

CITY OF WHITEHORSE – STANDING COMMITTEES

Monday, February 7, 2022 – 5:30 p.m.

Council Chambers, City Hall

CALL TO ORDER

ADOPTION OF AGENDA

PROCLAMATIONS

DELEGATIONS

CORPORATE SERVICES COMMITTEE

1. Range Road South Lift Station
2. Budget Amendment – Snow and Ice Control Program Review
3. New Business

CITY PLANNING COMMITTEE

1. Lease Agreement – Frostbite Music Society (Chambers House)
2. Public Hearing Report – Zoning Amendment – KDFN Lot Robert Service Way
3. Public Hearing Report – Zoning Amendment – 115 Range Road
4. Public Hearing Report – Zoning Amendment – Whistle Bend Phase 9
5. New Business

DEVELOPMENT SERVICES COMMITTEE

1. New Business

CITY OPERATIONS COMMITTEE

1. New Business

COMMUNITY SERVICES COMMITTEE

1. New Business

PUBLIC HEALTH AND SAFETY COMMITTEE

1. New Business

CITY OF WHITEHORSE
CORPORATE SERVICES COMMITTEE
Council Chambers, City Hall



Chair: Michelle Friesen

Vice-Chair: Kirk Cameron

February 7, 2022

Meeting #2022-03

1. Range Road South Lift Station

Presented by Manager Taylor Eshpeter

2. Budget Amendment – Snow and Ice Control Program Review

Presented by Associate Manager Michael Abbott

3. New Business

ADMINISTRATIVE REPORT

TO:	Corporate Services Committee
FROM:	Administration
DATE:	February 7, 2022
RE:	Range Road South Lift Station

ISSUE

The re-budget of capital funds, a capital budget amendment and authorization to commence the procurement for construction services are required for the Range Road South Lift Station project.

REFERENCE

Procurement Policy 2020-03

2021 Capital Expenditure Program 240c00311 – Range Road South Lift Station

HISTORY

The sewage lift station and forcemain on Range Road were constructed in the early 1960's and are at the end of their lifecycle. City crews have identified frequent operational problems with this lift station including security concerns. A proactive replacement of the lift station at this time will be more cost effective than further maintenance and upgrades.

In 2020 an engineering feasibility assessment was completed for a new lift station by an engineering consulting firm to explore improvement options and determine budgetary costing. The assessment explored three options and determined that the best solution is the full replacement of the lift station with a pre-manufactured wet well and a small building to house the electrical equipment. A preliminary cost assessment of \$2,400,000 was identified for the project.

Following review of proposed three options and selection of the preferred option, an RFP was issued in 2021 to undertake detailed design of the new lift station, gravity sanitary and forcemain alignments. The City's engineering consultant has advanced the detailed design to the 95% stage and has identified that additional budget of \$500,000 is required to complete the project.

In accordance with Section 3.1.1 of the Procurement Policy 2020-03, Council authorization is required prior to the commencement of procurements with an estimated value of \$500,000 or more and of procurements less than \$500,000 that are deemed to be of significant risk, involve security concerns or may be of significant community interest. This procurement is anticipated to be over \$500,000. This project was inadvertently left off the January 2022 commencement report.

Funding for this project is included in the approved 2021-2024 Capital Expenditure Program. Gas Tax funding has been secured for the \$2,400,000 and a Transfer Payment Agreement is in place for \$2,400,000. As capital re-budgets are not normally brought forward until March, Council is asked to re-budget this in advance and approve a budget amendment for an additional \$500,000 to complete the project.

ALTERNATIVES

1. Re-budget the 2021 Capital Range Road South Lift Station Project thereby increasing the 2022 capital budget, amend the project budget by \$500,000, and authorize Administration to commence the procurement for the project.
2. Refer the matter back to Administration.

ANALYSIS

It is estimated that with a re-budget of 2021 funds and \$500,000 of additional budget, sufficient funds are available in the capital budget to complete the project. It is proposed to fund this additional budget from water and sewer reserves, until an amended Gas Tax Transfer Payment Agreement has been approved.

This is a multi-year project and it was planned to complete detailed design in 2021 and construction in 2022.

Purchasing

A Request for Tender (RFT) will be publicly issued and the lowest compliant bid will be eligible for contract award. Purchase approval will be obtained in accordance with the Procurement Policy.

Procurement Policy Principles

Compliance: The RFT will follow City policy and procedures for procurements.

Supplier Access, Transparency, and Fairness: The RFT will be publicly available on the City's e-procurement platform, www.whitehorse.bonfirehub.ca

Best Value: The RFT will be publicly advertised and awarded to the lowest compliant bidder that can meet the specifications set by the City.

Efficient and Effective Procurement: The procurement of construction services for municipal stations projects has been successfully completed numerous times in the past by the City.

Local Procurement: Local contracting expertise is known to exist for this type of work.

Sustainable Procurement: Ongoing infrastructure replacement of sewer infrastructure that is at the end of useful life is required to keep the City's sewer collection network in operating condition and to maintain an acceptable level of service to the public.

Tentative Project Schedule	
<u>Item</u>	<u>Proposed date(s)</u>
Issue solicitation document	February 2022
Issue Purchase Order/Contract	April 2022
Start of Project	April 2022
Substantial Performance	October 2022
Total Completion	November 2022

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that the remaining funds from the 2021 capital budget for the Range Road South Lift Station project be re-budgeted to 2022 in an amount up to \$2,314,249; and

THAT the 2022 to 2025 Capital Expenditure Program be amended by increasing the 2022 budget for the Range Road South Lift Station project #240c00311 in the amount of \$500,000 funded from the Water and Sewer Reserve until an amended Gas Tax Transfer Payment Agreement has been approved; and

THAT Administration be authorized to commence the procurement for the project.

ADMINISTRATIVE REPORT

TO:	Corporates Services Committee
FROM:	Administration
DATE:	February 7, 2022
RE:	Budget Amendment – Snow and Ice Control Policy Review

ISSUE

Administration is seeking a mandate from Council to complete a detailed review of the Snow and Ice Control Policy by way of an amendment to the 2022 to 2025 Capital Expenditure Program.

REFERENCE

Snow and Ice Control Policy 2021-05
Bylaw 2021-41 Capital Expenditure Program 2022-2025

HISTORY

The Snow and Ice Control Policy identifies the intent of the City's winter maintenance operations and establishes the priorities and service levels for snow and ice control activities. The policy was last updated in January 2022 to include new additions to the City network of priority trails. A comprehensive and detailed review of the City's policy and the level of service provided has not been done in years.

ALTERNATIVES

1. THAT the 2022 to 2025 Capital Expenditure Plan be amended by adding a new capital project titled 'Snow and Ice Control Policy Review' for the purpose of completing a comprehensive review of the City's existing policy, in the amount of \$100,000, funded from the General Reserve.
2. Refer back to Administration for further analysis.

ANALYSIS

The City operates with a limited amount of resources for snow and ice control. Under the current Snow and Ice Control Policy, Council has set 4 priority ratings to define the order in which snow and ice control activities are addressed. The priority levels take into consideration traffic volume, transit and emergency services, drift exposure, road classification and geometrics and drainage. In addition to the 4 priority levels, consideration is also given to:

- Temperatures before, during, and after a winter storm;
- Duration of the storm;
- Amount of accumulated snow;
- Temperature of the road surface;
- Wind speed and direction; and
- The weather forecast for the days following the storm.

While the Snow and Ice Control Policy has been amended over the past few years to reflect the addition of some new trails and roads through development, an in-depth review of the policy is required given the changing climate, population growth and changing community needs.

Since 2015, approximately 10 km of roads, 10 km of sidewalks and 5 km of trails have been added through high-density developments such as Whistle Bend. These quantities will increase once additional phases are developed.

With respect to snow fall, over 93 mm of snow fell between November 1, 2021 and January 31, 2022. In comparison to previous years, the amount of precipitation between November 1 and January 31 was 88 mm (2020/21), 42 mm (2019/20), 45 mm (2018/19), 57 mm (2017/18) and 60 mm (2016/17) respectively, according to data recorded by Environment Canada at the Whitehorse Airport.

The review will conduct a gap analysis of the City's policy and the current allocations of budget and fleet resources, examine other approaches used in similar sized winter cities, identify any new and emergent technologies and best practices, and detail an implementation plan for recommended change. This review will also provide key inputs into the ongoing Snow Site Management Plan review and examine the current fee structure for use of the City's snow dump facilities. The review will not address connectivity issues from an active transportation perspective (for example other trails to further clear).

It is anticipated a draft copy of the review will be ready in early fall of 2022 and identify the timeline and changes required for the City's Snow and Ice Policy to best align with climate change and current needs of the community.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that the 2022 to 2025 Capital Expenditure Plan be amended by adding a new capital project titled 'Snow and Ice Control Policy Review' for the purpose of completing a comprehensive review of the City's existing policy, in the amount of \$100,000, funded from the General Reserve.

