwelling Unit;
 - iii. the Owner has not caused or permitted the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, production, processing, release, discharge, landfilling, treatment or remediation of any Contaminant in, on, under or from the Affordable Housing Unit;
 - iv. the Owner has at all times used the Affordable Housing Unit in compliance with all laws relating to Contaminants and to the environment;
 - v. the Owner will indemnify and save harmless the Town, and its elected and appointed officials, officers, employees and agents, from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs (including remediation costs and costs of compliance with any law, and legal fees and disbursements), expenses, fines and penalties, suffered or incurred by the Town by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement. This obligation will survive the termination of this Agreement;

- vi. not less than 5 days before the Completion Date, the Town will deliver to the Owner's solicitor's:
- (1) two copies of a Form A Transfer transferring the fee simple title to the Affordable Housing Unit to the Town, or Town's designee (the "Transfer"), subject only to Permitted Encumbrances,
 - (2) two copies of the Owner's Statement of Adjustments to be approved and executed by the Owner, and
 - (3) a statutory declaration of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada);
- vii. on or before the Completion Date, the Owner will deliver to the Town's solicitors or notaries, in trust, the Transfer executed on behalf of the Owner, in registrable form, on the undertakings that:
- (1) on the Completion Date, the Town will apply to register the Transfer in the LTO only if the adjusted Purchase Price (less any proceeds of a new mortgage to be granted by the Town, or Town's designee) has first been deposited in the trust account of the Town's, or Town's designates', solicitors; and
 - (2) after application has been made to register the Transfer in the LTO, and upon receipt of a satisfactory post-index search of the title to the Affordable Housing Unit indicating that in the normal course of LTO procedure the Town, or its designee, will become the registered owner of the Affordable Housing Unit free and clear of all mortgages and other financial liens, charges and encumbrances, other than any mortgage to be discharged as provided herein, the Town will at once pay, or cause its designee to pay, the Owner's solicitor or notary public the adjusted Purchase Price by solicitor's trust cheque made available for pick up by the Owner's solicitor or notary public, on the undertaking of the owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Affordable Housing Unit forthwith following completion;
- viii. the Affordable Housing Unit will be at the Owner's risk until the Completion Date and will thereafter be at risk of the Town. In the event of loss or damage to the Affordable Housing Unit occurring before the completion of the closing on the Completion Date by reason of fire, tempest, lightning, earthquake, flood or other acts of God, explosion, riot, civil commotion, insurrection or war, the Town, at the Town's option, may cancel this Agreement;
- ix. the Town, its agents and employees, have the licence, conditional on providing 48 hours prior written notice to the Owner, to enter upon the Affordable Housing Unit from time to time prior to the Completion Date, at the Town's sole risk and expense, for the purpose of making reasonable inspections, surveys, tests and studies of the Affordable Housing Unit and;

- x. the Town will pay or cause its designate to pay:
 - (1) any property transfer tax payable by it under the *Property Transfer Tax Act* (British Columbia),
 - (2) LTO registration fees in connection with the transfer of the Affordable Housing Unit to the Town, or the Town's designee,
 - (3) the Town's legal fees and disbursements but not the Owner's, and
 - (4) all goods and services tax, if any, payable in respect of transfer of the Affordable Housing Unit to the Town, or Town's designate, under the *Excise Tax Act* (Canada).

PART V – EXCEPTIONS TO RIGHT OF FIRST REFUSAL AND OPTION

- 6. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for between 90 and 119 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or to sell the Affordable Housing Unit to the Town, the Lender may after that time sell the Interest, but the purchase price for the Interest must not exceed Fair Market Value minus thirty (30) percent, and the Unit may only be used, occupied, re-sold or leased by that new owner in accordance with the Housing Agreement and this Agreement. Determination of Fair Market Value will occur in accordance with section 5(b) of this Agreement.
- 7. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for at least 120 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or sell the Affordable Housing Unit to the Town, the Lender may after that time sell the Interest to a purchaser for any price, and the Affordable Housing Unit may be used and occupied subject to all enactments applicable to the use of the Affordable Housing Unit but the Housing Agreement and this Agreement will not apply.

PART VI – INTERPRETATION

- 8. In this Agreement:
 - a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - c. if a word or expression is defined in this agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;

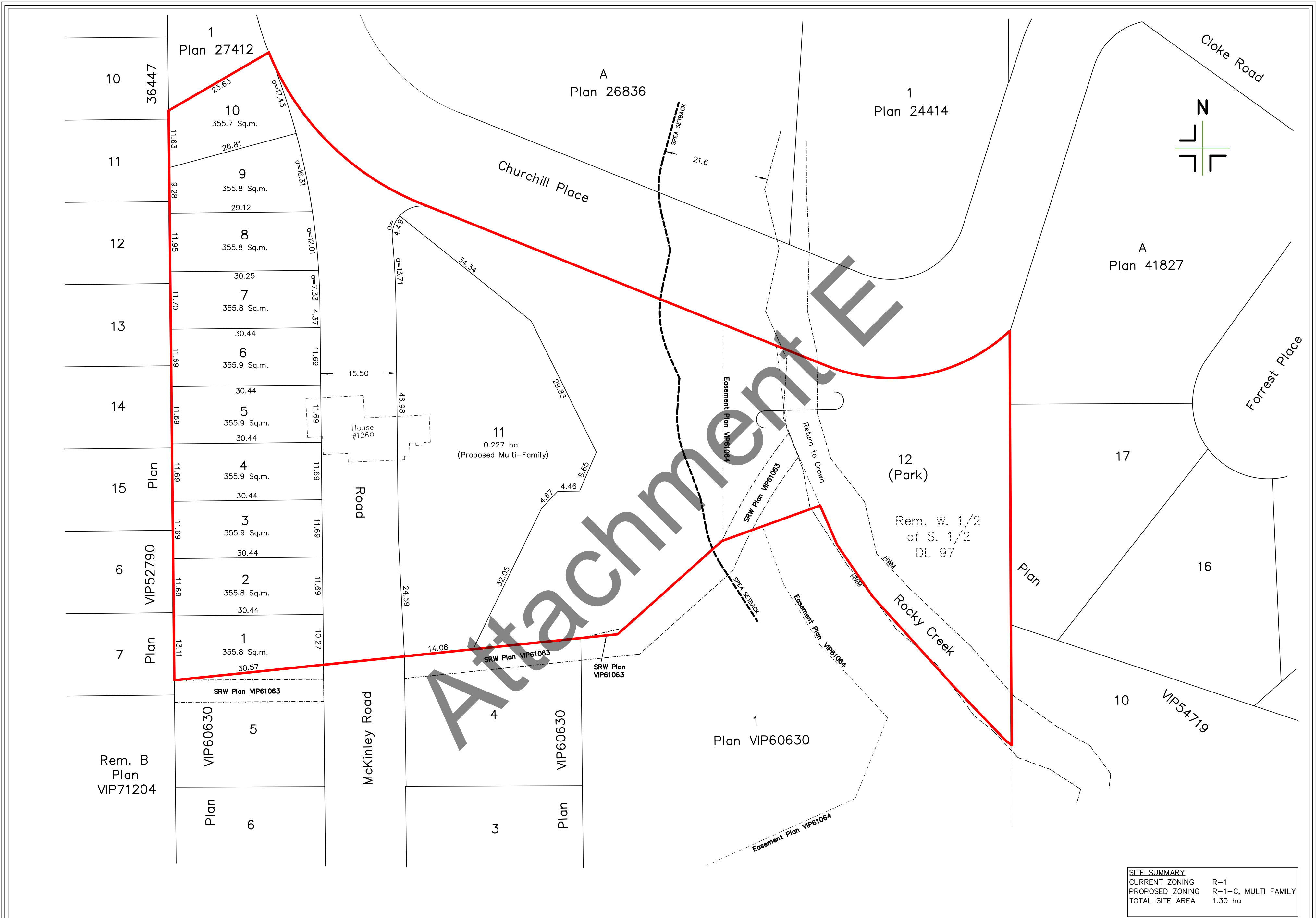
- e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f. the provision of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g. time is of the essence;
- h. all provisions are to be interpreted as always speaking;
- i. reference to a “party” is a reference to a party to this agreement and to that party’s representative successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a “party” also includes employees, agents, officers and invitees of the party;
- j. reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- k. where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

PART VII – MISCELLANEOUS

- 9. **Town Not Obligated to Exercise Right of First Refusal or Option.** The Owner acknowledges and agrees that the Town is under no obligation to exercise its Option or the RFR.
- 10. **Duration of Option and Right of First Refusal.** The option to purchase hereby granted and the right of first refusal granted by this Agreement are effective until the date that is 80 years less a day after the date on which Form C referring to this Agreement is deposited for registration in the LTO.
- 11. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the Town, if it is signed by the Town and the person who is the current registered owner of the Land. The Town may, in its absolute and unfettered discretion provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Agreement on such terms and conditions as the Town considers desirable.
- 12. **Assignability.** The Owner will not assign its interest under this Agreement without prior written consent of the Town, which consent the Town may arbitrarily withhold.
- 13. **Municipalities Powers Unaffected.** This Agreement does not:
 - a. affect or limit the discretion, rights, duties or powers of the Town under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - b. impose on the Town any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;

- c. affect or limit any enactment relating to the use or subdivision of the Land; or
 - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
14. **Agreement for Benefit of Town Only.** The Owner and the Town agree that;
- a. this agreement is entered into only for the benefit of the Town;
 - b. this agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any employee unit;
 - c. the Town may at any time execute a release and discharge of this agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
15. **No Public Law Duty.** Where the Town is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Town is under no public law duty of fairness or natural justice in that regard and agrees that the Town may do any of those things in the same manner as if it were a private party and not a public body.
16. **Liability.** Except to the extent caused by the negligence of the Town or any other person for whose negligence the Town is responsible in law, the Owner agrees to and does hereby indemnify and save harmless the Town, its officers, servants, agents and their heirs, personal representatives, successors and assigns against all loss, damage, costs and liabilities which they will or may be liable for or suffer in connection with the Lands. The obligations of the Owner as set out in this section survive termination of this Agreement.
17. **Costs.** Unless otherwise specified in this Agreement, the Owner will comply with all the requirements of this Agreement at its own cost and expense and will pay to the Town, on request, all reasonable costs or expenses it incurs in connection with this Agreement.
18. **Notice.** Any notice required to be served or given to an party herein pursuant to this Agreement will be sufficiently served or given, if delivered, to the postal address of the Owner set out in the records of the LTO, and in the case of the Town addressed:
- To: Town of Ladysmith
410 Esplanade
PO Box 220
Ladysmith, BC V9G 1A2
- or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
19. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

20. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
21. **Waiver.** All remedies of the Town will be cumulative and may be exercised by the Town in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the Town exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
22. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the Town and the Owner representing the use and occupation of the Affordable Housing Unit, and there are no warranties, representations, conditions or collateral agreements made by the Town except as set forth in this Agreement.
23. **Further Assurance.** Upon request by the Town the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Town to give effect to this Agreement.
24. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is consolidated or Subdivided by any means, including by subdivision under the *Land Title Act* (British Columbia) or by strata plan under the *Strata Property Act* (British Columbia). All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
25. **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
26. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the Town for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relieve (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the RFR.
27. **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the Town or give the Owner any authority to bind the Town in any way.
28. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.
29. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.



SITE SUMMARY	
CURRENT ZONING	R-1
PROPOSED ZONING	R-1-C, MULTI FAMILY
TOTAL SITE AREA	1.30 ha

SITE PLAN SHOWING PROPOSED SUBDIVISION OF:
THE WEST 1/2 OF THE SOUTH 1/2 OF DISTRICT LOT 97, OYSTER DISTRICT, EXCEPT PARTS IN PLANS 24414, 26836, 27412 AND VIP60630.

Client: TOWN OF LADYSMITH

Civic Address: 1260 CHURCHILL PLACE, LADYSMITH

File: 19-090

Scale: 1:500

Drawn by: DRW

Existing Property Zoning: R1

02040

SCALE 1:500

DISTANCES AND ELEVATIONS ARE IN METRES.
GEODETIC ELEVATIONS ARE DERIVED FROM
CONTROL MONUMENT 87H3642 (CVD28BC DATUM).

NOTE:
THIS PROPERTY IS AFFECTED BY
THE FOLLOWING REGISTERED DOCUMENTS:
M76300, EF87178, EJ36041 & EJ36043.

DATE:

REVISION:

July 31, 2019

First Draft

October 30, 2019

Revise Road Alignment/Lot layout

September 12, 2021

Revise Lot layout-R1C & Multi

September 20, 2021

Revise Lot Layout-Lot 11 Boundary at TOB

Turner & Associates

land surveying inc.