CITY OF WHITEHORSE
CITY PLANNING COMMITTEE
Council Chambers, City Hall



Chair: Dan Boyd

Vice-Chair: Ted Laking

February 7, 2022

Meeting #2022-03

-
1. Lease Agreement – Frostbite Music Society (Chambers House)
Presented by Manager Patrick Ross
 2. Public Hearing Report – Zoning Amendment – KDFN Lot Robert Service Way
Presented by Senior Planner Karmen Whitbread
 3. Public Hearing Report – Zoning Amendment – 115 Range Road
Presented by Senior Planner Karmen Whitbread
 4. Public Hearing Report – Zoning Amendment – Whistle Bend Phase 9
Presented by Planner Mathieu Marois
 5. New Business

ADMINISTRATIVE REPORT

TO: Planning Committee
FROM: Administration
DATE: February 7, 2022
RE: Lease Agreement – Frostbite Music Society (Chambers House)

ISSUE

A bylaw to enter into a new lease agreement with the Frostbite Music Society for a 280 m² parcel of land within Shipyards Park for placement of the Chambers House.

REFERENCE

- *Municipal Act*
- 2010 Official Community Plan (OCP)
- Zoning Bylaw 2012-20
- Lease, Encroachment and Property Use Policy
- Draft Frostbite Lease Agreement
- Proposed Bylaw 2022-10
- Location Sketch

HISTORY

In 2004, the City of Whitehorse and Frostbite entered into discussions about relocating the Chambers House to Shipyards Park. The Chambers House is owned by Frostbite and is listed as a heritage resource on the City's Heritage Registry. The building was relocated in the summer of 2007 from the City's Quartz Road compound and is now located adjacent to three designated Municipal Historic Site buildings within Shipyards Park.

The original lease agreement between the City and Frostbite was completed in 2009 and comprised the footprint of the Chambers House plus a two metre buffer on all sides for a total area of 140 m². That lease expired in 2019 and is now in an over-hold status.

Administration has negotiated the terms of a new lease with Frostbite, which include a 10 year term and an increase to the lease area to include a new para-ramp to the building. Administration is now bringing the proposed lease forward for Council approval.

ALTERNATIVES

1. Bring forward Bylaw 2022-10 to enter into a lease agreement with Frostbite Music Society.
2. Do not bring forward the bylaw and refer back to administration for further review.

ANALYSIS

The existing lease area is situated adjacent to the other heritage buildings in Shipyards Park, between the skating loop and the Riverfront Trail. The area is designated Mixed Use – Riverfront in the City's OCP, which encourages public and cultural amenities that promotes the heritage character of the area. The area is zoned PW – Public Waterfront which permits "institutional services" as a principal use and "offices" as a secondary use. "Institutional services" includes non-profit organizations within its definition.

Frostbite fits the vision for the area as it contributes to the cultural amenities in the area through its hosting of the Jenni House artist in residence winter program, musical performances and training, as well as the home for community radio station CJUC. It is similar to the other occupants in Shipyards Park, Yukon Literacy Coalition and Yukon Film Society.

Additionally, the Chambers House is occupied year round and provides a presence in the park that contributes to crime prevention and preventing vandalism.

Lease Considerations

The draft lease agreement contains the following provisions:

- 1) Term: 10-year term with no option to renew without Council approval;
- 2) Rent: \$10 per year plus all applicable property taxes, insurance premiums and utility charges;
- 3) Restricted access to the site as tenants are prohibited from driving or parking on the Riverfront Trail;
- 4) The lease is non-assignable without prior written consent of the City;
- 5) Frostbite will be required to maintain public liability insurance in the minimum amount of \$3,000,000 per occurrence;
- 6) The City will have unrestricted access to operate and maintain the existing City-owned water utility infrastructure located in the basement of the Chambers House; and
- 7) The City will have the option to take ownership of the Chambers House should Frostbite Music Society be dissolved.

Denial of Lease Agreement

If Council chooses to deny the lease agreement, Administration would terminate the existing lease agreement with Frostbite. Under the terms of their existing lease, Frostbite would have the option to remove the building from Shipyards Park within six months of termination of the lease, which would have an impact on the City's ability to operate and maintain water servicing within the park. In the event that Frostbite did not remove the building within six months, the building would then become the property of the City.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct Bylaw 2022-10, a bylaw to enter into a new lease agreement with the Frostbite Music Society for a 280 m² parcel of land within Shipyards Park (Lot 8 (REM), Group 804, Plan 20502 LTO) for placement of the Chambers House, be brought forward for consideration under the bylaw process.



SCALE: NTS	DWN. BY: KK
DATE: February 7, 2022	R.No: 0
FILE No:	

CITY OF WHITEHORSE - LAND & BUILDING SERVICES

LOCATION SKETCH - FROSTBITE LEASE
 Frostbite Music Society Proposed Lease (Chambers House)
 Area =208 m2



CITY OF WHITEHORSE

BYLAW 2022-10

A bylaw to authorize a lease agreement with the Frostbite Music Society with respect to the parcel of land containing the heritage property Chambers House

WHEREAS section 265 of the *Municipal Act* (2002) provides that Council may pass bylaws for municipal purposes respecting the municipality's leasing of any real or personal property; and

WHEREAS it is deemed desirable that the City enter into an agreement with Frostbite Music Society for the lease of a 280 square metre parcel of land for a ten-year period from March 1, 2022 to and including the last day of February, 2032;

NOW THEREFORE the Council of the municipality of the City of Whitehorse, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. The City of Whitehorse is hereby authorized to enter into a lease agreement with the Frostbite Music Society with respect to a portion of Lot 8 (Remainder), Group 804, Plan 20502 LTO, in the City of Whitehorse, as shown on the sketch attached hereto as Appendix "A" and forming part of this bylaw.
2. The Mayor and City Clerk are hereby authorized to execute on behalf of the City of Whitehorse the Lease Agreement attached hereto as Appendix "B" and forming part of this bylaw.
3. This bylaw shall come into full force and effect upon the final passing thereof.

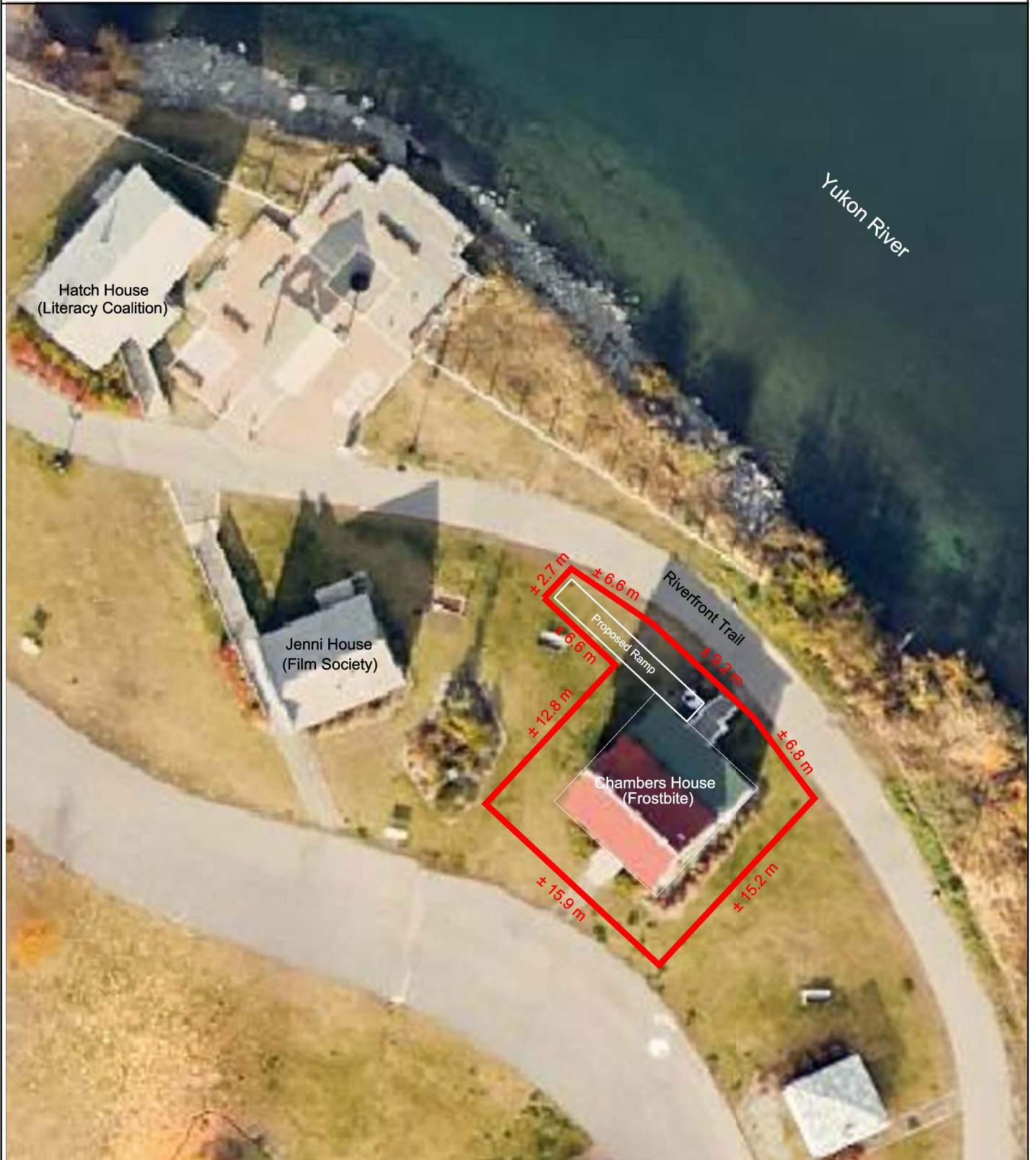
FIRST and SECOND READING:
THIRD READING and ADOPTION:

Mayor

City Clerk




CITY OF WHITEHORSE
BYLAW 2022-10
APPENDIX 'A'



BYLAW 2022-10

A bylaw to authorize a lease agreement between the City of Whitehorse and the Frostbite Music Society in Shipyard's Park.