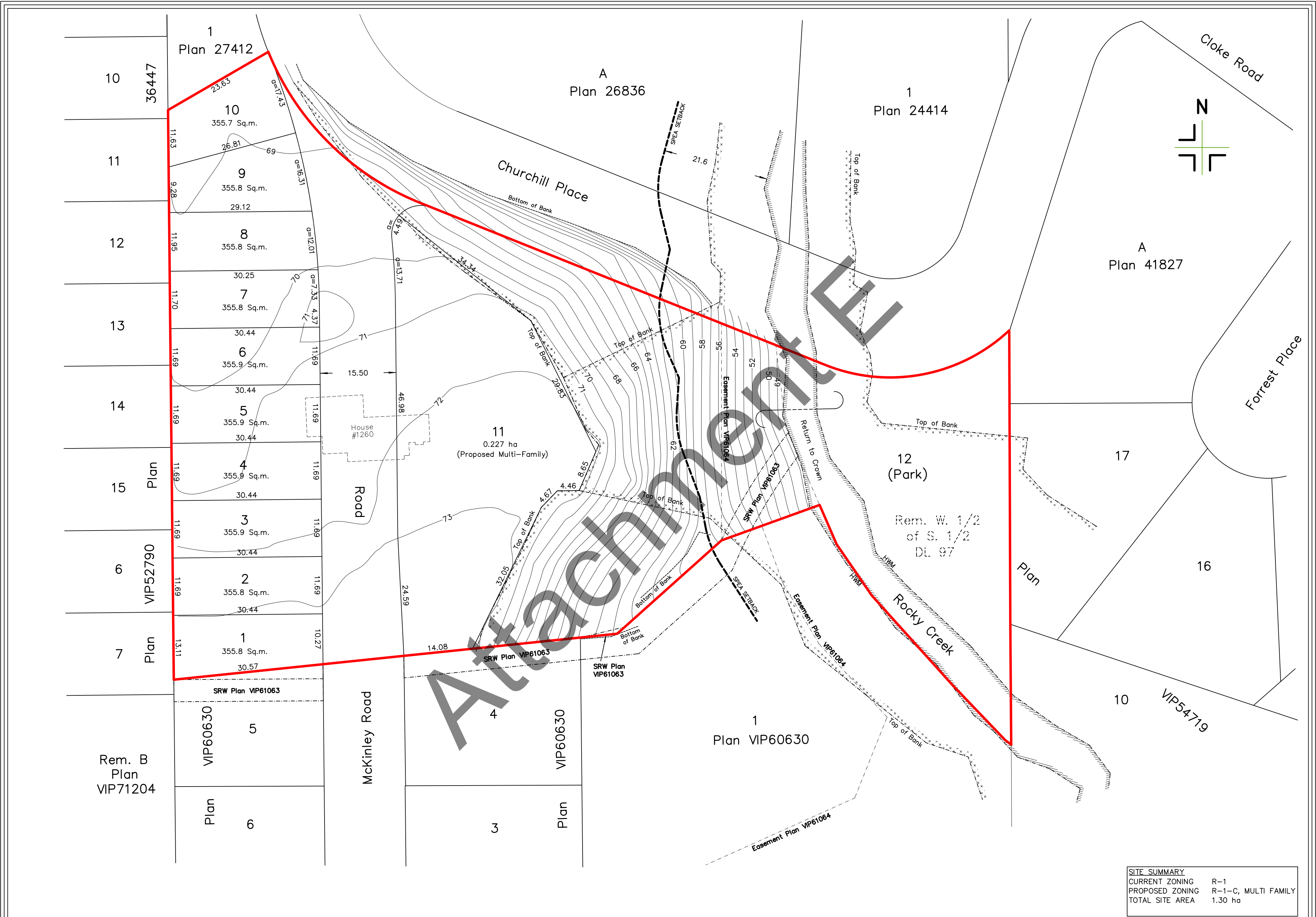
250.753.9778

435 Terminal Avenue North

Nanaimo, BC V9S 4J8

www.turnersurveys.ca

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PROPOSED ZONING	R-1-C, MULTI FAMILY
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October 30, 2019	Revise Road Alignment/Lot layout
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Minutes of the Parks, Recreation & Culture Advisory Committee
Wednesday, September 15, 2021 at 7:00pm via ZOOM

COMMITTEE MEMBERS PRESENT:

Tim Richards, Chair	Kelly Daniels
Councilor Duck Paterson	Geoff Dean
Lesley Lorenz	Emily Weeks
Bruce Mason	Jacqueline Huard
Lucy Paterson	

STAFF PRESENT:

Chris Barfoot, Lead
Kim Cheang

REGRETS:

Lynda Baker

**CALL TO ORDER AND
ACKNOWLEDGEMENT**

The meeting was called to order at 7:00pm.

C. Barfoot acknowledged with gratitude that this meeting is taking place on the traditional, unceded territory of the Stz'uminus First Nation.

AGENDA

2021-15: *Moved and seconded:*

That the Parks, Recreation and Culture Advisory Committee approve the agenda for the meeting as presented.

Motion carried.

MINUTES

Moved and seconded:

2021-16: That the Parks, Recreation and Culture Advisory Committee approve the minutes of the June 16, 2021 meeting as presented.

Motion carried.

OLD BUSINESS

Fall Meeting Schedule

Schedule was discussed. Required as of September 29th, 2021, all council and committees of council, meeting will be going back to in person meeting. Meeting will be the third Wednesday of every month transition back to in person. Will start meeting at FJCC, location still has adequate space for physical distance, ensure taking the safest approach that we can. Not able to utilize ZOOM, if someone is uncomfortable or can't attend, can phone in for conference.

NEW BUSINESS

Introductions

New Members

Returning Members

Elect Chair and Co-Chair

2021-17: *Moved and seconded:*

That the Parks, Recreation and Culture Advisory Committee appoint Tim Richards as Chair.

Motion carried

2021-18: *Moved and seconded:*

That the Parks, Recreation and Culture Committee appoint Lesley Lorenz as Co-Chair.

Motion carried

Brown Drive Park Discussion

CS 2021-244

That Council request that the Parks, Recreation & Culture Advisory Committee provide recommendations to Council on ways that Brown Drive Park can be used to its full potential, including the possible creation of a Parks Implementation Plan.

Motion Carried

2021-19: *Moved and seconded:*

That the Parks, Recreation and Culture Advisory Committee request that staff:

1. Prepare a report providing background information on Brown Drive Park and what amenities are currently there; and
2. Organize a site visit for the Committee to view the park.

Motion Carried

PRC Department Update (Summer and COVID)

Verbal Update Provided

- Summer camp
- Shut Down
- Proof of Vaccination

Current Capital Projects

Transfer Beach

Ladysmith Arts and Heritage Hub

Park related Items

- Aggie Field

Lot 108 update

Community Group Updates

Community Gardens

Cowichan Trail Stewardship Society

PRC DEPARTMENT UPDATE

NEXT MEETING Next meeting will be held at 7:00pm, October 20, 2021 at Frank Jameson Community Centre.

ADJOURNMENT It was moved, seconded and carried that the meeting be adjourned at 8:22 PM.

Committee of the Whole Recommendations to Council October 5, 2021

At its September 28, 2021 meeting, the Committee of the Whole recommended that Council direct staff to:

1. Amend “Waterworks Regulations Bylaw 1999, No. 1298” to include:
 - a) A single family dwelling with a suite rate structure based on 1.5 times the single family dwelling charge and allowing an initial consumption of 37.5m³ per quarter; and
 - b) A new step rate for water consumption greater than 200m³ for single family dwellings for only the quarters April to June and July to September, at a rate of \$3.1701 per cubic metre subject
2. Prepare amendments to “Council Procedure Bylaw 2009, No. 1666” as identified in the staff report dated September 28, 2021, including:
 - a) Various housekeeping amendments;
 - b) Scheduling specifications to ensure that a meeting is not held during the first week of January and that only one meeting is held in August;
 - c) Changing the Regular Council Meeting start time to 6:30 p.m.;
 - d) Removing the section on Public Hearings and preparing a Public Hearing Policy; and
 - e) Adding wording to reflect recent amendments to the *Community Charter* related to electronic meetings.
3. a) Bring forward amendments to:
 - “Official Community Plan Bylaw 2003, No. 1488”,
 - “Town of Ladysmith Zoning Bylaw 2014, No. 1860”; and
 - “Ladysmith Officers and Delegation of Authority Bylaw 2016, No. 1905”;related to coach houses as outlined in the September 28, 2021 staff report; and
b) Develop a design preauthorization program for coach houses as outlined in the September 28, 2021 staff report to the Committee of the Whole.
4. Consult with Stz’uminus First Nation and report back to Council regarding the potential for both the inclusion of the Hul’qumi’inum name on the Transfer Beach sign and a Coast Salish Welcoming Figure at Transfer Beach.



COMMITTEE OF THE WHOLE MEETING

MINUTES

Tuesday, September 28, 2021

6:30 P.M.

This meeting was held electronically as per Ministerial Order No. M192

Council Members Present:

Councillor Tricia McKay, Chair
Councillor Amanda Jacobson
Councillor Duck Paterson

Councillor Marsh Stevens
Councillor Jeff Virtanen

Council Members Absent:

Mayor Aaron Stone

Councillor Rob Johnson

Staff Present:

Allison McCarrick
Erin Anderson
Chris Barfoot
Jake Belobaba
Geoff Goodall

Donna Smith
Chris Geiger
Mike Gregory
Sue Bouma

1. CALL TO ORDER AND ACKNOWLEDGEMENT

Councillor McKay, Chair, called this Committee of the Whole meeting to order at 6:30 p.m., and acknowledged with gratitude that it was being held on the traditional unceded territory of the Stz'uminus First Nation.

2. AGENDA APPROVAL

CW 2021-053

That the agenda for this September 28, 2021 Committee of the Whole meeting be approved.

Motion Carried

3. MINUTES

3.1 Minutes of the Committee of the Whole Meeting held July 13, 2021

CW 2021-054

That the minutes of the Committee of the Whole meeting held July 13, 2021 be approved.

Motion Carried

4. REPORTS

4.1 Building Inspector's Report for May to August 2021

CW 2021-055

That the Committee receive the Building Inspector's Report for the months May to August 2021.

Motion Carried

4.2 Ladysmith Fire/Rescue Reports for May to August 2021

CW 2021-056

That the Committee receive the Ladysmith Fire/Rescue Reports for the months May to August 2021.

Motion Carried

4.3 Coastal Animal Control Services Reports for April to June 2021

CW 2021-057

That the Committee receive the Coastal Animal Control Services Reports for the months April to June 2021.

Motion Carried

4.4 RCMP Reports for Quarters 1 and 2, 2021

CW 2021-058

That the Committee receive the RCMP Reports for the first and second quarter of 2021.

Motion Carried

4.5 2021 Q2 (April – June) Financial Update

CW 2021-059

That the Committee receive the staff report dated September 28, 2021, regarding the 2021 Quarter 2 Financial Update.

Motion Carried

4.6 Financial Impact of new Summer Water Rates and Single Family Dwelling with Base Rates

CW 2021-060

That the Committee recommend that Council direct staff to amend “Waterworks Regulations Bylaw 1999, No. 1298” to include:

1. A single family dwelling with a suite rate structure based on 1.5 times the single family dwelling charge and allowing an initial consumption of 37.5m³ per quarter; and
2. A new step rate for water consumption greater than 200m³ for single family dwellings for only the quarters April to June and July to September, at a rate of \$3.1701 per cubic metre subject to bylaw amendments.

Motion Carried

4.7 Proposed Amendments to “Council Procedure Bylaw 2009, No. 1666”

CW 2021-061

That the Committee recommend that Council direct staff to prepare amendments to “Council Procedure Bylaw 2009, No. 1666” as identified in the staff report dated September 28, 2021, including:

1. Various housekeeping amendments;
2. Scheduling specifications to ensure that a meeting is not held during the first week of January and that only one meeting is held in August;
3. Changing the Regular Council Meeting start time to 6:00 p.m.;
4. Removing the section on Public Hearings and preparing a Public Hearing Policy; and
5. Adding wording to reflect recent amendments to the *Community Charter* related to electronic meetings.

CW 2021-062**AMENDMENT**

By unanimous consent the Committee agreed to amend Item 3 of Resolution CW 2021-061 by changing the start time of Regular Council Meetings to 6:30 p.m.

Amendment Carried

Resolution CW 2021-061 as amended, reads:

That the Committee recommend that Council direct staff to prepare amendments to "Council Procedure Bylaw 2009, No. 1666" as identified in the staff report dated September 28, 2021, including:

1. Various housekeeping amendments;
2. Scheduling specifications to ensure that a meeting is not held during the first week of January and that only one meeting is held in August;
3. Changing the Regular Council Meeting start time to 6:30 p.m.;
4. Removing the section on Public Hearings and preparing a Public Hearing Policy; and
5. Adding wording to reflect recent amendments to the *Community Charter* related to electronic meetings.

Main Motion, as Amended, Carried

4.8 Two-Storey Coach Houses**CW 2021-063**

That the Committee recommend that Council direct staff to:

1. Bring forward amendments to:
 - a. "Official Community Plan Bylaw 2003, No. 1488",
 - b. "Town of Ladysmith Zoning Bylaw 2014, No. 1860"; and
 - c. "Ladysmith Officers and Delegation of Authority Bylaw 2016, No. 1905";related to coach houses as outlined in the September 28, 2021 staff report; and
2. Develop a design preauthorization program for coach houses as outlined in the September 28, 2021 staff report to the Committee of the Whole.

Motion Carried

5. COUNCIL SUBMISSIONS

5.1 Inclusion of the Hul'qumi'inum Name on the Transfer Beach Park Sign

5.2 Coast Salish Welcoming Figure

CW 2021-064

That the Committee recommend that Council direct staff to consult with Stz'uminus First Nation and report back to Council regarding the potential for both the inclusion of the Hul'qumi'inum name on the Transfer Beach sign and a Coast Salish Welcoming Figure at Transfer Beach.

Motion Carried

6. ADJOURNMENT

CW 2021-065

That this meeting of the Committee of the Whole adjourn at 7:14 p.m.

Motion Carried

CERTIFIED CORRECT:

Chair (Councillor T. McKay)

Corporate Officer (D. Smith)

STAFF REPORT TO COUNCIL

Report Prepared By: Jake Belobaba, Director of Development Services
Reviewed By: Allison McCarrick, Chief Administrative Officer
Meeting Date: October 5, 2021
File No: 6520-20
Re: Uplands Remediation Proceeding to Certificate of Compliance

RECOMMENDATION:

That Council direct staff to prepare an amendment to the 2021-2025 Financial Plan to increase the Waterfront Remediation – Phase 1 budget by \$87,920 with the funds to come from prior year surplus, in order to accelerate the project and reduce overall project costs related to the Provincial Certificate of Compliance.

EXECUTIVE SUMMARY:

The Detailed Site Investigation (DSI) for the Uplands is nearing completion and the Town will be in a position to transition to the remediation process by the end of 2021. So far, the DSI results have been promising. Staff and the consultants are therefore recommending additional transitional activities that will accelerate remediation and lower overall remediation costs.

PREVIOUS COUNCIL DIRECTION:

Resolution	Meeting Date	Resolution Details
CS 2021-052	16-Feb-21	That Council authorize the Mayor and Corporate Officer to sign the FCM Green Municipal Fund Grant Agreement GMF 17055 titled "Uplands Environmental Assessment and Remedial Action Plan" for remediation of Town-owned property referred to as the "uplands" in the Waterfront Area Plan.
CS 2020-265	01-Sep-20	That Council award the contract for the detailed site investigation and remediation plan for the uplands of the Waterfront Area to Golder Associates Ltd for \$279,866 excluding GST.
CS 2020-153	19-May-20	<p>That Council:</p> <ol style="list-style-type: none"> 1. Receive the Regulatory Path to Closure and Stage 1 Preliminary Site Investigation prepared by Golder Associates provided in Appendix A of the staff report from the Director of Development Services dated May 19, 2020; 2. Direct Staff to amend the 2020-2024 Financial Plan to include up to \$400,000 from general surplus and development reserves to cover the cost of a detailed site investigation over the course of 2020-2021; and 3. Direct staff to: <ol style="list-style-type: none"> a. submit an application on behalf of the Town to the Federation of Canadian Municipalities to obtain funding for a detailed site investigation of the uplands and to obtain the services of a consultant, if required, to prepare the grant application; and b. seek the services of a qualified environmental engineering firm to complete a detailed site investigation of the uplands.