LEGEND

 SUBJECT AREA

THIS LEASE AGREEMENT, made the _____ day of _____, 2022 in triplicate, to be effective as of and from the 1st day of March, 2022.

BETWEEN:

The City of Whitehorse, a municipality duly incorporated pursuant to the provisions of the *Municipal Act* (the “Landlord”).

AND:

Frostbite Music Society, a society duly incorporated pursuant to the provisions of the *Societies Act* (the “Tenant”).

W H E R E A S:

- A. The Landlord is the tenant of the Lands as described in Paragraph 1.1 herein pursuant to a Lease (Disposition Number 2009-3080) with the Government of Yukon (the “Head Lease”);
- B. The Tenant will occupy the building known as the Chambers House which the Tenant will operate for community based arts and music programming (the “Premises”);
- C. The Premises are situated on the Lands and the Tenant desires to enter into a lease agreement with the Landlord in accordance with the terms and conditions contained in this lease.

1. Demise

1.1 Lease

Witness that in consideration of the rents, covenants, conditions and agreements herein reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord, being a tenant of the Government of Yukon under the Head Lease, does hereby demise and lease unto the Tenant that parcel of land more particularly described as follows:

That portion of Lot 8 (Remainder), 804, Plan 20502 LTO, City of Whitehorse, Yukon Territory, comprising approximately 280 square metres and shown outlined in red on the sketch attached hereto as Schedule “A”.

(hereinafter referred to as the “Lands”)

1.2 Term

To have and to hold the Lands and Premises, within which the Tenant will continue to operate an office for non-profit uses, and community arts and music based programming, for and during the term of this Lease for a period of ten (10) years, commencing March 1, 2022 to and including the last day of February, 2032.

1.3 Rent

Yielding and paying therefore during the term hereof unto the Landlord the sum of ten dollars (\$10.00) per year, plus Goods and Services Tax, of lawful money of Canada to be paid in advance on or before March 1st of each year during the term hereof.

1.4 Property Taxes

The Tenant shall be responsible for all real property taxes including local improvements rates levied or assessed by any competent authority upon or in respect of the Land.

1.5 Additional Rent

The Tenant shall pay to the Landlord as additional rent, the following:

- (a) *Insurance* - The cost of all insurance premiums paid for by the Landlord in the event that the Tenant does not pay the premiums of insurance as required by Paragraph 6.1 herein; and
- (b) *Utilities* - All rates and charges for utilities that are not billed separately to the Tenant and that are paid for by the Landlord.

(collectively referred to as “Additional Rent”).

1.6 Payment of Additional Rent

The Tenant shall pay such amount of Additional Rent in twelve equal monthly instalments, in advance, in the same manner as rent. At the end of such period, the Landlord shall furnish to the Tenant a statement showing the actual amount of additional rent together with such evidence in support thereof as the Tenant may reasonably require. If an overpayment has been made by the Tenant, the Landlord shall credit such amount to the ensuing period, or if there is no ensuing period, such amount shall be repaid to the Tenant and if an amount remains owing to the Landlord, the Tenant shall pay the same forthwith to the Landlord.

1.7 Carefree Lease

The Tenant acknowledges that it is intended that this Lease be a net-net lease for the Landlord and that all and every cost, expense, charge or out lay of any nature whatsoever in any way related to the Lands or their occupancy by the Tenant shall be borne by the Tenant excepting as otherwise expressly provided herein.

1.8 Heritage Integrity

The Landlord and Tenant hereby recognize that while the Chambers House is not designated as a heritage resource, its placement in Shipyards Park, along with other designated buildings requires that the historic integrity, especially the exterior, must be maintained. Any alterations, repairs, or applications for signage must receive prior approval from the Landlord.

1.9 Parking

The Tenant, their employees and any other individuals associated with the programs and activities associated with the building shall use the designated public parking area in the Shipyards Park parking lot for vehicle parking. The parking spaces are on a first-come, first-serve basis, with no reserved spaces. Vehicles are prohibited from driving and parking on any other land in Shipyards Park, unless there are exceptional circumstances and the Tenant has received written permission from the Landlord.

1.10 Access

The Tenant agrees that vehicles shall not drive or park on any portion of Lot 8 (Remainder), Group 804, Plan 20502 LTO, City of Whitehorse, Yukon Territory without prior written permission from the Landlord.

The Tenant further agrees that the formal pedestrian access route from the parking lot shall be by way of the waterfront trail rather than across the skating loop.

1.11 Special Events

The Landlord and Tenant hereby recognize that special events and festivals will be occurring in Shipyards Park during the lease term, which may limit the availability of parking and compromise access to the Lands and Premises. The Landlord shall make every reasonable effort to ensure that access to the Lands and Premises is maintained during special events and festivals. In the event that access will be unable to be maintained to the Lands and Premises as a result of any special event or festival, the Landlord shall notify the Tenant in advance of the special event or festival (not to include any regular events such as the weekly Fireweed Market).

1.12 Lease Renewal

If the Tenant duly and regularly pays the rent hereunder and performs all and every of the covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord may in its sole and unfettered discretion which may be unreasonably withheld, upon the written request of the Tenant made not less than 120 days prior to the expiration of the term thereof, grant to the Tenant a renewal of this Lease for a further term of ten (10) years at a rent to be determined in accordance with applicable City policies on or before 60 days prior to the expiration of the Term.

1.13 Terms of Renewal Lease

The renewal lease shall contain the same terms, provisos, covenants, and agreements herein contained except the rental rate contained in Section 1.3 herein.

2. Covenants of Tenant

2.1 Promises of Tenant

The Tenant covenants and agrees with the Landlord as follows:

- (a) *Rent* - The Tenant shall during the term of this lease or any renewal thereof pay to the Landlord the rent hereby reserved, and all other sums to be paid by the Tenant hereunder in the manner herein provided without any deduction whatsoever. The Tenant shall produce to the Landlord from time to time, at the request of the Landlord, satisfactory evidence of the due payment by the Tenant of all other payments required to be made by the Tenant under this lease;
- (b) *Repair* - The Tenant shall well and sufficiently repair, maintain, amend and keep the Lands and Premises, with appurtenances and all fixtures, in good and substantial repair when, where and so often as need shall be, damage by fire and other risks against which the Landlord is insured (the "Tenant Repair Exceptions") only excepted unless such damage is caused by the negligence or wilful act of the Landlord, its employees, agents or invitees;
- (c) *Notice to Repair* - The Landlord and its agents may at all reasonable times enter the Lands and Premises to examine the condition thereof, and all want of repair that upon such examination may be found and for the amendment of which notice in writing is

delivered to the Tenant at the Premises, the Tenant shall well and sufficiently repair and make good according to such notice within 30 days from the date on which such notice was delivered to the Tenant, subject to the Tenant Repair Exceptions;

- (d) *Care of Lands* - The Tenant shall take good care of the Lands and keep the same in a safe, tidy and healthy condition and shall, at its own expense, bear such costs as are reasonably necessary during the term of this lease to keep the Lands in such condition. The Tenant shall be responsible for clearing snow on the accessible ramp/walkway between the waterfront trail and the entrance to the Premises;
- (e) *Waste diversion* - The Tenant understands that it is required to comply with the Waste Management Bylaw at all times. This includes provision of sufficient recycling and compost bins, waste collection services, and compostable bags to line compost bins within the Lands. These provisions ensure that recyclable and organic waste are separated and diverted from the landfill as required by the Waste Management Bylaw. All costs associated with waste diversion shall be the responsibility of the Tenant;
- (f) *Business Taxes* - The Tenant shall pay when due all business taxes payable by the Tenant in respect of the Tenant's occupancy of the Lands;
- (g) *Assignment and Subleasing* - The Tenant shall not assign, mortgage or encumber this Lease, or sublet, or suffer or permit the Lands and Premises or any part thereof to be used by others by license or otherwise, except as contemplated by Paragraph 2.1(h), without the prior written consent of the Landlord, which consent may be arbitrarily and unreasonably withheld. Notwithstanding the foregoing, the Landlord shall not unreasonably withhold its consent in the event that the Tenant proposes to assign or sublet this lease to another society or non-profit organization. In the event that consent to the assignment or subleasing to another society or non-profit organization or the subleasing or licensing of a portion of the land to any person is withheld by the Landlord, the matter shall, at the option of the Tenant, and subject to the provisions of the *Arbitration Act*, be referred to a single arbitrator (if the parties can agree on one) otherwise to a board of three arbitrators, the first to be appointed by one party or side to such disagreement or dispute, the second to be appointed by the other party or side and the third to be appointed by the first two arbitrators so appointed, and the determination of such arbitrator or arbitrators shall be final and binding upon the parties hereto. If the Tenant assigns or sublets the Lands and Premises or any part thereof with the prior written consent of the Lessor, the Tenant shall not be relieved from any liability under this Lease and shall remain bound and responsible to fulfil the covenants and agreements herein contained, notwithstanding such assignment or consent to assignment by the Landlord;
- (h) *Use of Lands and Premises* - The Tenant shall not use the Lands nor allow the Lands to be used for any purpose other than as office space or music and arts programming for the Frostbite Music Society, and associated secondary uses as provided for by the current zoning of the Lands being "PW – Public Waterfront", or such other uses as may be approved in writing by the Landlord, which approval may be arbitrarily and unreasonably withheld. The Lands shall not be used to provide or supply programs or services on or off of the Lands, in other locations, in competition with privately owned and operated business;
- (i) *Nuisance* - The Tenant shall not at any time use, exercise, or carry on or permit to be used, exercised or carried on, in or upon the Lands or any part thereof any noxious,

noisome, or offensive act, trade, business, occupation or calling and no act, matter or thing whatsoever shall at any time be done in or upon the Lands or any part thereof which is an unreasonable annoyance, nuisance or disturbance to the occupiers or owners of the adjoining lands and properties;

- (j) *Insurance Risk* - The Tenant shall not do or permit to be done any act or thing on the Lands and Premises which may render void or voidable or conflict with the requirements of any policy of insurance, including any regulations of fire insurance underwriters applicable to such policy. The Tenant shall ensure that all activities carried out or conducted on the Lands and Premises are done in accordance with the provisions of any policy of insurance that is in force, so that the Tenant and the Landlord have the benefit of such insurance. Any activity which cannot be insured for or which is specifically exempted from coverage under any policy of insurance that is in force shall not be permitted by the Tenant;
- (k) *By-Laws* - The Tenant shall comply with all statutes, regulations, and by-laws of any governmental authority relating in any way to the use or occupation of the Lands, including, without limiting the generality of the foregoing, all laws, regulations and bylaws affecting or relating to the sale or consumption of alcoholic beverages on the Lands;
- (l) *Alterations* - The Tenant shall not make any alterations, installations, improvements, including fencing, or changes of any kind to the Lands without the prior written consent of the Landlord, and the Landlord may require that any or all work to be done or materials to be supplied hereunder, be done or supplied by contractors or workers approved by the Landlord;
- (m) *Removal of Goods, Chattels, or Fixtures* - The Tenant shall not remove from the Lands any goods, chattels or fixtures moved into the Lands, except in the normal course of business, ("business" when used in this Lease meaning the carrying out of the society's objects), until all rent and other payments due or to become due during the term of this Lease are fully paid;
- (n) *No Permanent Structures* - The Tenant shall not construct, install or erect any permanent structures or buildings on the Lands without the express written consent of the Landlord;
- (o) *Ownership of Existing or Future Structures* - Any installations and improvements made by the Tenant within the Lands are the property of the Tenant during the term of this Lease or any renewal thereof. Upon the expiry or earlier termination of the Lease or any renewal thereof, the Premises shall become the exclusive property of the Landlord.
- (p) *Builders Liens* - The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Lands and Premises and shall not cause or permit any lien to be registered against the Lands and if any such lien should be so registered the Tenant shall pay off and discharge the same forthwith and, if he shall fail or neglect to do so within 10 days after written notice thereof from the Landlord, the Landlord may but shall not be obliged to, pay and discharge such lien and may add to the next ensuing instalment of rent the amount so paid including all costs to the Landlord together with interest thereon from the date of payment. Provided that in the event of a bona fide dispute by the Tenant of the validity or correctness of any such claim of lien, the Tenant shall be entitled to defend against the same and any proceedings brought in respect thereof after having first paid

into Court the amount claimed and such costs as the Court may direct or having provided such other security as the Landlord may in writing approve to ensure payment thereof. Provided further that upon determination of the validity of any such lien, the Tenant shall immediately pay any judgment in respect thereof against the Landlord, including all proper costs and charges incurred by the Landlord and the Tenant in connection with any such lien and shall cause a discharge thereof to be registered without cost or expense to the Landlord;

- (q) *Operation of the Premises* - The Tenant acknowledges that the development and operation of the Frostbite Music Society within the Lands and Premises is of the utmost importance to the Landlord and the citizens of the City of Whitehorse. The Tenant acknowledges that in the event the Society is not operational in any twelve-month period, the Tenant shall be in default of this Lease, notwithstanding that rent is paid, and the Landlord shall have the option to immediately terminate the Lease;
- (r) *Inspection* - The Tenant shall permit the Landlord or any other person authorized by the Landlord to inspect the Lands and Premises at all reasonable times;
- (s) *Maintenance* - The Tenant shall permit the Landlord to install, maintain, replace, repair and service or cause to be installed, maintained, replaced, repaired, and serviced, wires, ducts or other installations in, under or through the Lands and Premises for or in connection with the supply of any service or utility to any part of the Lands or in connection with the extension of any service or utility from the Lands to any other buildings or structures located within Shipyards Park being comprised of Lot 8 (Remainder), Group 804, Plan 20502 LTO, and Block 330, Plan 2003-0151 LTO, City of Whitehorse, Yukon Territory;
- (t) *Vacant Possession* - The Tenant shall at the expiration or earlier termination of this Lease, peaceably surrender and deliver up vacant possession of the Lands and Premises;
- (u) *Financial Information* - The Tenant shall provide to the Landlord reasonable access to all of its books and records;
- (v) *City Infrastructure and Building Access* – The Tenant acknowledges that the Landlord owns utility and security system infrastructure within the Premises. At all times, the Tenant shall ensure that the area in the vicinity of the City’s infrastructure remains clear and unencumbered. The Tenant will ensure that free and clear access is maintained for the Landlord or its agents to access any City owned or maintained infrastructure located within the Premises for the purposes of installing, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining, inspecting and operating its utilities and security system and a right of reasonable access to the Premises in relation to the above. The Tenant shall ensure that the Premises are heated in such a manner as to ensure the continual operation of the City’s utility and security systems.
- (w) *Public Accessibility* - The Tenant shall ensure that programs and activities offered on the Lands are open to the general public and that the Tenant shall work with the Landlord to ensure that the Lands and Premises are open to the general public;
- (x) *Utilities* - The Tenant shall pay when due all rates and charges for telephone and other utilities supplied to or used in the Lands as separately metered or separately invoiced by the supplier(s), including those utilities as supplied by the Landlord;
- (y) *Utility Services* - The Tenant shall pay all costs associated with the installation of any additional utility services to the Lands.

3. Covenants of Landlord

3.1 Quiet Enjoyment

The Landlord covenants that the Tenant, paying the rent hereby reserved and performing the covenants herein on its part contained, shall and may peaceably possess and enjoy the Lands and Premises for the term of this Lease or any renewal thereof without interruption or disturbance from the Landlord or any other person lawfully claiming by, from or under the Landlord.

4. Rights and Remedies of the Landlord

4.1 Re-entry

If default or breach or non-performance of any of the covenants or agreements in this Lease contained on the part of the Tenant continues for 30 days after written notice thereof has been given by the Landlord to the Tenant, then it shall be lawful for the Landlord at any time thereafter without notice to re-enter the Lands and Premises and the same to have again, repossess and enjoy as of its former estate, anything herein contained to the contrary notwithstanding. If the Landlord re-enters the Lands and Premises by reason of the default of the Tenant prior to the expiry of the term of this lease, the Tenant will be liable to the Landlord for the amount of rent for the remainder of the term as if such re-entry had not been made, less the actual amount received by the Landlord after such re-entry from any subsequent leasing of the Lands and Premises during the remainder of the term after deducting the Landlord's costs of re-letting the Lands and Premises.