INTRODUCTION/BACKGROUND:

On May 19, 2020, Council directed staff to undertake a DSI for the Uplands¹ and amended the 2020-2024 Financial Plan to allocate \$400,000 for this purpose. Council also directed staff to apply to the FCM Green Municipal Fund to offset the costs of the DSI. Golder was awarded the DSI contract on September 20, 2020 and commenced work shortly after. The Town received \$168,400 in funding from the FCM program in February of 2021. The DSI is now concluding and is on budget and showing promising results. As of the date of this report, the Town's total expense for the DSI (when factoring in the FCM grant) will be approximately \$230,000 and testing results suggest physical remediation is not needed. Analysis prior to the DSI process suggested a phased remediation option, where the land is remediated in sections. However, DSI results now suggest the Town can likely proceed directly to an application for a Provincial Certificate of Compliance (COC) for the entire site. The Town now has an opportunity to frontload the COC process and significantly decrease both the timeframe and cost of obtaining a COC.

PROPOSAL:

Testing, scheduled to occur throughout October, is expected to confirm levels of contamination low enough to rule out phased remediation as a practical option and instead confirm that an accelerated (and less expensive) "direct to COC" approach for the entire site is the best option. The consultant will produce a roadmap and budget for this approach for Council approval in November. Challenges with scheduling contractors, and the cost and time savings of combining the final DSI steps with the initial COC steps warrant increasing the DSI budget by \$87,920. A breakdown of the \$87,920 is provided in Attachment A.

The additional \$87,920 will allow additional tests, required later for the COC process, to occur concurrently with the final investigations of the DSI process, thereby, two tasks can be completed at the same time.

The October testing results are expected to position the Town to apply for a COC, and the final remediation process may even become a "desktop exercise" where the Town obtains a COC simply by having the consultant prove the site does not require physical remediation. The consultant and staff will bring forward a report to Council in November outlining the remaining costs and timeframe for remediation.

Assuming the results from the testing in October are favorable, the total cost to the Town of investigating and remediating the Uplands may be under \$1,000,000 less the \$168,400 received from FCM.

ANALYSIS:

As noted above, practical options for remediating the Uplands are likely to be limited (in a good way) by favorable testing results. It is unlikely that a better alternative to the "direct to COC" approach will emerge and allocating the extra \$87,920 at this stage positions the Town for an accelerated and less expensive COC process. Council will receive a more comprehensive report in November, based on the last round of testing, that will provide a detailed roadmap and budget for the remediation/COC process.

ALTERNATIVES:

Council can choose to:

¹ Lot 4, District Lots 8G, 11G, 24 and 56, Oyster District, Plan 45800; and Lots 1 and 5, District Lots 24 and 56, Oyster District, Plan Vip64405

1. Defer spending the additional \$87,920, which may cause an increased cost for the same work later.
2. Halt the remediation process on the Uplands.

FINANCIAL IMPLICATIONS:

Spending the additional \$87,920 now is frontloading and reducing an expense needed later to obtain a COC for the Uplands and implement the Waterfront Area Plan. Staff suggest using prior year surplus to fund this budget increase.

LEGAL IMPLICATIONS:

N/A

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

N/A

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

N/A

ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Complete Community Land Use | <input type="checkbox"/> Low Impact Transportation |
| <input type="checkbox"/> Green Buildings | <input checked="" type="checkbox"/> Multi-Use Landscapes |
| <input type="checkbox"/> Innovative Infrastructure | <input type="checkbox"/> Local Food Systems |
| <input type="checkbox"/> Healthy Community | <input type="checkbox"/> Local, Diverse Economy |
| <input type="checkbox"/> Not Applicable | |

ALIGNMENT WITH STRATEGIC PRIORITIES:

- | | |
|--|----------------------------------|
| <input type="checkbox"/> Infrastructure | <input type="checkbox"/> Economy |
| <input type="checkbox"/> Community <input type="checkbox"/> Not Applicable | |
| <input checked="" type="checkbox"/> Waterfront | |

I approve the report and recommendation.

Allison McCarrick, Chief Administrative Officer

ATTACHMENT:

- A. Golder Change Order

CHANGE ORDER # 04

Client Name	Project Name	Contract Date	Golder Project No.
Town of Ladysmith	Uplands Remediation - DSI Step #3	30 July 2020	18109842/4000/3

CHANGE IN SCOPE OF SERVICES

- Field work to commence 20 September 2021 following client approval
- Health & Safety Updates
- Review of data to design and plan Step #3 of DSI in support of future Certificate of Compliance application
- Professional Utility Locate (1 day)
- Daylighting/Hydrovacuum (3 days) and subsequent off-Site slurry disposal (on-Site drums will also be emptied by truck to reduce drum disposal charges later)
- Sonic rig drilling (3 days) to achieve appropriate depths for both lateral and vertical delineation
- Drilling approximately 20 boreholes to collect soil samples, installing up to 12 new groundwater monitoring wells and up to 3 new vapour probes
- Soil, Groundwater, and Vapour sampling and analysis of new installs

CHANGE IN AGREEMENT COST (\$CAD)

Original Agreement Cost:	279,866.00
Change in Agreement Cost due to Change Order # 01	13,975.00
Change in Agreement Cost due to Change Order # 02	105,605.00
Change in Agreement Cost due to Change Order # 04	88,474.00
Current Agreement Cost:	487,920.00

CHANGE IN AGREEMENT TIME

Original Completion Date:	Ongoing
Current Completion Date (as adjusted by previous Change Orders):	Ongoing
Change in Agreement time (calendar days) due to this Change Order:	Ongoing
New Completion Date due to this Change Order:	Ongoing

The work covered by this Change Order shall be performed under the same terms and conditions as those included in the original Agreement. All other terms and conditions of said Agreement, as it may have been modified, shall be and remain the same.

The foregoing modification of said Agreement is hereby accepted.

GOLDER ASSOCIATES LTD.

Town of Ladysmith

 Authorized Signatory
 Name: _____
 Title: _____
 Date: _____

 Authorized Signatory
 Name: _____
 Title: _____
 Date: _____

STAFF REPORT TO COUNCIL

Report Prepared By: Christina Hovey, RPP, MCIP
Reviewed By: Jake Belobaba, RPP, MCIP, Director of Development Services
Meeting Date: October 5, 2021
File No: 3800-21-094
Re: Encroachment Agreement 32 High Street (Temperance Hotel)

RECOMMENDATION:

That Council authorize the Mayor and Corporate Officer to sign an Encroachment Agreement between the Town of Ladysmith and the property owner of 32 High Street to allow for the encroachment of the existing building and ramp into the road rights of way of High Street and 1st Avenue.

EXECUTIVE SUMMARY:

The owners of 32 High Street are planning to renovate the property. The site plan provided in their Building Permit application showed that a portion of the building and the access ramp crosses the property line into the Town's roads. Staff recommend that the Town enter into an Encroachment Agreement to legalize the existing location of the building and access ramp.

PREVIOUS COUNCIL DIRECTION:

N/A

INTRODUCTION/BACKGROUND:

32 High Street (the Temperance Hotel) is a two-storey wood framed building at the corner of 1st Avenue and High Street. The building has commercial units on the main-storey and residential units above. The building is listed on the Town of Ladysmith's Community Heritage Register and, according to the Register, was constructed in 1900.

Figure 1: 32 High Street (Temperance Hotel)



The current property owner is working to upgrade the building. They have applied for a Building Permit to repair the foundation and have received¹ a Façade Development Permit to paint the building, replace the windows and doors, and re-shingle the roof.

¹ The Façade DP was issued on August 13, 2021. Approval of Façade DP's is delegated to the Director of Development Services (Bylaw No. 1905).

As part of their application for a Building Permit the property owner submitted a site plan (survey) which shows that the existing building and ramp are encroaching into the road right of way up to 0.56m (see Schedule A of the Draft Encroachment Agreement in Attachment A). Buildings are required to be entirely located on a legal parcel. Although this is an old and existing building, it is prudent to legalize the encroachment as a condition of the Building Permit.

Staff are recommending an Encroachment Agreement as the most effective way to legalize the existing encroachment in terms of cost and time. Other options include closing and selling the applicable portions of the roads, placing an easement over the road, or authorizing the Building Inspector to issue a Building Permit despite the encroachment. All of these options have significant drawbacks in terms of cost and the ability of the Town to use the road right of way in the future if needed or if circumstances change.

ALTERNATIVES:

Council can choose not to enter into an Encroachment Agreement with the property owner of 32 High Street and refer the issue back to staff for further review as specified by Council.

FINANCIAL IMPLICATIONS:

N/A

LEGAL IMPLICATIONS:

The *Community Charter* grants Council the authority to permit encroachments upon and/or grant a licence of occupation over municipal roads.

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

The Façade Development Permit Application was referred to the Community Planning Advisory Committee on August 4, 2021 (See Attachment B – Minutes, CPAC, August 4, 2021) because the building is in the Town's Heritage Register.

CPAC passed the following resolution regarding the proposed updates to 32 High Street:

It was moved, seconded and carried that CPAC recommend:

- that DP 3060-21-13 (32 High Street) be approved; and,
- that the applicant choose heritage style hardware for the doors.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

The draft Encroachment Agreement has been reviewed by the Infrastructure Services department. They had no concerns with the proposed agreement.

ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:

- ☐ Complete Community Land Use
- ☒ Green Buildings
- ☐ Innovative Infrastructure
- ☒ Healthy Community
- ☐ Not Applicable

- ☐ Low Impact Transportation
- ☒ Multi-Use Landscapes
- ☐ Local Food Systems
- ☐ Local, Diverse Economy

ALIGNMENT WITH STRATEGIC PRIORITIES:

- ☐ Infrastructure
- ☐ Community
- ☐ Waterfront
- ☒ Economy
- ☐ Not Applicable

I approve the report and recommendation.

Allison McCarrick, Chief Administrative Officer

ATTACHMENTS:

- A. Encroachment Agreement for 32 High Street
- B. Minutes, CPAC, August 4, 2021

ENCROACHMENT AGREEMENT

THIS AGREEMENT made the ____ day of _____, 2021.

BETWEEN:

TOWN OF LADYSMITH
PO Box 220, 410 Esplanade
Ladysmith, British Columbia V9G 1A2

("Ladysmith")

OF THE FIRST PART

AND:

TEMPERANCE GROUP INVESTMENTS LTD. INC.NO. BC1259037
PO Box 119,
Ladysmith, BC
V9G 1A9

(the "Licensees")

OF THE SECOND PART

WHERE AS:

A. The Licensees are the owners of the property legally described as:

That part of Lot A (DD 65840N), Block 8, District Lot 56, Oyster District, Plan 703 lying to the south east of a boundary parallel to and perpendicularly distant 64 feet from the south easterly boundary of said lot
PID: 007-807-741 (32 High Street)

(the "Property");

B. The soil and freehold of the public road located adjacent to the Property (the "Highway") is vested in Ladysmith;

C. Ladysmith has authority under Section 35(11) of the Community Charter, to permit encroachments upon and/or to grant a licence of occupation or easement in respect of the Highway;

D. The Licensees have requested that Ladysmith grant the Licensees a licence to encroach upon, use and occupy a portion of the Highway for the purpose of maintaining an existing building including a new foundation and a ramp that projects into the Highway (the "Works"); and

- E. Ladysmith has agreed to grant the Licensee an Licence Agreement (the “**Agreement**”) over a portion of the Highway on the terms hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the fee paid by the Licensees to Ladysmith and in consideration of the premises and covenants and agreements contained in the Agreement, the receipt and sufficiency of which is hereby acknowledged, Ladysmith and the Licensees covenant and agree with each other as follows:

1.0 GRANT

- 1.1 Ladysmith, subject to the terms, conditions, covenants and agreements contained in this Agreement, hereby grants to the Licensees a non-exclusive licence to occupy that portion of the Highway marked as “General Location of Building and Ramp Encroachment” on the drawing attached hereto as Schedule “A” (the “**Licence Area**”) for the purpose of maintaining the existing building (including a new foundation) and ramp.

2.0 FEE

- 2.1 The Licensees shall pay to Ladysmith a fee of one dollar \$1.00 for the fifty year term, upon execution of the Agreement.

3.0 TERM

- 3.1 The Term of the licence granted under this Agreement shall be fifty (50) years, subject to earlier termination as provided herein.

4.0 RENEWAL

- 4.1 This Agreement may be renewed on the same terms herein by mutual agreement of the parties in writing, such agreement to be executed no less than 30 (thirty) days prior to the expiry of the Term.

5.0 COVENANTS OF LICENSEES

- 5.1 The Licensees acknowledge and agree that the Licence Area is a highway and that Ladysmith has limited power to authorize the private use of highways. The Licensees further acknowledge and agree that any rights granted by Ladysmith to the Licensees by this Agreement are not exclusive and are subject to the public's right to pass and repass and that Ladysmith has full authority pursuant to this Agreement to require the Licensees' removal from the Licence Area, at any time, in accordance with this Agreement, without compensation to the Licensees.
- 5.2 The Licensees covenant and agree that this Agreement shall not in any way restrict the right of Ladysmith or require Ladysmith at any time to:
- (a) alter any road, curb, gutter, sidewalk or boulevard within or adjoining the Licence Area, notwithstanding that the effect of such alteration may be to render the Works of less or no value for the purposes of the Licensees;

- (b) inspect, construct or maintain any form of structure, service or utility on, over or under any portion of the Highway including the Licence Area and, for such purpose, Ladysmith may require that the Works be removed at the Licensees' cost, in part or in whole; or
 - (c) permit other encroachments or use of the Highway.
- 5.3 In the event of Ladysmith effecting any alteration of or construction on or adjacent to the Licence Area, requiring removal of all or part of the Works, or permitting other encroachments or uses of the Licence Area, the Licensees will release and forever discharge, and hereby releases and forever discharges, Ladysmith from all manner of claims of any nature whatsoever, which may arise by reason of such alterations, or requirement for removal of the Works, or other encroachments or uses of the Licence Area.
- 5.4 Without limiting the generality of section 5.3, the Licensees further agree and acknowledge that this Agreement does not restrict or abrogate the rights and powers of Ladysmith and the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Licence Area as if the Agreement had not been executed and delivered by the Licensees.
- 5.5 The Licensees covenant and agree with Ladysmith that they shall:
 - (a) carry out the repair and improvement of the Works in accordance with all regulations and directions from Ladysmith;
 - (b) use only materials approved in advance by Ladysmith for constructing upgrading and improving the Works;
 - (c) maintain the Works in good and sufficient repair to the satisfaction of Ladysmith;
 - (d) not install, construct, erect, alter, remove or replace any structure on the Licence Area other than the Works, unless authorized in advance by Ladysmith;
 - (e) make good, at its own expense, all damage or disturbance which may be caused to the Licence Area in the exercise of its rights under this Agreement;
 - (f) upon expiration or earlier termination of this Agreement, remove the Works from the Licence Area and, at its own expense, and restore the Licence Area to a condition similar to the area surrounding the Licence Area;
 - (g) not do or allow to be done anything by its invitees that may become a nuisance or annoyance to adjoining properties; and
 - (h) observe, abide by and comply with all laws, bylaws, regulations, orders, directions and requirements of any public authority having jurisdiction which in any way affect the Licensees' use or occupation of the licence area.
- 5.6 Should the Licensees fail to satisfy any of the requirements of paragraph 5.5, Ladysmith may do any work necessary to fulfill the requirement as determined in the

sole discretion of Ladysmith, including to make the necessary repairs or remove the Works

- 5.7 The Licensees shall pay the costs of work performed by Ladysmith under paragraph 5.6 to Ladysmith forthwith and agrees that, if in default of payment, the amount of such cost may be recovered in any Court of competent jurisdiction.
- 5.8 Nothing in this Agreement shall impose any duty or obligation upon Ladysmith to maintain or inspect the Works, or provide advice or direction to the Licensees regarding the maintenance or inspection of the Works, all of which shall be the sole responsibility of the Licensees notwithstanding any actions taken from time to time by Ladysmith pursuant to sections 5.1 to 5.7 inclusive.