4.2 Right of Termination

Upon the Landlord becoming entitled to re-enter upon the Lands and Premises, the Landlord shall have the right in addition to all other rights, to determine forthwith this lease by giving notice in writing to the Tenant and thereupon rent shall be apportioned and paid to the date of such determination and the Tenant shall forthwith deliver up possession of the Lands and Premises and the Landlord may re-enter and take possession of the same.

4.3 Bankruptcy

If the term hereof or any renewal thereof shall at any time be seized or taken in execution or attachment by any creditor of the Tenant or if the Tenant makes any assignment for the benefit of creditors or becomes bankrupt or insolvent or takes the benefit of any bankruptcy or insolvency legislation or in case the Lands and Premises become vacant or unoccupied for a period of 10 days, the then current month's rent together with the rent accruing for the balance of the term or the next three months, whichever is less, shall immediately become due and payable and the term hereof or any renewal thereof shall at the option of the Landlord become forfeited and void. Neither this Lease nor any interest therein nor any estate hereby created shall pass to or enure to the benefit of any trustee in bankruptcy or any receiver of any assignee for the benefit of creditors or otherwise by operation of law.

4.4 Status as a Society

In the event the Tenant is dissolved, wound up or struck from the Corporate Registry, fails to maintain its status as a registered Society, or is in default of filing returns or notices, including its annual return and financial statements for a period in excess of one (1) year, or is otherwise no longer a not-for-profit society or organization, the Landlord shall have the absolute right to terminate this Lease upon giving the Tenant written notice to that effect.

4.5 Dissolution of Society

Where all of the Tenant's fixed assets are affixed solely to the Lands, the Tenant's Constitution and/or Bylaws must include an unalterable dissolution clause which provides that upon dissolution of the society, the City will take full ownership and possession of the Land and Premises. All other assets of the Tenant must firstly be distributed to another non-profit society operating within the City of Whitehorse, in good standing with the Registrar of Societies, with similar objectives, and only failing to transfer these assets to another non-profit society with similar objectives, would the Tenant's fixed assets be distributed to the City.

4.6 Distress

Whensoever the Landlord shall be entitled to levy distress against the goods and chattels of the Tenant, the Landlord may use such force as it may deem necessary for that purpose and for gaining admittance to the Lands and Premises without being liable in any action in respect thereof, or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the Landlord from all actions, proceedings, claims or demands whatsoever for or on account of or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.

4.7 Non-waiver

The waiver by the Landlord of any breach by the Tenant of any covenant or condition contained in this Lease shall not be construed as or constitute a waiver of any further or other breach of the same or any other covenant or condition, and the consent or approval of the Landlord to or of any act by the Tenant requiring the Landlord's consent or approval shall not be deemed to waive or render unnecessary the Landlord's consent or approval to any subsequent act, similar or otherwise, by the Tenant.

4.8 Landlord's Right to Perform

If the Tenant fails to perform any of the covenants or obligations of the Tenant under or in respect of this Lease, the Landlord may from time to time, at its discretion, perform or cause to be performed any such covenants or obligations or any part thereof and for such purpose may do such things as may be required and may enter upon the Lands and Premises to do such things and all expenses incurred and expenditures made by or on behalf of the Landlord shall be paid forthwith by the Tenant to the Landlord and if the Tenant fails to pay the same the Landlord may add the same to the rent and recover the same by all remedies available to the Landlord for the recovery of rent in arrears; provided that if the Landlord commences or completes either the performance or causing to be performed of any of such covenants or obligations or any part thereof, the Landlord shall not be obliged to complete such performance or causing to be performed or be later obliged to act in a like fashion.

4.9 Interest

The Tenant shall pay to the Landlord interest at the prime commercial lending rate of The Royal Bank of Canada plus 3% per annum on all payments of rent and other sums required to be paid under this Lease from the date upon which the same were due until actual payment thereof.

5. Indemnification

5.1 Indemnity by Tenant

Except for or in respect of events caused by the Landlord's actions, or those for who it is at law responsible, arising out of the use and occupation of the Lands and Premises, including wilful misconduct or negligence during the Term, the Tenant shall indemnify the Landlord and all of its servants, agents, employees, contractors, invitees and persons for whom the Landlord is in law responsible and shall hold them and each of them harmless from and against any and all liabilities, claims, damages, losses and expenses, including all legal fees, on a solicitor-and-own-client basis, or in the alternative, the highest rate allowed for the taxation of costs under the *Rules of Court* and disbursements, due to, arising from or to the extent contributed to by:

- (a) any breach by the Tenant of any of the provisions of this Lease;
- (b) any act or omission of the Tenant of any of its members, servants, agents, employees, invitees, licensees, sub-tenants, concessionaires, contractors or persons for whom the Tenant is in law responsible on the Lands and Premises;
- (c) any injury, death or damage to persons or property of the Tenant or its members, servants, agents, employees, customers, invitees, contractors or any other persons on the Lands and Premises by or with the invitation, license or consent of the Tenant;
- (d) any damage, destruction or need of repair to any part of the Lands and Premises caused by any act or omission of the Tenant or its members, servants, agents, employees, customers, invitees, contractors, or persons for whom the Tenant is in law responsible, notwithstanding any other provisions of this Lease; and
- (e) any latent or patent defect in the Lands and Premises;

and this Indemnity shall survive the expiration or earlier termination of this Lease. In the event that the Landlord incurs liabilities, claims, damages, losses and expenses which are not paid by the Tenant or acknowledged by the insurer of the Tenant, within one year of written demand being made by the Landlord for indemnity pursuant to the provisions herein, this Lease shall terminate.

5.2 Indemnity by Landlord

Except for or in respect of events caused by the Tenant's actions, or those for whom it is at law responsible, arising out of the use and occupation of the Lands and Premises, including wilful misconduct or negligence during the term of this Lease, the Landlord shall indemnify the Tenant and all of its servants, agents, employees, contractors, customers, invitees and persons for whom the Tenant is in law responsible and shall hold them and each of them harmless from and against any and all liabilities, claims, damages, losses and expenses, including all legal fees, on a solicitor-and-own-client basis, or in the alternative, the highest rate allowed for the taxation of costs under the *Rules of Court* and disbursements, due to, arising from or to the extent contributed to by:

- (a) any breach by the Landlord of any of the provisions of this Lease;
- (b) any act or omission of the Landlord or any of its servants, agents, employees, contractors or persons for whom the Landlord is in law responsible on the Lands and Premises; and

- (c) any injury, death or damage to persons or property of the Landlord or its servants, agents, employees, contractors or any other persons on the Lands and Premises by or with the invitation or consent of the Landlord;

except for any latent or patent defect in the Lands and Premises, and this Indemnity shall survive the expiration or earlier termination of this Lease.

5.3 Landlord Unable to Perform

Whenever and to the extent that the Landlord shall be unable to fulfil or shall be delayed or restricted in the fulfilment of any obligation hereunder in respect of the supply or provision of any service or utility or the doing of any work by reason of being unable to obtain the material goods, equipment, service, utility or labour required to enable it to fulfil such obligation or by reason of any strike or lock-out or any statute, law, or order-in-council or any regulation or order passed or made pursuant thereto or by reason of the order or direction of any administration, controller or board or any governmental department or officer or other authority or by reason of any cause beyond its control either of the foregoing character or not, the Landlord shall be relieved from the fulfilment of such obligation and the Tenant shall not be entitled to compensation for any loss, inconvenience, nuisance or discomfort thereby occasioned.

5.4 Relief of Landlord on Sale

If the Landlord sells or otherwise conveys its interest in the Lands and the subsequent owner of such interest assumes the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of all liability for such covenants and obligations. The Tenant shall from time to time at the request of the Landlord promptly execute and return to the Landlord such certificates confirming the current status of this Lease in such detail as the Landlord may require.

6. Insurance

6.1 Liability Insurance.

The Tenant shall provide and maintain in such form and to such extent and with such companies, as required by the Landlord, public liability insurance in the minimum amount of THREE MILLION (\$3,000,000) DOLLARS, or such other amount as the Landlord may request, for the protection against any claims in any way relating to the Lands. This public liability insurance, in which both the Landlord and the Tenant shall be designated as the insured, which policy shall provide that the same cannot be cancelled without at least 15 days prior written notice to the Landlord and the Tenant shall deposit with the Landlord a certificate of such insurance at or prior to the commencement of the term and thereafter within 10 days prior to the expiration of any such policy.

7. Hazardous Substances

7.1 Definitions

“Hazardous Substance” means any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing:

- (a) radioactive materials;
- (b) explosives, excluding lawfully possessed fireworks and lawfully conducted exploding novelty acts;

- (c) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
- (d) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (i) endangers the health, safety or welfare of persons or the health of animal life;
 - (ii) interferes with normal enjoyment of life or property;
 - (iii) causes damage to plant life or to property;
- (e) toxic substances; or
- (f) substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Landlord, the Tenant, or the Lands.