6.0 TERMINATION

- 6.1 Either party may terminate this Agreement by providing ninety (90) days notice in writing to the address first written above.
- 6.2 Subject to Part 7, upon the sale of the Property, this Agreement will automatically terminate and the Licensees shall remove the Works from the Licence Area and, at their own expense, restore the Licence Area to a condition similar to the area surrounding the Licence Area.

7.0 ASSIGNMENT

- 7.1 Notwithstanding section 6.2, in the event that the Licensees sell the Property they may, with the consent of Ladysmith, such consent not to be unreasonably withheld, assign the licence to the purchaser by way of written addendum to this Agreement.
- 7.2 If the purchaser does not enter into an agreement with Ladysmith for assignment of the licence prior to the closing date, section 6.2 shall apply.

8.0 INSURANCE

- 8.1 The Licensees agree to take out and maintain through the Term a policy of comprehensive general liability insurance with limits of no less than \$2,000,000 (two million dollars) per single occurrence, or such greater amount as Ladysmith may from time to time designate, inclusive of bodily injury, death and property damage arising out of the use of the Licence Area by the Licensees. Ladysmith must be added as an additional insured to the policy. The policy must contain a provision for cross liability insurance as between the Licensees and the Town.
- 8.2 All policies of insurance must contain a clause requiring the insurer not to cancel or change the insurance without first giving Ladysmith thirty days written notice.
- 8.3 If the Licensees do not provide or maintain in force the insurance required by this Agreement, Ladysmith may take out the necessary insurance and pay the premium for periods of one year at a time and the Licensees must pay to Ladysmith as additional licence fees the amount of the premium immediately on demand.
- 8.4 If both Ladysmith and the Licensees have claims to be indemnified under any insurance required by this Agreement, the indemnity must be applied first to the

settlement of the claim of Ladysmith, and the balance, if any, to the settlement of the claim of the Licensees.

- 8.5 The Licensees must provide Ladysmith with evidence of the insurance in accordance with section 8.1, on the form attached as Schedule “B” to this Agreement.

9.0 INDEMNIFICATION AND RELEASE

- 9.1 The Licensees agree to release and save harmless Ladysmith, its elected and appointed officials, agents and contractors from and against all manner of liability, actions, causes of action, demands, damages, losses, costs or expenses (including legal costs on a solicitor-client basis) for property damage, personal injury, including severe bodily injury or death, arising from the use or occupation of the Licence Area by the Licensees, except to the extent attributable to the negligence or wilful misconduct of Ladysmith, its employees, elected and appointed officials, agents or contractors.

- 9.2 The Licensees agree to indemnify Ladysmith from and against all claims of actions, causes of action, expenses (including legal costs on a solicitor-client basis), damages, loss, including severe bodily injury or death, suffered by any person, including members of the general public, arising from the use of the Licence Area by the Licensees, except to the extent attributable to the negligence or wilful misconduct of Ladysmith, its employees, elected or appointed officials, agents or contractors.

- 9.3 Sections 5.2, 9.1 and 9.2 shall survive any termination of this Agreement.

10. NOTICE

- 10.1 Any required notice may be given by delivering the notice in writing to the address first written above or such other address as the parties may provide in writing from time to time.

11. INTERPRETATION

- 11.1 When the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require.

- 11.2 The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

- 11.4 A provision in this Agreement granting Ladysmith a right of approval must be interpreted as granting a free and unrestricted right to be exercised by Ladysmith in its discretion, except where the provision specifies that Ladysmith act reasonably in exercising such discretion.

12 MISCELLANEOUS

- 12.1 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 12.2 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 12.3 This is the entire agreement between the parties.
- 12.4 Waiver of any default by a party is not a waiver of any subsequent default.
- 12.5 This Agreement grants no interest in land in the Encroachment Area to the Owners.
- 12.6 Time is of the essence of this Agreement.
- 12.7 It is mutually understood, acknowledged and agreed by the parties that Ladysmith has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Licensees other than those contained in this Agreement.
- 12.8 If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

TOWN OF LADYSMITH, by its authorized)
signatories)

_____))
Name:)

_____))
Name:)

TO BE USED WHEN LICENSEE IS A)
CORPORATION)
TEMPERANCE GROUP INVESTMENTS LTD.)
INC.NO. BC1259037, by its authorized)
signatories)

_____))
Name:)

_____))
Name:)

SCHEDULE A – Licence Area



SCHEDULE B – Certificate of Insurance

**TOWN OF LADYSMITH
CERTIFICATE OF INSURANCE
FOR ENCROACHMENT AGREEMENT**

INSURED

NAME:
ADDRESS:

AUTHORIZED REPRESENTATIVE OF THE INSURER

NAME:		CONTACT:	
ADDRESS:			
EMAIL:		PHONE # () -	FAX # () -

ENCROACHMENT LOCATION: _____

This document certifies that the policy of insurance described below has been issued to the insured(s) named above arising from the insured(s)' activities at the encroachment location and is in full force and effect.

TYPE OF INSURANCE	COMPANY AND POLICY NUMBER	POLICY DATES		LIMITS OF LIABILITY/AMOUNTS
		EFFECTIVE YEAR/MM/DD	EXPIRY YEAR/MM/DD	
Commercial General Liability including: <ul style="list-style-type: none"> premises and operations liability products or completed operations liability blanket contractual liability cross liability occurrence property damage host liability contingent employers' liability personal injury liability with extension to non-owned licensed vehicles 				Bodily Injury & Property Damage \$ Inclusive \$ Aggregate \$ Deductible
<p>The insurance includes the TOWN OF LADYSMITH as an ADDITIONAL INSURED, but not as additional named insured. In addition to this certificate, you may be required to provide a copy of the declaration page and policy wordings.</p> <p>The policy states that it will not be canceled or amended without thirty (30) days written notice to the TOWN OF LADYSMITH.</p> <p>The policy provides coverage to the TOWN OF LADYSMITH, its officers, officials, employees and volunteers, but only in respect to legal liability of the named insured.</p>				

Authorized to Sign on Behalf of Insurers

Date _____

Print or Type Name



MINUTES

Community Planning Advisory Committee

Wednesday, August 4, 2021 at 7:00 p.m.
via Zoom

PRESENT: Chair – Jason Harrison; Members – Abbas Farahbakhsh, Jason Robertson, Jennifer Sibbald, Steve Frankel, Tamara Hutchinson; Council Liaison – Tricia McKay; Senior Planner & Recorder – Christina Hovey;

ABSENT: Member – Brian Childs;

GUESTS: Applicants/Owners; Stefan Queitsch and Denise Berquist

The meeting was called to order at 7:04 p.m., acknowledging with gratitude that Ladysmith is located on the traditional unceded territories of the Stz'uminus People.

It was decided among the CPAC Members to change the order of the agenda so that the Introductions and Role of CPAC (5. a) be done before the Election of Chair (2).

1. INTRODUCTIONS AND ROLE OF CPAC

- Senior Planner Christina Hovey provided a brief overview of the Community Planning Advisory Committee Terms of Reference (provided in the CPAC binder and available on the Town's website).
- Council Liaison Councillor Tricia McKay explained the role of CPAC in advising Council, and her personal effort to ensure CPAC has a strong voice at the Council Table. Councillor McKay provided an overview of some the materials available to CPAC to help them review applications including the Council Strategic Plan, Official Community Plan, and Development Permit Area Guidelines (all provided in the CPAC binder and available on the Town's website).
- Member Introductions (roundtable).

2. ELECTION OF CHAIR

Jason Harrison was nominated to act as Chair of the Committee.

It was moved, seconded and carried that Jason Harrison be acclaimed as Chair of the Community Planning Advisory Committee.

3. AGENDA APPROVAL

It was moved, seconded and carried that the Agenda of August 4, 2021 be approved as amended.

4. ADOPTION OF MINUTES

It was moved, seconded and carried that the Minutes of June 2, 2021 be approved.

5. NEW BUSINESS

a. CPAC Binder Review

Senior Planner Christina Hovey provided a brief overview of the contents of the CPAC member binders. A new section has been added which includes resolution templates and some references for meeting procedures/best practices.



6. COUNCIL REFERRALS

a. Facade Development Permit application 3060-21-13 – 32 High Street

Applicants/Owners; Stefan Queitsch and Denise Berquist provided an overview of their plans for the building including structural upgrades to the foundation and interior renovations as well as the façade upgrade which is the subject of the development permit application. They explained that the paint colour they selected was found on old materials that had been covered through previous construction. They have been working with the historical society to learn about the history of the building and access old photos of the building. The applicants are not sure yet what they will do with the awnings on High Street, but they will come back in for another development permit when they decide.

Committee members spoke positively about the proposal and were supportive of the plans to improve this prominent heritage building. Committee members spoke positively about the paint colours and windows selected. The Committee discussed the door choices and there was some debate about whether it would be possible to find something else that would look more historic, but still match the building. Members noted that contemporary doors and windows would have energy efficiency benefits and that painting the doors and selecting heritage style hardware would positively impact the appearance of the doors.

It was moved, seconded, and carried that CPAC recommend:

- that DP 3060-21-13 (32 High Street) be approved; and
- that the applicant choose heritage style hardware for the doors.

7. MONTHLY BRIEFING

File Updates:

The following files that CPAC previously reviewed have been to Council since the last meeting:

- 1130 Rocky Creek Road (File No. 3360-20-02);
- 940 Esplanade Avenue (File No. 3360-21-02, and bylaw enforcement file);
- 10864 Westdowne Road (File No. 3360-20-08); and
- 336 Belaire Street (File No. 3360-20-09/3060-21-06).

CPAC members can review the Council Agendas and Minutes or call staff for further information.

8. NEXT MEETING – September 1, 2021 (via Zoom)

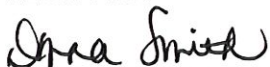
9. ADJOURNMENT

The meeting was adjourned at 8:12 p.m.


Jason Harrison (Sep 3, 2021 10:37 PDT)

Chair (J. Harrison)

RECEIVED:



Corporate Officer (D. Smith)

STAFF REPORT TO COUNCIL

Report Prepared By: Ryan Bouma, Sr. Engineering Technologist
Reviewed By: Geoff Goodall, Director of Infrastructure Services
Meeting Date: October 5, 2021
File No:
Re: **Stocking Lake Meter Valve Construction Project Budget**

RECOMMENDATION:

That Council:

1. Increase the budget for the Stocking Lake Meter Valve Construction project by \$44,000, with the funds coming from the Water Reserve; and
2. Amend the 2021 to 2025 Financial Plan accordingly.

EXECUTIVE SUMMARY:

The Stocking Lake meter valve construction project was approved in the 2020 Capital Plan. The project has been delayed due to complications with providing power to the site to operate the meter and lake level indicator. This issue has now been resolved and the project was tendered in August 2021. The low bid received (\$189,903) exceeded the current budget of \$176,000. Staff are requesting that Council increase the budget by \$44,000 to cover the cost of the low bid as well as engineering and SCADA programming to complete construction services.

PREVIOUS COUNCIL DIRECTION:

N/A

INTRODUCTION/BACKGROUND:

The project involves the installation of a meter at the valve building located just downstream of the Stocking Lake Dam. Currently water consumption for the Stocking Lake system is recorded on a meter located at the Water Filtration Plant (WFP). The water supply main that delivers water to the WFP from Stocking Lake has had a number of leaks in the last 10 years and due to its remoteness some of these leaks go unnoticed for extended periods. The installation of the water meter will help mitigate this issue as it will be able to compare flows just below the dam to those entering the WFP. In addition to the meter, a pressure transducer will also be installed at the valve building which will enable remote lake level reading.

The Stocking Lake Meter construction project was included in the Capital Plan in 2020. The engineering of the project moved forward, but the construction was delayed while staff and the consultant investigated power options for the system, as there is now hydro at the site. Staff have confirmed a power system which will comprise a fuel cell and solar system. The project

was tendered in August 2021. The construction budget for the project was \$176,000 and the low bid received was \$189,903. Staff are requesting that Council increase the budget by \$44,000 to cover the cost of the low bid as well as costs associated with engineering construction services and SCADA programming.

ALTERNATIVES:

Council can choose to:

1. Reject the recommendation and staff would postpone the project for a future budget.

FINANCIAL IMPLICATIONS:

The construction budget for the project is \$176,000. In order to cover the cost of the tender (\$189,903) and further costs for construction services, an additional \$44,000 is required. These funds will be taken from the Water Reserve.

LEGAL IMPLICATIONS:

N/A

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

N/A

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

The CVRD is a part owner in the dam and lake reservoir, but the supply main is 100% owned by the Town of Ladysmith.

ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:

- | | |
|---|--|
| <input type="checkbox"/> Complete Community Land Use | <input type="checkbox"/> Low Impact Transportation |
| <input type="checkbox"/> Green Buildings | <input type="checkbox"/> Multi-Use Landscapes |
| <input checked="" type="checkbox"/> Innovative Infrastructure | <input type="checkbox"/> Local Food Systems |
| <input type="checkbox"/> Healthy Community | <input type="checkbox"/> Local, Diverse Economy |
| <input type="checkbox"/> Not Applicable | |

ALIGNMENT WITH STRATEGIC PRIORITIES:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Infrastructure | <input type="checkbox"/> Economy |
| <input type="checkbox"/> Community | <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Waterfront | |

I approve the report and recommendations.

Allison McCarrick, Chief Administrative Officer

STAFF REPORT TO COUNCIL

Report Prepared By: Ryan Bouma, Sr. Engineering Technologist
Reviewed By: Geoff Goodall, Director of Infrastructure Services
Meeting Date: October 5, 2021
File No: 5530-20-04
Re: Stocking Lake Dam Remediation Selection

RECOMMENDATION:

That Council:

1. Select Option 2 as the preferred option, outlined in the "Stocking Lake Remediation Conceptual Design" report dated August 2021 as prepared by Ecora;
2. Direct staff to instruct Ecora to complete the preliminary design of Option 2 as outlined in the scope of work for the project; and
3. Instruct staff to investigate funding opportunities that may be available to facilitate the next phase of the project, design and construction.

EXECUTIVE SUMMARY:

The Town applied funding from the Community Emergency Preparedness Fund to complete a study to determine appropriate remediation/replacement options for the Stocking Lake Dam. This dam is jointly owned by the Town and the CVRD. This funding application followed a previous Dam Safety Review and Risk Assessment of the Stocking Lake Dam completed by Ecora in November 2018, which identified several deficiencies with the dam.

The scope for this project was developed jointly between Town and CVRD staff. The work program required that the consultant complete detailed site investigations of the condition of the existing dam and then develop remediation/replacement options with a recommended option for review by both the Town and CVRD. Staff of both the CVRD and Town have now reviewed the recommended Option 2 "New Downstream Dam" and concur with the recommendation.

Staff are now seeking Council's direction to approve this option so that the consultant can move forward with the last part of the project, completing the preliminary design of the selected option.

PREVIOUS COUNCIL DIRECTION:

Resolution	Meeting Date	Resolution Details
CS 2019-315	10/07/2019	That Council: 1. Enter into an Interim Management and Co-Licencees Agreement with the Cowichan Valley Regional District for the Stocking Lake Dam describing the interests in the lands, responsibilities, and cost sharing as an interim step until such time as a joint works agreement can be formalized; and

Resolution	Meeting Date	Resolution Details
		2. Direct staff to submit a grant application to the Community Emergency Preparedness Fund (CEPF) Structural Mitigation Sub-stream for the jointly owned and operated Stocking Lake Dam Rehabilitation or Replacement Project.

INTRODUCTION/BACKGROUND:

A previous Dam Safety Review and Risk Assessment of the Stocking Lake Dam completed by Ecora in November 2018 identified several deficiencies with the dam. In the event of a dam failure there is a “high” risk of environmental damage, loss of life, and loss of infrastructure and economy. The existing dam was found to not meet the Provincial dam safety requirements, and remediation or replacement of the dam was recommended.

Ecora’s August 2021 report (an abbreviated version of the report is included as Attachment A) provides three options to bring the dam up to current safety standards, including:

1. Remediate the existing dam – The dam would be widened and a new intake pipe would be installed. Other improvements would be made to the spillway and intake to bring the existing dam into compliance.
2. Create a new downstream dam – Rather than remediate what is there, an entirely new dam could be constructed downstream of the existing dam. The dam would be constructed prior to removing the existing dam.
3. Create a new dam in the existing location – The old dam would be removed and replaced entirely with new materials and intake pipe. The construction of the new dam would be similar to Option 2, but would cost approximately \$400,000 more.

The attached abbreviated version of the Ecora report provides detailed descriptions and evaluations of each option. The report recommends proceeding with Option 2 for its long term performance, quality control, and lower construction risk. Additionally, the new dam would be able to provide additional reservoir storage with a lower intake pipe (approximately 100,000m³ or 2 weeks of summer water consumption). Options 1 and 3 do not benefit from additional storage unless the dam is raised.

Staff agree with the findings of the Ecora report and ask that Council authorize Option 2 so that Ecora can proceed with the conceptual design of the dam.

ALTERNATIVES:

Council can choose to:

1. Direct staff to proceed with Option 1, to remediate the existing dam.
2. Direct staff to proceed with Option 3, to create a new dam at the existing dam location.

FINANCIAL IMPLICATIONS:

The current option evaluation and conceptual design work being done by Ecora is funded in part by the Town of Ladysmith, the CVRD and grant funding.

Additional detailed design will be required after the conceptual design is complete. Detailed design is anticipated to cost more than \$100,000. Ecora estimates that construction of the dam to be between \$1.5 and \$2.1 million. Town and CVRD staff would look for grant opportunities to fund the project.

This project represents a major capital works expenditure relative to other capital projects. The CVRD is a part owner in the dam and is therefore able to equally contribute to all the costs.

LEGAL IMPLICATIONS:

N/A

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

The existing dam site is a local attraction for hikers and connects part of the Stocking Lake trail system. Hiking would be prohibited in the area during construction and the trail system would be permanently altered to work with the new dam configuration. The trail may not be able to cross the new dam and alternative routes would need to be found and constructed.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

N/A

ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:

- | | |
|---|--|
| <input type="checkbox"/> Complete Community Land Use | <input type="checkbox"/> Low Impact Transportation |
| <input type="checkbox"/> Green Buildings | <input type="checkbox"/> Multi-Use Landscapes |
| <input checked="" type="checkbox"/> Innovative Infrastructure | <input type="checkbox"/> Local Food Systems |
| <input checked="" type="checkbox"/> Healthy Community | <input type="checkbox"/> Local, Diverse Economy |
| <input type="checkbox"/> Not Applicable | |

ALIGNMENT WITH STRATEGIC PRIORITIES:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Infrastructure | <input type="checkbox"/> Economy |
| <input type="checkbox"/> Community | <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Waterfront | |

I approve the report and recommendations.

Allison McCarrick, Chief Administrative Officer

ATTACHMENT:

A. Stocking Lake Dam Remediation Conceptual Design – abbreviated version of Ecora Report

ATTACHMENT A



Stocking Lake Dam Remediation Conceptual Design

Presented To:



Dated:

August 2021

Ecora File No.:

201830

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Presented To:

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Prepared by:



2021-08-27

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Date

ECORA ENGINEERING & RESOURCE GROUP LTD.
ENGINEERS AND GEOSCIENTISTS OF BRITISH COLUMBIA
PERMIT TO PRACTICE #1001040
Reviewed & Approved by:



2021-08-27

Michael J. Laws, P.Eng.
Senior Geotechnical & Dam Safety
Engineer
email@ecora.ca

Date

Version Control and Revision History

Version	Date	Prepared By	Reviewed By	Approved By	Notes/Revisions
0	August 27, 2021	AJK	MJL	MJL	Issued for Use

Limitations of Report

This report and its contents are intended for the sole use of the Town of Ladysmith, their agents, and the applicable regulatory authorities. Ecora Engineering & Resource Group Ltd. (Ecora) does not accept any responsibility for the accuracy of any data, analyses, or recommendations contained or referenced in the report when the report is used or relied upon by any Party other than the Town of Ladysmith, their agents, the applicable regulatory authorities, or for any Project other than that described in this report. Any such unauthorized use of this report is at the sole risk of the user.

Where Ecora submits both electronic file and hard copy versions of reports, drawings, and other project-related documents, only the signed and/or sealed versions shall be considered final and legally binding. The original signed and/or sealed version archived by Ecora shall be deemed to be the original for the Project. Both electronic file and hard copy versions of Ecora's deliverables shall not, under any circumstances, no matter who owns or uses them, be altered by any party except Ecora.

Ecora's General Conditions are provided in Appendix A of this report.

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Appendix Sections

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Figure 3.2 Stocking Lake Bathymetry

Appendices

Appendix A	General Conditions
Appendix B	Stocking Lake Dam Invasive Investigation Report (Ecora, 2021)
Appendix C	Stocking Lake Dam Upgrades – Environmental Assessment (Ecora, 2021)
Appendix D	Stocking Lake Dam Upgrades – Conceptual Design Drawings

1. Introduction

Ecora Engineering & Resource Group Ltd. (Ecora) was retained by The Town of Ladysmith (the Town) to provide engineering services in support of preliminary design of remediation work to the Stocking Lake Dam (Dam File #D720127-00).

The following report summarizes the site investigations performed to support this design assignment, provides conceptual design options, and corresponding budgetary cost estimates for upgrading Stocking Lake Dam to comply with the BC Dam Regulations (BC Reg 40/2016) and the 2007 CDA Dam Safety Guidelines (2013 Edition).

The report concludes with a Multiple Account Evaluation (MAE) of each design option and provides a recommendation on a preferred option.

2. Background

The engineering analyses performed for the Dam Safety Review and Risk Assessment of Stocking Lake Dam (Ecora, 2018) identified several major deficiencies in Stocking Lake Dam. That report identified the following key areas of interest:

- Saturated soils above the low-level outlet (LLO) pipe suggest the LLO is providing a preferential seepage path through the dam and that seepage is actively occurring;
- Seepage was observed exiting the downstream face of the dam near the right abutment; and
- Liquefaction of the soils beneath the downstream toe during various design earthquakes would cause post-seismic deformations large enough to cause overall failure of the dam.

The fact that the existing dam embankment appears to be homogeneous in composition, based on historic site investigations, coupled with the evidence of active seepage through the embankment and spillway outlet channel side wall adjacent to the right abutment of the dam, puts the dam at a high risk of an internal erosion (piping) failure. A probabilistic piping risk assessment was conducted using the UNSW method, which resulted in a calculated probability of piping failure of 1.4×10^{-2} (1 in 70 years). The post-seismic liquefaction analysis concluded that as a result of the 1 in 2475-year seismic event (which is the design event based on a "High" consequences classification), the embankment is estimated to lose between 3.71 m to 3.90 m of freeboard. This loss of freeboard would result in a complete dam failure. In addition, as part of this design assignment, The Town had requested Ecora to investigate the option of increasing the reservoir capacity by raising the dam and spillway sill elevation.

3. Site Investigation

3.1 Geotechnical Investigation

A geotechnical invasive investigation was performed at the dam site on March 9 and March 10, 2021. The investigation comprised of the advancement of one sonically drilled borehole and two hand-augers.

The purpose of the investigation was to supplement previous investigations to gain a greater understanding of the sub-surface stratigraphy and assist with the development of design solutions. Complete details of the geotechnical investigation can be found in Appendix B.

3.2 Topographic/Bathymetric Survey

A supplemental topographic and partial bathymetric survey of the Stocking Lake Dam site and Stocking Lake was performed by Turner & Associates Land Surveying (Turner) between March 24, 2021 and April 15, 2021. The purpose of the topographic survey was to expand upon previous survey data to include a larger area around the existing dam site and potential new dam site downstream of the existing. In addition, several areas of exposed bedrock east of the dam were surveyed to assist in the mapping of the bedrock profile at the site.

A partial bathymetric survey of Stocking Lake was completed to provide geodetic reference for a historic bathymetric map created by the Province in 1982. The bathymetric information collected by Turner was used as a base to overlay the hand drawn bathymetric map for the purposes of digitizing the data. The correlations between the current and historic data was very good and as such we have a high level of confidence in the accuracy of the historic digitized bathymetric map of Stocking Lake. Figure 3.2 illustrates the bathymetric contours for Stocking Lake.

3.3 Environmental Assessment

An environmental assessment of the dam site and the shoreline surrounding Stocking Lake was performed by Ecora on March 15, 2021. The standalone report documenting the assessment is attached at Appendix C.

4. Remediation Conceptual Design

4.1 General

The following sections explore several options for addressing the deficiencies with Stocking Lake Dam. Each of these options require the lake to be drawn down to at least the upstream invert of the low-level outlet pipe. This will allow the repair or replacement of the pipe.

In addition, each option contains works to re-grade the right bank of the spillway channel, downstream of the existing dam. During the site investigation, the slope was identified as showing signs of instability and it is recommended that this slope be regraded to a maximum of 2.0H:1.0V to mitigate future slope stability issues and prevent sloughing of the bank material which could block the spillway channel.

All options have been conceptually designed with the current dam crest and spillway sill elevations. Increasing the reservoir capacity by raising the dam and spillway sill does not add a significant amount of complexity to the design however will increase material costs. To quantify this, we have assumed a dam raise of 0.6 m which would result in a reservoir storage increase of approximately 150,000 m³. The costs associated with this are presented in Section 5.

4.2 Option 1: Remediate Existing Dam

4.2.1 General

This option would involve the replacement of the majority of the low-level outlet, installation of an inclined control gate at the upstream end of the LLO, excavation and removal of the downstream half of the existing embankment, construction of an extension of the embankment on the downstream side consisting of coarse rock fill with a granular filter/drain at the interface between the old dam and the extension, and the construction of a 55 m reinforced concrete spillway chute to address the historic performance issues of the spillway outlet channel.

Prior to construction of option 1, Stocking Lake would need to be drawn down to an elevation 1.5m to 2.0m below the upstream invert of the existing LLO pipe to allow for construction of the works associated with the LLO. This would involve pumping or siphoning water around the dam for discharge downstream of the limits of construction. A small cofferdam may be required to isolate the worksite while constructing the LLO control gate and new intake structure. Drawing G1.1 in Appendix D illustrates this option.

4.2.2 Low-Level Outlet Remediation

Seepage along the LLO is suspected to be occurring and is likely to be caused by either differential settlement between concrete pipe segments causing separation of the pipe sections and/or seepage through permeable pipe backfill material. Segmental concrete pipe is no longer recommended as LLO pipe material as it has poor performance when subjected to seismic events such as joint slippage and settlement.

This remediation option proposes to slipline approximately 35 m of the existing concrete pipe that passes through the upstream portion of the existing embankment with a smaller diameter (350mm – 400mm) continuous HDPE pipe. This would mitigate the leaks that are currently suspected in the existing pipe. Prior to these works, the downstream portion of the embankment would be excavated down to bedrock/competent soils. This would allow access to the pipe and allow for slipline operations.

The remainder of the 450mm concrete pipe, in its entirety downstream of the slipline, would be replaced with a 350mm – 400mm HDPE. It is envisioned that this pipe would be welded to the slipline section to provide a contiguous pipe section for its entire length.

The outlet pipe would be controlled by an inclined canal gate located at the upstream toe of the dam where the existing LLO intake is. The canal gate would have a valve stem that would match the slope of the upstream face of the dam and terminate with a hand-wheel at the dam crest. A reinforced concrete footing would be poured to support the valve stem and a galvanized steel cage or similar is proposed to protect the stem from ice and debris damage.

4.2.3 Downstream Dam Extension

It was identified in the 2018 DSR that a zone of the foundation underlying the downstream toe of the existing dam would liquefy during the design earthquake. This liquefaction would result in a significant loss of freeboard and ultimately the complete failure of the embankment. To mitigate this, we are proposing to excavate the downstream portion of the dam to competent, non-liquefiable material and construct a rockfill extension to the embankment on the downstream side. This dam extension would act as a buttress to stabilize the remaining original embankment material and improve its response to the design seismic event.