7.2 Compliance with Laws

The Tenant shall not bring upon the Lands or any part thereof any Hazardous Substance. Without limiting the generality of the foregoing, the Tenant shall, at the Tenant's own cost and expense, comply with all laws and regulations from time to time in force relating to a Hazardous Substance and protection of the environment and shall immediately give written notice to the Landlord of the occurrence of any event on the Lands constituting an offence thereunder or being in breach thereof and, if the Tenant, either alone or with others, causes the happening of such event, the Tenant shall, at its own expense, immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with this Paragraph 7; promptly remove the Hazardous Substance from the Lands, as the case may be, in a manner which conforms with all laws and regulations governing the movement of the same; and if requested by the Landlord, obtain from an independent consultant designated or approved by the Landlord a report verifying the complete and proper removal thereof from the Lands or, if such is not the case, reporting as to the extent and nature of any failure to comply with this Paragraph. The Tenant shall, at its own expense, remedy any damage to the Lands caused by such event or by the performance of the Tenant's obligations under this Paragraph 7 as a result of such occurrence. If any governmental authority having jurisdiction requires the clean-up of any Hazardous Substance held, released, spilled, abandoned, or placed upon the Lands or released into the environment by the Tenant in the course of the Tenant's business or as a result of the Tenant's use or occupancy of the Lands, then the Tenant shall, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work required and shall keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's reasonable requirements with respect to such plans.

7.3 Discharge

The Tenant shall not discharge or permit the discharge of any oil or grease or any deleterious, objectionable, dangerous materials or Hazardous Substance into any water course, culvert, drain or sewers in, under or near the Lands. The Tenant shall take as reasonable measures for ensuring that any discharge effluent shall not be corrosive, poisonous or otherwise harmful or to cause obstruction, deposit or pollution to any waters, ditches, water course, culverts, drains or sewers, nor to or within any sewage disposal works nor to the bacteriological process of sewage purification. The Tenant shall

forthwith, at the Landlord's request, provide facilities for testing and monitoring the effluent from the Tenant's operations and shall permit the Landlord and its agents reasonable access to the lands for the purposes of carrying out such testing and monitoring from time to time at the Tenant's expense. The Tenant shall construct, maintain and operate every furnace and burner used on the Lands so as to substantially consume or burn the smoke arising there from and shall not use or suffer any furnace or burner to be used negligently. The Tenant shall not cause or permit any grit, dust, noxious or offensive effluvia or Hazardous Substance to be emitted from any engine, furnace, burner or apparatus on the Lands without using the best practicable means reasonably available for preventing or counteracting such emissions.

7.4 Ownership of Hazardous Substances

If the Tenant brings onto or creates upon the Lands any Hazardous Substance or if the conduct of the Tenant's business causes there to be any Hazardous Substance upon the Lands, then, notwithstanding any rule of law to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord, notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Lands and notwithstanding the expiry or earlier termination of this Lease.

7.5 Access to Information

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to any Hazardous Substance and the protection of the environment and the Tenant covenants and agrees that the Tenant shall from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information. The Tenant shall, at its own expense, comply with all the laws and regulations from time to time in force regulating the manufacture, use, storage, transportation or disposal of Hazardous Substance and shall make, obtain and deliver all reports and studies required by governmental authorities having jurisdiction.

8. Termination

8.1 Termination

It is hereby agreed that during the term hereof, the Landlord or the Tenant may terminate this Lease by giving notice in writing at least three (3) months before such determination; and on the day following the date specified in the notice, this Lease is terminated.

9. General Provisions

9.1 Subordination

This Lease is subject and subordinate to all mortgages, easements, or rights of way which now or hereafter during the term of this Lease or any renewal thereof shall be recorded in the Land Titles Office as a mortgage, easement, or right of way given by the Landlord against the Lands. The Tenant shall execute promptly from time to time any assurances that the Landlord may request to confirm this subordination.

9.2 No Agency or Partnership

Nothing herein contained shall be construed as creating the relationship of principal and agent or of partners or of joint ventures between the parties hereto, their only relationship being that of landlord and tenant.

9.3 Overholding

If the Tenant continues to occupy the Lands with the consent of the Landlord after the expiration of this Lease or any renewal thereof without any further written agreement, the Tenant shall be a monthly Tenant at a monthly rental equivalent to 1/12 of the annual rental and all other sums payable hereunder pro-rated for one month.

9.4 Effect of Headings

The headings or subheadings to the clauses in this Lease form no part thereof, and are inserted for convenience and internal reference only and are not to be relied upon or considered by any person in the interpretation hereof.

9.5 Notices

Any notice required to be given hereunder by any party shall be deemed to have been well and sufficiently given if mailed by prepaid, registered mail, emailed, faxed to or delivered at the address of the other party hereinafter set forth:

If to the Landlord:

The City of Whitehorse

2121 Second Avenue

Whitehorse, Yukon Territory, Y1A 1C2

Attention: Manager, Land and Building Services

Fax No. (867) 668-8395

Email Address: land@whitehorse.ca

If to the Tenant:

Frostbite Music Society

Attention: President

PO Box 31283, Whitehorse, YT Y1A 5P7

Email Address: frostbiteyukon@gmail.com

A notice shall be deemed to have been received, if emailed, faxed or delivered, on the date of delivery and if mailed as aforesaid then on the fifth business day following the posting thereof, provided that in the event of disruption of internet connection, postal services a notice shall be given by one of the other methods of communication.

9.6 Solicitor and Client Costs

If the Tenant defaults in paying the rent hereunder or in performing any of the covenants and agreements herein contained on the part of the Tenant to be observed and performed, the Landlord may recover from the Tenant all of the Landlord's reasonable costs in enforcing compliance with this Lease and without limitation, costs as between solicitor-and-own-client or in the alternative, costs at the highest tariff allowed under the *Rules of Court*.

9.7 Joint and Several Covenants

In the event that this Lease is executed by two or more persons as Tenant, the covenants and agreements on the part of the Tenant herein contained will be and will be deemed to be joint and several covenants.

9.8 Binding Agreement

This Lease shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns as the case may be. This Lease is not assignable by the Tenant without the express written consent of the Landlord, which may be arbitrarily and unreasonably withheld.

9.9 Interpretation of Words

Wherever the singular or the masculine is used in this Lease, the same shall be deemed to include the plural or the feminine or the body politic or corporate where the context or the parties so require.

9.10 Time of Essence

Time shall in all respects be of the essence hereof.

9.11 Changes to Agreement

No provision of this Lease shall be deemed to have been changed unless made in writing signed by the Landlord and Tenant, and if any provision is unenforceable or invalid for any reason whatever, such unenforceability or invalidity shall not affect the remaining provisions of this Lease and such provisions shall be severable from the remainder of this Lease.

9.12 Acceptance by Tenant

The Tenant does hereby accept this Lease of the Lands, to be held by it as tenant, and subject to the conditions, restrictions and covenants above set forth.

IN WITNESS WHEREOF the parties hereto have hereunto executed this Lease as of the day and year first above written in the City of Whitehorse, in the Yukon Territory.

) THE CORPORATE SEAL OF
) **The City of Whitehorse**
) was hereunto affixed in the presence of:

)

)

)

)

)

)

Wendy Donnithorne, City Clerk

)

)

)

)

)

)

)

)

Michael Bellon, President

Affidavit of Witness

CANADA) I, _____ ,
)
) *(print name of witness)*
) of the City of Whitehorse,
YUKON TERRITORY) in the Yukon Territory,
)
TO WIT:) MAKE OATH AND SAY AS FOLLOWS:

- 1) I was personally present and did see **Michael Bellon**, named in the within instrument, who identified himself to me to be the person named therein, duly sign and execute the same as the authorized signatory for **Frostbite Music Society** for the purpose therein named;
- 2) The said instrument was executed at the City of Whitehorse, in the Yukon Territory, and that I am the subscribing witness thereto;
- 3) The said party are in my belief of the full age of nineteen years.

SWORN / AFFIRMED BEFORE ME)
at Whitehorse in Yukon)
on the ____ day of _____, 2022)
)
_____) *(Signature)*
(signature of Notary or Commissioner))
)
_____) *(Print name of Witness)*
Cathy Dyson)
(Print full name))
)
Notary Public in and for Yukon;)
(My commission expires: October 31, 2023))
)
)
)

** All Notaries and Commissioners outside of Yukon must affix seal*

SCHEDULE "A"

Frostbite Music Society Lease Area

ADMINISTRATIVE REPORT

TO:	Planning Committee
FROM:	Administration
DATE:	February 7, 2022
RE:	Public Hearing Report – Lot 1216 Robert Service Way

ISSUE

Public Hearing Report on a bylaw to amend the zoning of Lot 1216 Robert Service Way, Kwanlin Dün First Nation (KDFN) Settlement Land C-34B, to allow for commercial/industrial and public utility lots.