As the rockfill is not impermeable and to mitigate the potential for piping of the original dam material, a granular filter layer and drain would need to be constructed between the existing embankment material and the extension. This would serve to intercept any potential transport of fine granular material from the existing embankment due to seepage.

4.2.4 Spillway

It is suspected that seepage is occurring through the underlying material of the existing spillway channel, near the right abutment of the existing dam embankment. To mitigate this seepage and to contain the spillway flows within the channel, we are proposing the construction of a rectangular reinforced concrete spillway chute along the upstream 55 m of the existing spillway channel alignment. The 55 m length of the spillway chute is required to ensure spillway flows are safely conveyed beyond the downstream face of the proposed dam structure. In addition, the right bank of the spillway channel will be re-graded to mitigate future instability of the slope.

This concrete chute would be 4.0 m wide with walls 1.3 m high and be founded on undisturbed competent native soil (till). Due to the grade of the chute, ~8%, concrete baffles would need to be installed at the downstream end of the chute to dissipate flow energy and reduce flow velocities as they exit the chute. For 20 m downstream of the chute, a riprap lined channel would be constructed to further reduce flow velocities and mitigate potential erosion of the channel.

4.3 Option 2: New Downstream Dam

4.3.1 General

For this option we are proposing the construction of a new dam, approximately 30 m downstream of the existing dam. This location was selected as it has the narrowest cross section of the downstream channel and therefore would minimize the amount of material required to construct the dam.

The new dam would be comprised of a sheet pile cut-off wall along the centreline of the dam supported by rockfill on the upstream and downstream slopes. The LLO would pass through the base of the dam, along the historic creek centreline. A reinforced concrete spillway control structure would be constructed at the right abutment. See Appendix D, drawing G1.2 for a graphical representation of this option.

4.3.2 Dam Structure

The sheet pile system we are proposing would consist of fiberglass reinforced polymer (FRP) sheet piles set in a reinforced concrete footing. Ecora has chosen FRP sheet piles instead of steel sheet piles due to their natural corrosion resistance, longer service life, lower unit costs, and lower weight.

The left half of the new dam foundation is bedrock and the right half is till, therefore due to this variable foundation condition, traditional pile driving techniques cannot be employed. Ecora is proposing that a concrete footing be constructed for the sheet piles to be founded in.

The rockfill on either side of the sheet pile core would consist of two zones; a fine rock fill directly in contact with the piles and a coarse rock fill for the rest. These rock ramps would stabilize the sheet pile core and protect it from damage.

4.3.3 Low-Level Outlet

A new LLO pipe is proposed to pass through the dam at the concrete footing level along the centerline of the historic outlet channel. Since the LLO intake would be downstream of the existing intake, the invert elevation would be approximately 0.8 m lower than the current one. This would add ~100,000 m³ to the available live storage of the reservoir. Depending on future reservoir release needs, the LLO pipe could be sized larger than the existing 450 mm pipe.

The LLO would be controlled using a vertical canal gate placed inside a reinforced concrete gatewell upstream of the new dam structure with a hand-operated wheel accessible from the top of the structure. The gatewell would protect the control gate and would be accessed via a catwalk from the dam's crest. Ecora is proposing that the upstream face of the gatewell be open with removable sectional steel grating that would act as debris screen and allow for easy diver access for gate maintenance.

4.3.4 Spillway

The spillway control structure is proposed to be a drop structure with a downstream stilling basin and be constructed of reinforced concrete. The spillway control structure would be placed at the dam's right abutment and founded on undisturbed competent native soils (till). An ogee spillway structure was considered as the control section however the design flows were not of such a magnitude to justify the additional concrete that would be required to construct an ogee structure.

The stilling basin would consist of a plunge pool and end sill to dissipate the flow energy and force a hydraulic jump, returning the flow regime to sub-critical. This would help mitigate potential erosion of the spillway channel downstream of the spillway structure. To further reduce flow velocities and protect the downstream spillway channel, riprap would be placed on the channel bottom and banks for approximately 20 m downstream of the structure.

4.4 Option 3: New Dam at Existing Location

4.4.1 General

Ecora also explored the concept of constructing a new dam at the location of the existing dam. The dam design included the same sheet pile/rockfill concept as option 2 with a concrete drop structure spillway on the right abutment and similar LLO configuration. A concrete spillway channel would have to be constructed downstream of the spillway control structure to convey flows past the downstream face of the dam.

The materials required for the sheet pile core are similar in quantity to option 2 however the excavation and rockfill quantities would be greater. For safe isolation of the worksite, this option would require a coffer dam be installed upstream of the existing embankment to ensure any incoming flows into the reservoir are contained.

4.5 Other Options Considered

Ecora explored several other options at the outset of this design assignment. These options included:

- **Concrete Gravity Dam.** This option was excluded primarily due to the combined foundation conditions (bedrock/till). Concrete gravity dams are not recommended to be installed on such foundations. Also, a significant increase in the volume of concrete would be required and that would have dramatically increased the construction costs.
- **Zoned Embankment Dam.** Ecora considered replacing the existing homogeneous embankment with a zoned earth fill embankment. This option was excluded primarily due to the size (width) of a structure, relative to the height, that would be required for a proper zoned embankment. In addition, similar constraints exist for constructing at the existing dam location as option 3 in regard to the excavation and fill quantities as well as the requirement of a temporary coffer dam.
- **Ogee Spillway Control Structure.** Ogee style spillway control structures are more hydraulically efficient than straight drop structures and therefore have a greater flow capacity. However, the construction of an ogee structure requires considerably more concrete than a straight drop structure. The design flow rates are not of a sufficient magnitude to warrant the additional cost of constructing an ogee structure.
- **Overshot Spillway Gate.** An overshot spillway gate can be implemented to temporarily increase the storage capacity of a reservoir by raising the spillway control sill elevation. This is

done by mechanically raising a steel gate on the spillway sill. The benefit of this type of system allows for lower material costs (concrete) for the main spillway structure and allows for variable reservoir storage volumes. The primary disadvantage and the justification for this type of system not being presented is the maintenance of the gate. These gates are prone to mechanical failure due to degradation of the lifting mechanism or gate misalignment. They require routine maintenance to function as intended. We do not believe benefits of this type of system for Stocking Lake Dam outweigh the additional maintenance requirements, in this case.

5. Risk Assessment

As part of Ecora's 2018 Dam Safety Review, a NDMP Risk Assessment Information Template was completed for the existing Stocking Lake Dam. The conclusion of this risk assessment was that the primary risk event was a breach of Stocking Lake Dam due to internal (piping) erosion caused by a 1 in 70-year event. This was due to the susceptibility of the existing homogenous dam embankment to a piping failure. The next governing risk event was a seismic event greater than 1 in 100-years but less than 1 in 500-years. This was attributed to a liquifiable layer of soil beneath the downstream half of the dam.

The return periods for the piping failure modes presented were determined using the method developed by Foster et al., *A method for assessing the relative likelihood of failure of embankment dams by piping* (Foster et al, 2000).

Options 2 and 3 present the construction of a new rock fill embankment dam with a sheet pile water retention element. These types of embankments are not susceptible to piping failures however piping could occur through the foundation. The estimated return period for such an event is greater than 1 in 3000-years.

Option 1 is designed with a filter layer on the downstream face designed to intercept any transportation of fines and mitigate potential piping. This is estimated to reduce the probability of failure to a risk event with a return period of greater than 1 in 1000-years.

All design options presented in this report are intended to be designed to meet the minimum design standards set out by the BC Dam Safety Regulations (BC Reg. 40/16) and the 2007 CDA Dam Safety Guidelines (2013 Edition). Given that the Stocking Lake Dam is assigned a consequences classification of "High", the governing minimum design event is the 1 in 2475-year seismic event. Note that this is the minimum design standard and all options will be designed to this criteria.

Table 5.1 summarizes the primary risk events for the various design options and the estimated probability of failure.

Table 5.1 Risk Assessment Summary for Design Options

Design Option	Piping Failure	Seismic Failure
Option 1	> 1 in 1000 years	> 1 in 2475 years
Option 2	> 1 in 3000 years	> 1 in 2475 years
Option 3	> 1 in 3000 years	> 1 in 2475 years

6. Budgetary Cost Estimate

The following tables below provide a budgetary, high-level construction cost estimate for the proposed dam remediation options as presented in the preceding sections. The range of values shown are intended to capture the variability of material costs and the risks associated with estimating construction costs at this stage in design.

These estimates are based on a range of current (2021) unit rates and are intended to reflect anticipated contractor bid prices. Quantities used in the calculation of these estimates were determined using AutoCAD Civil 3D models based on topographical survey data.

6.1 Option 1: Remediate Existing

Table 6.1 summarizes the estimated costs associated with the option of remediating the existing dam.

Table 6.1 Budgetary Cost Estimate for Option 1

Task	Estimated Cost
Mob/De-Mob, Traffic Control, Safety, De-watering	\$160,000.00 - \$220,000.00
Earthworks (excavation, rock fill, etc.)	\$490,000.00 – \$710,000.00
Low-level outlet modifications (Includes pipe, gate, concrete, etc)	\$130,000.00 - \$163,000.00
Spillway (concrete, bridge, etc.)	\$450,000.00 – \$555,000.00
Total	\$1,230,000.00 - \$1,650,000.00

The estimated cost for the remediating the existing dam is between \$1.23M and \$1.65M. These costs reflect keeping the dam and spillway sill at the current elevations. Raising the dam and spillway to by 0.6 m to increase the live storage capacity of the reservoir would add approximately ~8% to those costs, \$1.33M to \$1.78M.

6.2 Option 2: New Downstream Dam

Table 6.2 summarizes the costs associated with constructing a new downstream dam.

Table 6.2 Budgetary Cost Estimate for Option 2

Task	Estimated Cost
Mob/de-mob, safety	\$145,000.00 - \$200,000.00
Sheetpile element, incl. footing, and wing walls	\$524,000.00 - \$635,000.00
Earthworks (excavation, fill), incl. dam breach	\$496,000.00 - \$830,000.00
Spillway works	\$220,000.00 - \$273,000.00
Low-level outlet works	\$135,000.00 - \$175,000.00
Total	\$1,520,000.00 - \$2,113,000.00

The estimated cost for the construction of a new dam downstream is between \$1.52M and \$2.11M. This cost is for constructing the dam with the current dam and spillway sill elevations. To increase the reservoir capacity by 0.6 m, the estimated costs increase to approximately \$1.67M to \$2.33M.

6.3 Option 3: Construct New Dam at Existing Location

The geometry of the sheet pile core at this location is comparable to option 2, with an increase in the amount of rock fill required and an increase in the concrete volume required to extend the concrete portion of the spillway. This extension is necessary to ensure the flows are contained within spillway. Excavation volume would be greater as the entire existing embankment would need to be removed.

Constructing a new dam at the existing location would also require the construction of a cofferdam upstream of the toe of the existing dam. This would be necessary to ensure the worksite is isolated from the reservoir during construction. Depending on the type of cofferdam, this would add \$300,000 - \$500,000 to the total cost of construction.

The estimated construction costs for this option are between \$2.10M to \$2.90M to construct a dam that maintains the current reservoir capacity and \$2.27M to \$3.13M for increased reservoir capacity.

7. Options Evaluation

7.1 General

The following sections discuss the presented dam remediation options for Stocking Lake Dam as they relate to the following six weighted multiple account evaluation criteria:

- Constructability (15%);
- Long term performance (20%);
- Quality control (10%);
- Capital Cost (30%);
- Environmental Impact (10%); and
- Construction Risk (15%)

These six evaluation criteria were chosen to justify Ecora's recommended remediation option and we believe they represent the primary areas of consideration for deciding which remediation option to proceed with.

Each dam option is scored based on the above criteria using a scoring scale from 1 to 5. A score of 1 represents least favourable (highest cost, least constructable, etc) while a score of 5 represents most favourable (least cost, most constructable, etc).

The scores are tabulated, weighted, and presented in evaluation matrix at the end of this section. Based on the score outcome, Ecora will provide a recommendation for which option to proceed to preliminary design.

7.2 Constructability

The constructability criteria takes into account the complexity of construction, material availability, and dewatering requirements. A rank of 1 is the most complex and a rank of 5 is the least complex.

Option 1: Remediate Existing Dam

Remediating the existing dam, as presented in section 4.2, would likely be the least complex of the options due to not having to construct a new dam core. Complexity still exists however with the slipline operation, construction of the spillway chute, and construction of the granular filter/drain. Material availability is slightly more favourable for this option as there are no sheet piles to be sourced.

The dewatering operations for the construction of this option would involve lowering the reservoir level below the invert of the existing LLO pipe to facilitate the slipline and construction of the new intake structure. In addition, a small cofferdam may need to be implemented during the construction of the new intake structure to ensure any inflows to the reservoir do not inundate the work zone. Continual pumping operations would likely need to be employed as the bottom of the excavation would be below the ground water table.

Overall, for constructability, we rank this option as a **3.5**.

Option 2: Construct New Dam Downstream

Construction of a new dam downstream of the existing will involve specialized construction techniques to build the sheet pile cut-off wall. Ecora has been in contact with a contractor that specializes in FRP sheet pile dam construction who has expressed interest in this project. In addition, the complexity of the concrete appurtenant structures is greater with this option than Option 1. Material availability is marginally less favourable than Option 1 due to the sheet piles.

The reservoir level would need to be drawn down to just below the invert of the existing LLO to facilitate the removal of the intake structure. Depending on the operational capability of the existing LLO control gate, this lake draw down may not need to be done prior to the planned dam breach. This way, a cofferdam would not be required as the existing embankment would act as a cofferdam during construction of the new dam. Once the dam is complete, the remaining portions of the old LLO and intake structure can be removed during the breach of the embankment.

This option had been given a constructability ranking of **3**.

Option 3: Construct New Dam Existing Location

The majority of the constructability concerns for this option are the same as Option 2. However, to facilitate the construction of a new dam in the same location of the existing, a substantial cofferdam would need to be constructed upstream of the existing embankment.

Due to this additional complexity, Option 3 has been given a ranking of **2**.

7.3 Long-Term Performance

This criteria considers the design life of the remediation option, capacity for future water needs, and seismic response of the dam system. A ranking of 1 would indicate poor performance while a rank of 5 would indicate superior performance.

Option 1: Remediate Existing Dam

The rockfill dam extension proposed in Option 1 is designed to prevent complete dam failure following the design seismic event however it would not prevent all damage. It is likely that repairs would have to be made to the embankment following such an event and it is possible that there could be a service disruption from a seismic event greater than 1 in 100-years but less than 1 in 500-years. This option also has a higher risk of piping failure over the other options.

By sliplining the existing LLO, potential leakage/seepage from the existing concrete pipe would be mitigated and the LLO would no longer be vulnerable during the design earthquake, however the smaller diameter pipe would

reduce the capacity of the low-level outlet. This would limit the attainable flow rate from the outlet which may impact the ability to meet water demands. It would also increase the time required to draw down the reservoir.

Accommodations for raising the dam and spillway sill to increase reservoir capacity are possible for this option. In this regard it is the same as the other options.

Given the post-seismic response, higher risk of piping failing over other options and reduced LLO capacity, this option has been assigned a rank of 2.

Option 2: Construct New Dam

Due to the relatively new use of FRP sheet piles in industry, there is no direct data on the service life of these piles. However, since the FRP material is inherently more resilient to environmental degradation than steel, it is predicted that FRP sheet piles have a longer service life than steel sheet piles. Steel sheet piles have a documented service life of 75-120 years depending on the thickness of the steel and the protective coating applied to the piles. This suggests that the FRP piles should have a service life of greater than 75 years.

The upstream and downstream rock ramps provide mass to the dam structure and therefore seismic stability to the system. The flexural capacity of the sheet pile wall will allow for temporary deflection during the seismic event while remaining serviceable. The reinforced concrete portions of the dam will be designed to withstand earthquake loading while remaining structurally sound.

Constructing a new dam will allow for increasing the size of the LLO pipe if desired. This would allow for an increase in the attainable flow rate and therefore be able to meet greater water demands in the future. The invert of the LLO intake would be lower than the existing LLO which would convert approximately 100,000 m³ of dead storage into usable live storage. In addition, this design can be easily modified to raise the elevation of the dam crest and spillway sill thus increasing the reservoir's live storage capacity.

The option of constructing a new dam downstream has been assigned a ranking of 5 for long term performance.

Option 3: Construct New Dam

Since Option 3 had the same long term performance characteristics as Option 2, it has been given a rank of 5 for this criteria.

7.4 Quality Control

Quality control represents the ability to ensure the quality of the materials used in construction are predictable and as specified. A ranking of 1 is the least control over quality while a 5 is associated with the most certainty of quality control.

Option 1: Remediate Existing Dam

The remediation option relies partially on the existing embankment material. Since the exact source of the material and construction techniques used are unknown for this material, Ecora cannot guarantee its performance. All other materials used the design can be verified prior to construction and the construction will be overseen by a qualified professional.

For quality control, this option receives a rank of 3.

Option 2: Construct New Dam Downstream

This option is constructed entirely of new material which that can be quality checked before construction and the construction techniques will be monitored during construction.

Option 2 has been assigned a rank of 4.5 for quality control.

Option 3: Construct New Dam Existing Location

Option 3 is similar to Option 2 and has been assigned a rank of 4.5.

7.5 Capital Cost

For the capital cost ranking, a value of 1 is associated with higher construction costs while a value of 5 is associated with lower construction costs.

Option 1: Remediate Existing Dam

As presented in Section 6.1, the estimated capital cost to construct this option is between \$1.23M and \$1.65M to keep the same reservoir capacity and \$1.33M to \$1.78M to increase the capacity. Since this is the cheapest cost of the three options, we assign a rank of 4.

Option 2: Construct New Dam Downstream

Referencing Section 6.2, the estimated capital cost of constructing a new dam downstream is between \$1.52M and \$2.11M for keeping the same dam crest and spillway control sill elevations, and \$1.67M to \$2.33M for increased capacity. We have assigned a rank of 3 for this option.

Option 3: Construct New Dam Existing Location

Referencing Section 6.3, the estimated capital cost of constructing a new dam at the existing dam location is \$2.10M to \$2.90M for the same reservoir capacity and \$2.27M to \$3.13M for increase storage, which has been assigned a rank of 2 as the most expensive option.

7.6 Construction Risk

There is a certain amount of risk associated with all construction projects. Unforeseen conditions are difficult to predict and pose a risk to all options as well as material availability and material cost. In the following section, we have attempted to identify the portions of construction, unique to the options, that pose the greatest risk for delays and cost increases. For the construction risk ranking, a value of 1 is associated with the greatest risk while a value of 5 is associated with the least risk.

Option 1: Remediate Existing Dam

The depth to competent foundation material has been estimated by analysing the current and historical borehole logs as well as the geophysical survey results. There may be localized variations in the depth to the competent foundation strata which would not be known until construction. This represents a risk as many of the estimated quantities are based on the assumed stratigraphy.

Dewatering operations during construction are expected to be continuous during construction as the bottom of the excavation is below the groundwater table. The risk associated with these operations is the unknown flow rate of the seepage. Depending on the flow rate, pumping requirements may be more extensive than anticipated.

The slipline operation presents a construction risk as the condition and alignment of the existing LLO pipe is unknown at this time. Depending on the condition of the pipe, there may be additional effort required to slipline. Additionally, the maximum size of pipe that can be inserted into the existing pipe will not be known until the interior condition and alignment of the existing pipe is known.

Considering these identified risks, Option 1 has been assigned a rank of 2.

Option 2: Construct New Dam Downstream

For Option 2, the risks associated with foundation conditions and dewatering that were previously identified also apply. The greatest unique risk for this option is the specialized construction of the sheet pile wall. This risk can be mitigated however through early contractor engagement and by ensuring the contractor selected to construct the wall has the required experience.

Option 2 has been given a construction risk ranking of **3**.

Option 3: Construct New Dam Existing Location

Risks associated with the foundation conditions, dewatering operations, and specialized construction all apply to this option. In addition, the costs associated with constructing and maintaining a cofferdam during construction could be highly variable depending on material availability and method of construction. This risk could be reduced once the details of the construction of a cofferdam are clearer.

Option 3 has been given a construction risk ranking of **2**.

7.7 Environmental Impact

The environmental impact criteria evaluates the affects the construction and permanent facilities will have on existing environmental assets. The impact of increasing the reservoir capacity and subsequently the maximum operating level of the reservoir is not considered in this criteria as it is the same for all options and is addressed in Appendix C.

A score of 1 in this category would indicate a severe environmental impact with no planned mitigation measures while a score of 5 would indicate no impact.

The complete environmental impact assessment is contained in Appendix C and is presented for the maximum probable disturbance which would be Option 2 since the construction footprint for the new dam extends furthest downstream into currently vegetated areas. Mitigation measures are provided in the appendix and provide methods for minimizing the environmental impact and compensating impacts that cannot be avoided. The rankings take into account both the initial impact as well as the mitigation measures.

The construction footprints for Options 1 and 3 are slightly smaller than for Option 2 and therefore have been assigned a ranking of **4**. Option 2 has been assigned a ranking of **3.5** due to the larger area of disturbance.

7.8 Decision Matrix

Table 7.1 Decision Matrix

Criterion	Weight	Option 1 Remediate	Option 2 New Dam Downstream	Option 1 New Dam Existing Location
Constructability	15%	3.5	3	2
Long Term Performance	20%	2	5	5
Quality Control	10%	3	4.5	4.5
Capital Cost	30%	4	3	2
Construction Risk	15%	2	3	2
Environmental Impact	10%	4	3.5	4
Total Score	100%	3.13	3.60	3.05

7.9 Recommendations

To address the deficiencies identified with the existing Stocking Lake Dam, Ecora is recommending that Option 2, the construction of a new downstream dam, be advanced to preliminary design. We recognize that this option is not the most economic of the remediation options however it scores better due to the improved long-term performance, greater ability to control quality, and lowest construction risk aspects of the design as well as the ability to construct for future water needs.

We have explored the option of increasing the reservoir storage by raising the height of the dam crest and spillway control sill for all options and have confirmed the viability. The environmental impacts of raising the water level in the reservoir by less than 1.0 m are not major and likely would not add significant restoration costs to the project budget.

8. Closure

We trust this report meets your requirements. Please contact Adam Kerk-Hecker or Michael Laws if you have any questions or comments concerning this report.

STAFF REPORT TO COUNCIL

Report Prepared By: Infrastructure Services
Reviewed By: Geoff Goodall, Director of Infrastructure Services
Meeting Date: October 5, 2021
File No:
Re: Request for Noise Bylaw Exemption – 107 Rollie Rose Drive

RECOMMENDATION:

That Council:

1. Grant Westmark Construction Ltd. an exemption to Town of Ladysmith "Noise Suppression Bylaw 2003, No. 1478" to permit construction noise at 107 Rollie Rose Drive, until 7:00pm Monday to Saturday, beginning October 6, 2021 until April 5, 2022; and
2. Direct staff to ensure that neighbouring residents receive written notification.

EXECUTIVE SUMMARY:

Westmark Construction Ltd. is constructing a multi-unit apartment building at 107 Rollie Rose Drive. In order to maintain their construction schedule, the company has requested the following exemption from the Town's Noise Bylaw: extend their daily working hours to 8:00pm Monday to Saturday, from October 1, 2021 to April 5, 2022 (Attachment A). Staff are recommending that Council grant an exemption for the following alternate time period: 7:00am to 7:00pm Monday to Saturday, October 11, 2021 to April 5, 2022.

PREVIOUS COUNCIL DIRECTION:

Resolution	Meeting Date	Resolution Details
CS 2021-266	08/03/2021	<p>That Council:</p> <ol style="list-style-type: none"> 1. Grant Westmark Construction Ltd. an exemption to Town of Ladysmith "Noise Suppression Bylaw 2003, No. 1478" to permit construction noise at 107 Rollie Rose Drive, until 8:00 p.m. Monday to Thursday, beginning August 9, 2021 until September 30, 2021; and 2. Direct staff to ensure that neighbouring residents receive written notification. <p>Motion Carried</p> <p>OPPOSED: Councillors Johnson, McKay and Stevens</p>

INTRODUCTION/BACKGROUND:

"Noise Suppression Bylaw 2003, No. 1478" (Attachment B) limits construction noise to Monday to Saturday between 7:00am and 6:00pm and all day Sunday. Westmark Construction Ltd. has

made a request for an exemption to Bylaw No. 1478, that would permit construction and any associated noise to take place an additional 2 hours from Monday to Saturday, until April 5, 2022. Westmark is making this request to maintain its construction schedule for the multi-unit apartment building located at 107 Rollie Rose Drive.

This is the second such noise exemption that has been received from Westmark for this project. The first request was made to Council on August 3, 2021, at which time Council granted an exemption that allowed work until 8:00pm Monday through Thursday until September 30, 2021.

Staff are recommending an alternate exemption to Westmark's request and recommend permitting construction noise at 107 Rollie Rose Drive, until 7:00pm Monday to Saturday, beginning October 11, 2021 to April 5, 2022. The reduction by 1 hour from the previous exemption is to help address the concerns regarding children being back in school and having earlier bed times.

ALTERNATIVES:

Council can choose to:

1. Not permit an exemption to Bylaw No. 1478.
2. Permit an alternate exemption to Bylaw No. 1478.

FINANCIAL IMPLICATIONS:

N/A

LEGAL IMPLICATIONS:

Council has the authority to grant the bylaw exemption.

CITIZEN/PUBLIC RELATIONS IMPLICATIONS:

Town staff would notify neighbouring residents prior to the exemption. It will take minimal staff time to create and deliver notification to the neighbourhood.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:

Bylaw Services has provided input regarding the staff recommendation.

ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:

- | | |
|--|--|
| <input type="checkbox"/> Complete Community Land Use | <input type="checkbox"/> Low Impact Transportation |
| <input type="checkbox"/> Green Buildings | <input type="checkbox"/> Multi-Use Landscapes |
| <input type="checkbox"/> Innovative Infrastructure | <input type="checkbox"/> Local Food Systems |
| <input type="checkbox"/> Healthy Community | <input type="checkbox"/> Local, Diverse Economy |
| <input checked="" type="checkbox"/> Not Applicable | |

ALIGNMENT WITH STRATEGIC PRIORITIES:

☐ Infrastructure

☐ Community

☐ Waterfront

☐ Economy

☒ Not Applicable

I approve the report and recommendations.

Allison McCarrick, Chief Administrative Officer

ATTACHMENTS:

A. Applicant's Request

B. "Noise Suppression Bylaw 2003, No. 1478" (consolidated)

Attachment A – Applicant's Request

From: Robb Garrett <robb@westmarkconstruction.ca>

Sent: Thursday, September 23, 2021 5:47 PM

To: Allison McCarrick

Subject: RE: Exemption to Noise Bylaw

Hi Allison

As we are approaching the end of September I would like to apply for another time extension so that our Trades have the opportunity to work later to maintain our construction schedule. We request our daily working hours to be the same extension from 7:00am to 8:00pm Monday through Saturday from (01-Oct-21) through to (05-Apr-21). We would appreciate it if you could please consider this request in your next meeting agenda? Please let us know.

Thank You

Robb Garrett

Project Manager/Estimator



T 250.729.7540 (ext 23)

F 250.729.7549

E robb@westmarkconstruction.ca

Website: www.westmarkconstruction.ca

ATTACHMENT B

T O W N O F L A D Y S M I T H



NOISE SUPPRESSION BYLAW

MARCH 3, 2003

CONSOLIDATED FOR CONVENIENCE ONLY

A BYLAW FOR ABATEMENT AND CONTROL OF NOISE IN THE TOWN OF LADYSMITH

The amendment bylaws which are included in this consolidated version
of the "Bylaw Title" are:

2046

as on July 29, 2021

NOISE SUPPRESSION BYLAW CONSOLIDATION

This consolidation of the Noise Suppression Bylaw and amendments has been prepared exclusively for the use of the Town of Ladysmith for convenience only.

The Town of Ladysmith does not represent that this consolidation is accurate or complete and anyone using this material should confirm its content by reference to the original Bylaws.