REFERENCES

- 2010 Official Community Plan (OCP)
- Zoning Bylaw 2012-20
- Proposed Bylaw 2021-38
- KDFN Self-Government Agreement (2005)
- Joint Declaration of Commitment (2018)
- Robert Service Way Planning Study (2018)
- Commercial Industrial Land Study (2020)
- *Yukon Environmental and Socio-Economic Assessment Act* (YESAA)
- YESAA Consolidated Decision Document – Battery Energy Storage System (2021-0076)
- Whitehorse Airport Zoning Regulations (C.R.C., c. 122)
- 2015 Seismic Hazard Map – Geological Survey of Canada
- Location Map (Appendix A)

HISTORY

Chu Níikwān Limited Partnership (CNLP) proposes to rezone a KDFN settlement parcel known as C-34B, located at the northeast corner of the Robert Service Way and Alaska Highway intersection.

CNLP is seeking to rezone 1.66 ha of the site to FN-PU – First Nations – Public Utilities to facilitate a Yukon Energy Corporation (YEC) Battery Energy Storage System (BESS) facility. CNLP is also requesting to rezone the remaining 9.13 ha of the site to FN-CIM – First Nation – Mixed Use Commercial/Industrial for the development of potentially four commercial/industrial lots.

The BESS project was assessed and approved through the YESAA process on August 23, 2021 (2021-0076).

Bylaw 2021-38 received 1st Reading on November 29, 2021. Public hearing notification were sent out in accordance with the Zoning Bylaw 2012-20, including:

- Newspaper advertisements were posted on December 17 and 24, 2021.

- Email notifications were sent to the Government of Yukon (YG) Lands Department, KDFN, and Ta'an Kwäch'än Council governments.
- Letters were mailed to sixteen (16) landowners within 100 m of the subject site.
- A notice sign was placed on the subject site.

The Public Hearing was held on January 17, 2022. No verbal submissions were received and no one appeared at the Public Hearing. One written submission in opposition was received that noted the following:

- Geo-hazard concerns due to the batteries being near other sources of power (i.e. hydrodam and LNG power sources) which are all within an earthquake zone and in proximity of unstable land and a basin of water.
- Location concerns due to another site (i.e. Mayo Road substation) having infrastructure to potentially connect with (i.e. less power lines needed) and no lease costs as the land is owned by YG (i.e. decreased costs passed on to the consumer).
- Safety concerns due to the location of the batteries within a runway flight path.

ALTERNATIVES

1. Proceed with the second and third readings under the bylaw process.
2. Do not proceed with the second and third readings.

ANALYSIS

Geo-hazard, location and safety concerns were appropriately considered as part of the location determination and YESAA process noted above. Of note:

Geo-Hazard Concerns

The site is relatively flat and is located approximately 100 m southwest from the top of the nearest steep slope bank (i.e. a slope in excess of 30%). Future development on the subject site will be in accordance with policy 1.2.2 of the OCP which restricts new development within 15 m from the top of escarpments that have a slope in excess of 30%.

In addition, according to Natural Resources Canada's *2015 Seismic Hazard Map – Geological Survey of Canada*, all of Whitehorse is located within the same moderate risk earthquake zone hazard level (i.e. 5 to 15 per cent chance that significant damage will occur every 50 years). It is therefore considered that locating the batteries on the subject site will not initiate or exacerbate any geo-hazard risks over and above any other location in Whitehorse.

In the event of a hazard occurring, the batteries are planned to be stored in metal containers and will be equipped with an automated system for detection and on-site suppression of fire. YEC will also coordinate with the Whitehorse Fire Services department to prepare a fire response plan. The facility is expected to create low noise nuisance and have very low risk of fire or explosion, as stated in the Yukon Environmental and Socio-economic Assessment Board's Designated Office Evaluation Report (2021-0076).

Location Concerns

YEC considered three separate battery location options as part of the project planning, which included a site on KDFN Settlement Land adjacent to the Takhini Substation on the North Klondike Highway. The subject site option was preferred due to public input, various site challenges, and the lease rates offered. Of note, the public consultation indicated general support for the project but strong opposition to it being located at the site option adjacent to the Takhini Substation.

Safety Concerns

The subject site is located approximately 1 km from the Whitehorse airport, and is within the approach path of runway 14R-32R. The Transport Canada's airport regulations (C.R.C., c. 122) limit the maximum building height on the subject site to approximately 20 m, which aligns with the proposed FN-PU First Nation-Public Utility maximum height restriction. Compliance with the maximum height permitted and any other airport regulation will be addressed at development review stage.

Policy Matters

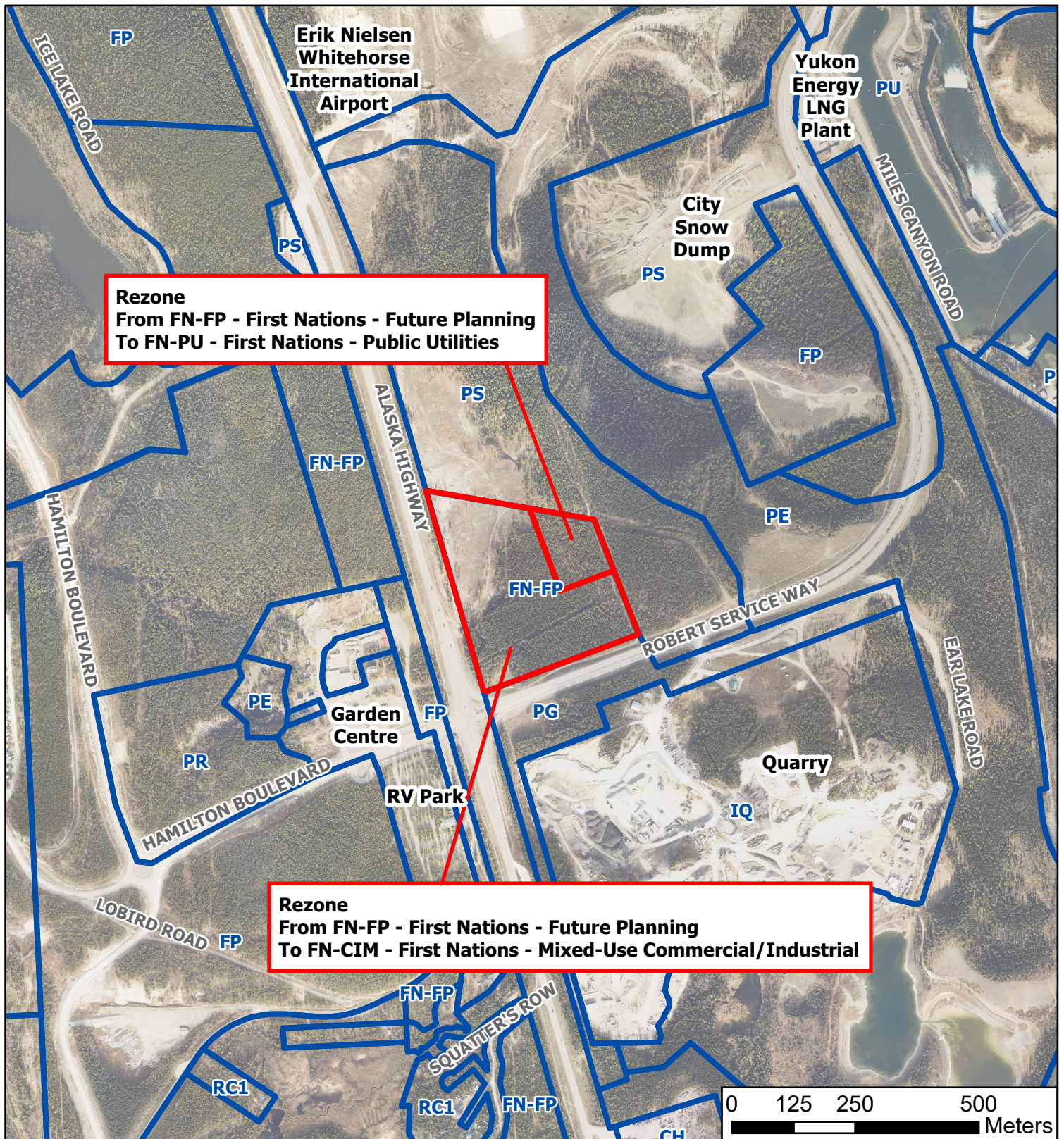
The proposal also aligns with the City's vision and advice for the area, as outlined in the OCP, the Robert Service Way Planning Study, and the Commercial Industrial Land Study. The City has identified the need for 32 ha of commercial/industrial land to accommodate growth to 2040, which this rezoning amendment will help fulfill by facilitating the development of commercial industrial lots.

The proposed rezoning also aligns with the KDFN Self-Government Agreement (SGA) (2005) industrial designation, overall objectives of the Joint Declaration of Commitment (2018) and is not anticipated to create adverse effects on protective services.

The current OCP is also in the process of being updated. The OCP Emerging Directions report includes a proposed broad policy direction to continue to collaborate with KDFN to support them as they plan and develop their land.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2021-38, a bylaw to amend the zoning at Lot 1216 Robert Service Way to allow for public utility and commercial/industrial uses, be brought forward for second and third reading under the bylaw process.