TOWN OF LADYSMITH

BYLAW NO. 1478

A Bylaw for abatement and control of noise in the Town of Ladysmith

The Municipal Council of the Town of Ladysmith in open meeting assembled enacts as follows:

1. DEFINITIONS

In this Bylaw, unless the context otherwise requires:

- a) **CONTINUOUS SOUND** means any sound occurring for a duration of more than 3 Minutes, or occurring continually, sporadically or erratically but totaling more than 3 minutes in any 15 minute period of time;
- b) **DECIBEL** means the ratio between levels of sound pressure expressed as 20 times the logarithm to the base of 10 of the said ratio;
- c) **DULY AUTHORIZED** means authorized by the Municipality;
- d) **FARM LAND** means land classified as a farm pursuant to the provisions of the *Assessment Act*;
- e) **HEAT PUMP** means a device which has the capability to transfer heat from the air outside a building or structure to the air inside a building or structure or vice versa, by means of a compressible refrigerant and includes an air conditioner, condenser, compressor, refrigeration unit and all equipment and devices accessory thereto;
- f) **MOTOR BOAT** means a vessel which is propelled by an internal combustion engine;
- g) **MUNICIPALITY** means the Town of Ladysmith
- h) **POINT OF RECEPTION** means:
 - .i any place on a parcel where sound originating from any source, other than a source on such parcel, is received; or

- .ii any place on a highway sound is received;
- i) **QUIET ZONE** means any area of land or highway included within any zone under the provisions of the Zoning Bylaw of the Municipality in effect from time to time other than land in an Industrial Zone or Commercial Zone on which no residential dwelling units have been constructed;
- j) **SHOPPING CENTRE ZONE** means the C-2 and C-3 Zone in the area commonly referred to as “Coronation Square Mall” under the Zoning Bylaw of the Town of Ladysmith or any successor bylaw;
- k) **SOUND** means the oscillation in pressure, stress, particle displacement of particle velocity, in a medium with internal forces (i.e. elastic, viscous) or the super position of such propagated oscillations, which oscillations are capable of causing an auditory sensation;
- l) **SOUND LEVEL** is the average of the medians of 5 or more sets of lower and upper measurements of a series of A-weighted sound pressure levels read or recorded at a point of reception on a slow response of a sound level meter;
- m) **SOUND LEVEL METER** means a sound measuring device designated to meet the American National Standard A.N.S.I. S14-1971 or the C.S.A. Standard Z107.1-1973, as the same may exist from time to time and specifically shall include:
 - .i Bruel and Kjaer – Sound Level Meter types 2205, 2208, 2213 and types 2203, 2204, 2206 and 2209, calibrated with a Bruel and Kjaer Sound Level Calibrator type 4230 or Pistophone type 4220;
 - .ii General Radio – Sound Level Meter model 156-B, 1511-C and model 1933 calibrated with a General Radio Sound Level Calibrator model 1562-A.
 - .iii Quest Electronics model 214 Sound Level Meter calibrated with a Quest Electronics Calibrator model CA-12.
- n) **STRUCTURE** means any construction, except a building, affixed to or sunk into land; includes fences and walls and excludes paved parking surfaces, on-grade patios and boats.
- o) **WATER PUMP** means a pump, which circulates water in a swimming pool or hot tub.
- p) **PERSONAL WATER CRAFT** means a vessel less than 4 m (13.1 ft.) in length, without a cockpit, propelled by equipment which includes an internal combustion engine and a jet pump and which is designed to be operated by a person sitting, standing or kneeling on the vessel.

- q) **MOTOR VEHICLE** means a vehicle, not run upon rails, that is designed to be self-propelled.
- r) **ROAD SURFACE** means gravel, asphalt, cement or material or any kind whatsoever placed upon any road, highway, bridge, viaduct, land or any way designed or intended for use by the general public for the passage of vehicles and every private place or passage-way to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited

2. **GENERAL PROHIBITION**

- a) No person shall make or cause to be made any noise or sound in or on a highway or elsewhere in the Municipality which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighbourhood or of persons in the vicinity thereof.
- b) No person shall shout, use a megaphone or make other noise in or at or on streets, wharves, docks, piers, railway stations, or other public places which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighbourhood or of persons in the vicinity thereof.

3. **PRIVATE PROPERTY**

No person, being the owner or occupier or being in possession or control of real property shall suffer or permit any person to make or cause to be made any noise or sound therein or thereon which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighbourhood or of persons in the vicinity thereof.

4. **ANIMALS**

No person shall harbour or keep any animal or bird which by causing frequent or loud noise disturbs the quiet, rest, enjoyment, comfort or convenience of the neighbourhood or of persons at or near the source of such noise or sound.

5. **DOGS**

- a) The sound made by a dog barking, howling or creating any kind of sound continually or sporadically or erratically for any period of time in excess of ten minutes is, in the opinion of Council, an objectionable noise.
- b) It shall be unlawful for any person to harbour or keep a dog, which shall make an objectionable noise by barking, howling or creating any kind of sound continually or sporadically or erratically for any period of time in excess of ten minutes.

6. MOTOR BOAT

- a) No person shall launch a motor boat from any lands in the Municipality or remove a motor boat from any body of water onto any lands within the Municipality if that motor boat is equipped with an exhaust system that permits the exhaust gases from the engine to be expelled directly into the air and without first passing through water, unless the motor boat is equipped with a muffling device that ensures that the exhaust gases from the engine are cooled and expelled without excessive noise.
- b) No person shall use or operate a motor boat anywhere in the Municipality if that motor boat is equipped with an exhaust system that permits the exhaust gases from the engine to be expelled directly into the air and without first passing through water, unless the motor boat is equipped with a muffling device which ensures that the exhaust gases from the engine are cooled and expelled without excessive noise.
- c) Notwithstanding anything contained in this bylaw to the contrary, the Council, may, by Resolution, grant a permit for a race or regatta and in such event any motor boat competing in such race or regatta may be exempted from the provisions of this bylaw.

6.1 PERSONAL WATER CRAFT

- a) The Council believes that the noises produced by the operation of personal water craft in front of Transfer Beach Park are objectionable and liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals and members of the public within 25 metres of Transfer Beach Park.
- b) No person shall make noise by operating a personal water craft within 25 metres of Transfer Beach Park.

7. HEAT PUMPS AND WATER PUMPS

- a) The Council is of the opinion that the operation of a heat pump or water pump resulting in a sound level at a point of reception located in a Quiet Zone in excess of 50 decibels between 7:00 a.m. and 10:00 p.m. on any day, or in excess of 45 decibels between 10:00 p.m. and 7:00 a.m. of the following day is objectionable and liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.

- b) No person shall emit or cause, suffer or permit the emission of sound from the operation of a heat pump or a water pump resulting in a sound level at a point of reception located in a Quiet Zone in excess of:
 - i. 50 decibels between 7:00 a.m. and 10:00 p.m. on any day, or
 - ii. 45 decibels between 10:00 p.m. and 7:00 a.m. of the following day.

7.1 ENGINE RETARDANT BRAKES

- a) The Council believes that the noise produced by the use of an engine retardant brake on a motor vehicle on any highway in the Town of Ladysmith is objectionable and liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals and members of the public.
- b) No person shall use an engine retardant brake while operating a motor vehicle on a highway in the Town of Ladysmith except to assist in stopping or slowing down the vehicle in an emergency.

8. SHOPPING CENTRES

- a) No person shall make, cause or permit to be made or caused continuous sound on any land within a Shopping Centre Zone, the sound level of which exceeds 58 decibels measured at a point of reception in a Quiet Zone any time between 9:00 a.m. and 10:00 p.m.
- b) Sections 2 and 3 of this bylaw shall not apply to any continuous sound made in a Shopping Centre Zone between 9:00 a.m. and 10:00 p.m. which does not exceed 58 decibels measured at a point of reception in a Quiet Zone.
- c) The provisions of Section 8 of this bylaw shall not apply to:
 - .i the sound emitted from a heat pump or water pump, or
 - .ii sounds caused by building or property maintenance or repair activities.

9. MOTOR VEHICLES

The following noises are, in the opinion of the Council of the Town of Ladysmith, objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public:

- (a) the squeal of a tire on a road surface made by a motor vehicle which is accelerating or changing direction;
- (b) a loud, roaring or explosive sound emitted by a motor vehicle;

- (c) the amplified sound of a radio, television, player or other sound playback device or amplification equipment, or the sound of a musical instrument, that emanates from a motor vehicle and can easily be heard by someone outside the motor vehicle;
- (d) the sound from vehicle-mounted sound amplification equipment which is continuously made for more than two (2) minutes at the same location;
- (e) the sound of an automobile security system which is made, either continuously or intermittently, for a period exceeding one minute, or the sound of an automobile security system, but not including its activation status signal, which is made more than three times in a 24-hour period.

No person shall make or cause to be made any objectionable noise set forth in Section 9 hereof.

No person shall operate a motor vehicle so as to cause a nuisance by noise there from.

No person shall use or operate a horn or other warning device on a motor vehicle for any purpose other than as an audible warning incidental to the safe operation of the motor vehicle.

The prohibitions contained in this section shall not apply to participants in a motor vehicle race or a parade provided such race or parade has first been approved by Town Council.

10. **SOUND MEASUREMENT**

A sound level measurement shall be sufficient for all purposes if it is carried out in accordance with the following:

- a) sound level measurements shall be taken with a sound level meter;
- b) sound levels shall be measured on the A-weighted network and the slow meter response;
- c) the sound level meter shall be complete with calibrator and windscreen and shall be operated in the following manner:
 - .i Sound level meters shall be used and operated in accordance with manufacturer's instructions. The sound level meter shall be calibrated before and after readings have been taken.

- .ii When determining the sound level from a source, the ambient or background noise or sound level shall be established at the appropriate position and during the relevant period of time wherever possible before taking sound measurements from the source. No measurement shall be attempted if the difference is 3 decibels or less.

- .iii Sound measurements shall be made at a distance of approximately 10 feet from

- any wall, buildings or other reflecting structures, with the microphone appropriately oriented to eliminate as much as possible all reflected sound.

11. INTERPRETATION

Where any word or term or name or abbreviated word or abbreviated term or abbreviated name that is not defined in this bylaw, or where any technical standard or abbreviated technical standard that is not set out in this bylaw, is used in this bylaw, such work, term, name, abbreviated word, abbreviated term, abbreviated name, technical standard or abbreviated-technical standard shall be interpreted by reference to the definitions and technical standards last published by the Canadian Standards Association (C.S.A.), or by the American National Standards Institute (A.N.S.I.), or by the International Organization for Standardization (I.O.S.) or by the International Electro-Technical Commission (I.E.C.) or by the Society of Automotive Engineers (S.A.E.) or by the Machinery and Equipment Manufacturers' Association of Canada (M.E.M.A.C.) as the context of this bylaw and the case may require.

12. EXEMPT NOISE

The provisions of this bylaw shall not apply to:

- a) The use, in a reasonable manner, of any apparatus or mechanism for the amplification of the human voice or of music in a public park or square in connection with any duly authorized public meeting, public celebration or other public gathering.
- b) Any duly authorized parade or performance by a military or other band.
- c) Any vehicle or equipment of the Municipality, the Police Department or any other public body engaged in carrying out a public service or carrying out work in or on a highway, park or the Municipal Public Works Yard.

- d) The sounding of a horn or other signaling device on any vehicle, boat or train where such sounding is properly and necessarily used as a danger or warning signal.
- e) The erection, demolition, construction, reconstruction, altering or repairing of any building or other structure within the Municipality or the excavating of any street, highway, lane or any other land between the hours of 7:00 a.m. and 6:00 p.m. on each day except Sunday, or in the case of urgent necessity, at any other time during the week if such work is essential to the health, safety or protection of the public.
- f) Persons and their agents, servants and employees or independent contractors under contract therewith and their agents, servants, and employees who are engaged in work of an essential or emergency nature and being done for the primary purpose of ensuring the health, safety or welfare of the residents of the Municipality.
- g) The use of bells or chimes on churches or any public body.
- h) Any delivery or collection service between the hours of 6:00 a.m. and 9:00 p.m. on each day except Sunday and any statutory holiday in any commercial, industrial or public zone as defined in the Zoning Bylaws of the Municipality, and between the hours of 7:00 a.m. and 9:00 p.m. on each day except Sunday and any statutory holiday in all other districts defined in the said Zoning Bylaw.
- i) Any sound or noise caused by a farming activity carried out in a reasonable manner on farmland between the hours of 7:00 a.m. and 9:00 p.m.
- j) Any sound or noise caused by a farming activity carried out in a reasonable manner on farmland between the hours of 9:00 p.m. and 7:00 a.m. if:
 - .i in the circumstances it is essential that the activity take place during such hours;
 - .ii the activity must, in accordance with sound farming practice, take place between such hours.
- k) The use of a lawnmower between the hours of 8:00 a.m. and 9:00 p.m. on any day.
- l) Any sound or noise caused by blasting or the operation of drills, compressors or other equipment used to prepare land for blasting between the hours of 8:00 a.m. and 5:00 p.m. on each day except Sunday or a statutory holidays.

m) Any sound or noise authorized by a filming permit issued under “Town of Ladysmith Film Bylaw 2021, No. 2045”.

13. Notwithstanding anything else contained in this bylaw, delivery or collection services to or from the lands and premises described as:

Lots A&B, District Lot 43, Oyster Land District, Plan VIP 70526 (Coronation Square Shopping Centre)

shall be exempt from the provisions of this bylaw between the hours of 8:00 a.m. and 9:00 p.m. on each day except Sundays and statutory holidays and the exemption set out in Section 11(h) of this bylaw shall not apply to these lands and premises.

14. A Peace Officer or Bylaw Enforcement Officer, and any person duly authorized by the Municipality to measure sound levels are hereby authorized to enter, at any reasonable time, upon any property in order to ascertain whether the provisions of this bylaw are being obeyed.

15 OFFENCE

Any person who violates any provision of this bylaw is guilty of an offence and liable upon summary conviction to a fine of not less than \$100 or more than \$500 for a first offence and of not less than \$250 or more than \$1,000 for a second or subsequent offence. For the purposes of this Section, an offence shall be deemed to occur upon each day during or on which violation occurs or continues.

16 REPEAL

“Nuisance Regulation Bylaw 1993, No. 1094, Section 2(a)” and “Nuisance Regulation Bylaw 1993, No. 1094, Amendment Bylaw 1994, No. 1132” are hereby repealed.

17 CITATION

This Bylaw may be cited for all purposes as “NOISE SUPPRESSION BYLAW 2003, NO. 1478”.

READ A FIRST TIME on the 3rd day of FEBRUARY, 2003

READ A SECOND TIME on the 3rd day of FEBRUARY, 2003

READ A THIRD TIME on the 17th day of FEBRUARY, 2003

ADOPTED on the 03rd day of MARCH, 2003

BYLAW STATUS SHEET
October 5, 2021

		Status
2068	Official Community Plan Bylaw 2003, No. 1488, Amendment Bylaw (No. 65) 2021, No. 2068 (1130 Rocky Creek Rd)	First and second reading, June 1, 2021. Public Hearing and third reading June 15, 2021. Conditions to be met prior to adoption.
2069	Town of Ladysmith Zoning Bylaw 2014, No. 1860, Amendment Bylaw (No. 37) 2021, No. 2069 (1130 Rocky Creek Rd)	First and second reading, June 1, 2021. Public Hearing and third reading June 15, 2021. MOTI approval received July 27, 2021. Conditions to be met prior to adoption.
2084	Town of Ladysmith 2022 Permissive Tax Exemptions Bylaw 2021, No. 2084	First, second and third reading September 21, 2021. Chronicle ads scheduled for September 30 and October 7, 2021.