DATE:
Dec 6, 2021

FILE NO:
Z-09-2021

 Lot 1216

CITY OF WHITEHORSE - PLANNING AND SUSTAINABILITY SERVICES

Bylaw 2021-38

An application to amend the zoning of Lot 1216 Quad 105D/11 2010-0050 LTO YT (KDFN Settlement Land c-34B) to allow for commercial/industrial and public utility lots.



ADMINISTRATIVE REPORT

TO: Planning Committee
FROM: Administration
DATE: February 7, 2022
RE: Public Hearing Report – 115 Range Road

ISSUE

Public Hearing Report on a bylaw to amend the zoning of 115 Range Road from IA-Airport to CH-Highway Commercial.

REFERENCES

- 2010 Official Community Plan (OCP)
- Zoning Bylaw 2012-20
- Proposed Bylaw 2021-39
- Location Map (Appendix A)

HISTORY

The City received an application to amend the zoning of 115 Range Road from IA–Airport to CH – Highway Commercial. The site was formerly used by a helicopter business that now leases helipads at the Erik Nielson Whitehorse International Airport. No future use for the site is proposed at this time. NAV Canada has confirmed that the subject site is no longer desirable as a H1 helipad due to the changing context of the area. The location also no longer meets the requirements for an H2 and H3 helipad. Therefore, under current zoning, the subject site can only potentially be used for aircraft sales and service uses.

Bylaw 2021-39 received 1st Reading on November 29, 2021. Public Hearing notifications were sent out in accordance with the Zoning Bylaw 2012-20, including:

- Newspaper advertisements were posted on December 3 and 10, 2021.
- Email notifications were sent to the Government of Yukon Lands Department, Kwanlin Dün First Nation, and Ta'an Kwäch'än Council governments.
- Letters were mailed to six (6) landowners within 100 m of the subject site.
- A notice sign was placed on the subject site.

ALTERNATIVES

1. Proceed with the second and third readings under the bylaw process.
2. Do not proceed with the second and third readings.

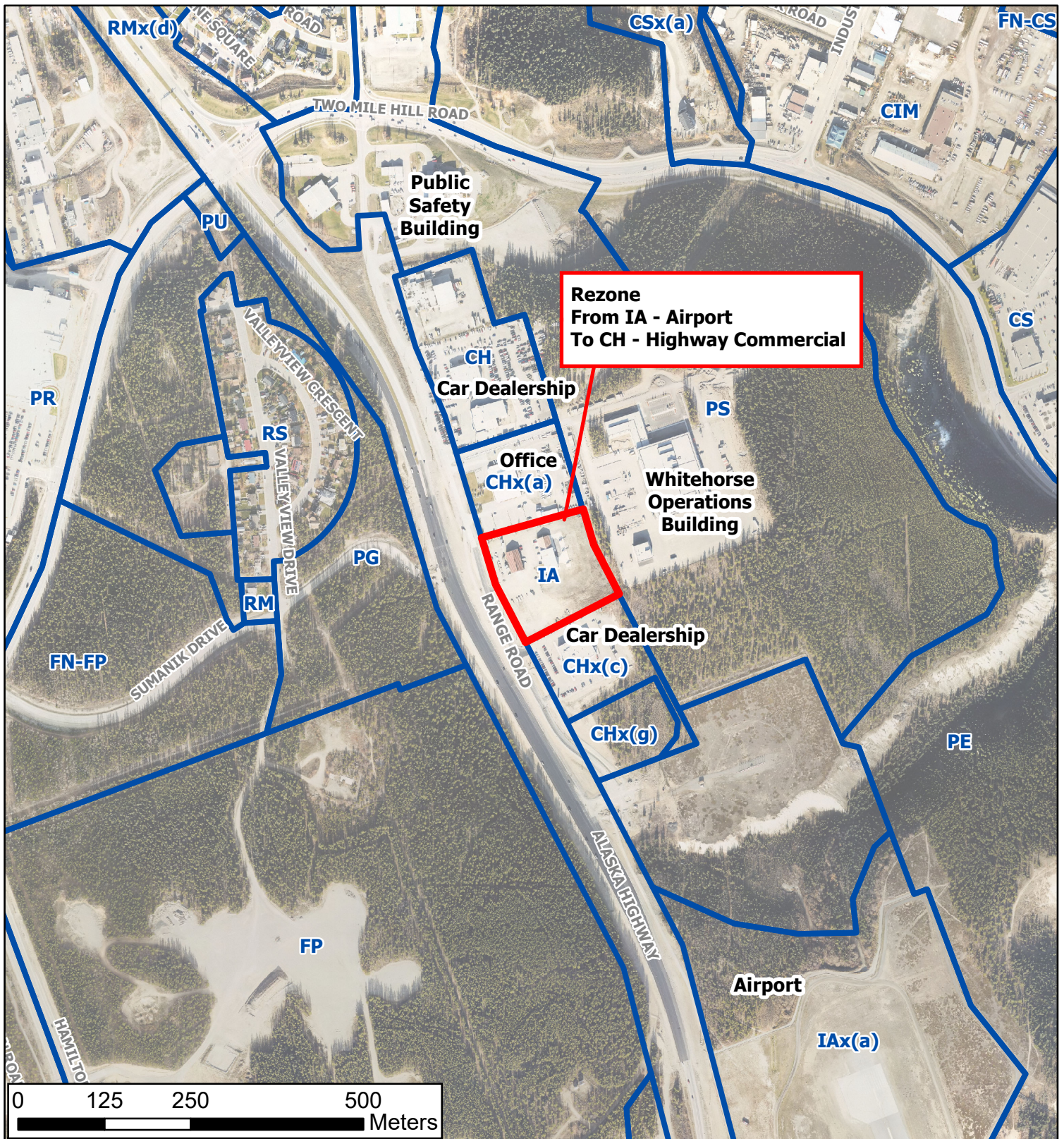
ANALYSIS

A Public Hearing was held on January 17, 2022. No written or verbal submissions were received and no one delegated at the Public Hearing. No issues were raised at the Public Hearing either.

The proposed rezoning aligns with the OCP designation, the proposed broad policy direction in the OCP Emerging Directions report and with surrounding uses and zones. The proposed rezoning will facilitate intensification of the site by providing for more flexible and intensive land uses.


ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2021-39, a bylaw to amend the zoning of 115 Range Road from IA-Airport to CH-Highway Commercial, be brought forward for second and third reading under the bylaw process.



DATE:
Nov 22, 2021

FILE NO:
Z-11-2021

 115 Range Road

CITY OF WHITEHORSE - PLANNING AND SUSTAINABILITY SERVICES

Bylaw 2021-39

A Bylaw to amend the Zoning of 115 Range Road from IA to CH to allow for highway commercial use.



ADMINISTRATIVE REPORT

TO:	Planning Committee
FROM:	Administration
DATE:	February 7, 2022
RE:	Public Hearing Report – Zoning Whistle Bend Phase 9

ISSUE

Public Hearing Report on a bylaw to establish zoning for Phase 9 of Whistle Bend, from FP-Future Planning to RCS-Comprehensive Residential Single Family, RCS2-Comprehensive Residential Single Family 2, RCM-Comprehensive Residential Multi-Family, and RCT-Comprehensive Residential Townhouses.

REFERENCES

- Official Community Plan 2010 (OCP)
- Zoning Bylaw 2012-20
- Proposed Bylaw 2021-42
- Location Map (Appendix A)
- Planning and Preliminary Engineering Design Report for Whistle Bend Future Areas & Town Square 2020

HISTORY

In 2020, the City completed the planning and preliminary engineering work for three new development areas in Whistle Bend – Areas A, B and C. Area C which was selected as the next development area has three phases for zoning purposes – 8, 9 and 10. Phase 8 was approved in September 2021 and rezoning for Phase 9 is now proposed to enable additional residential uses in Whistle Bend.

Bylaw 2021-42 received 1st Reading on 13 December 2021. Public Hearing notifications were sent out in accordance with the Zoning Bylaw 2012-20, including:

- Newspaper advertisements were posted on December 17 and 24, 2021.
- Email notifications were sent to the Government of Yukon (YG) Lands Department, Kwanlin Dün First Nation, and Ta'an Kwäch'än Council governments.
- Mail notifications were not sent as there are no property owners, other than YG and the City, within 100 m of the proposed rezoned area and the Whistle Bend Community Association formally dissolved in May 2021.
- A rezoning sign could not be placed as the area is currently inaccessible due to construction.

ALTERNATIVES

1. Proceed with the second and third readings under the bylaw process.
2. Do not proceed with the second and third readings.

ANALYSIS

A Public Hearing was held on January 17, 2022. No written or verbal submissions were received and no one appeared at the Public Hearing. No issues were raised at the Public Hearing either.

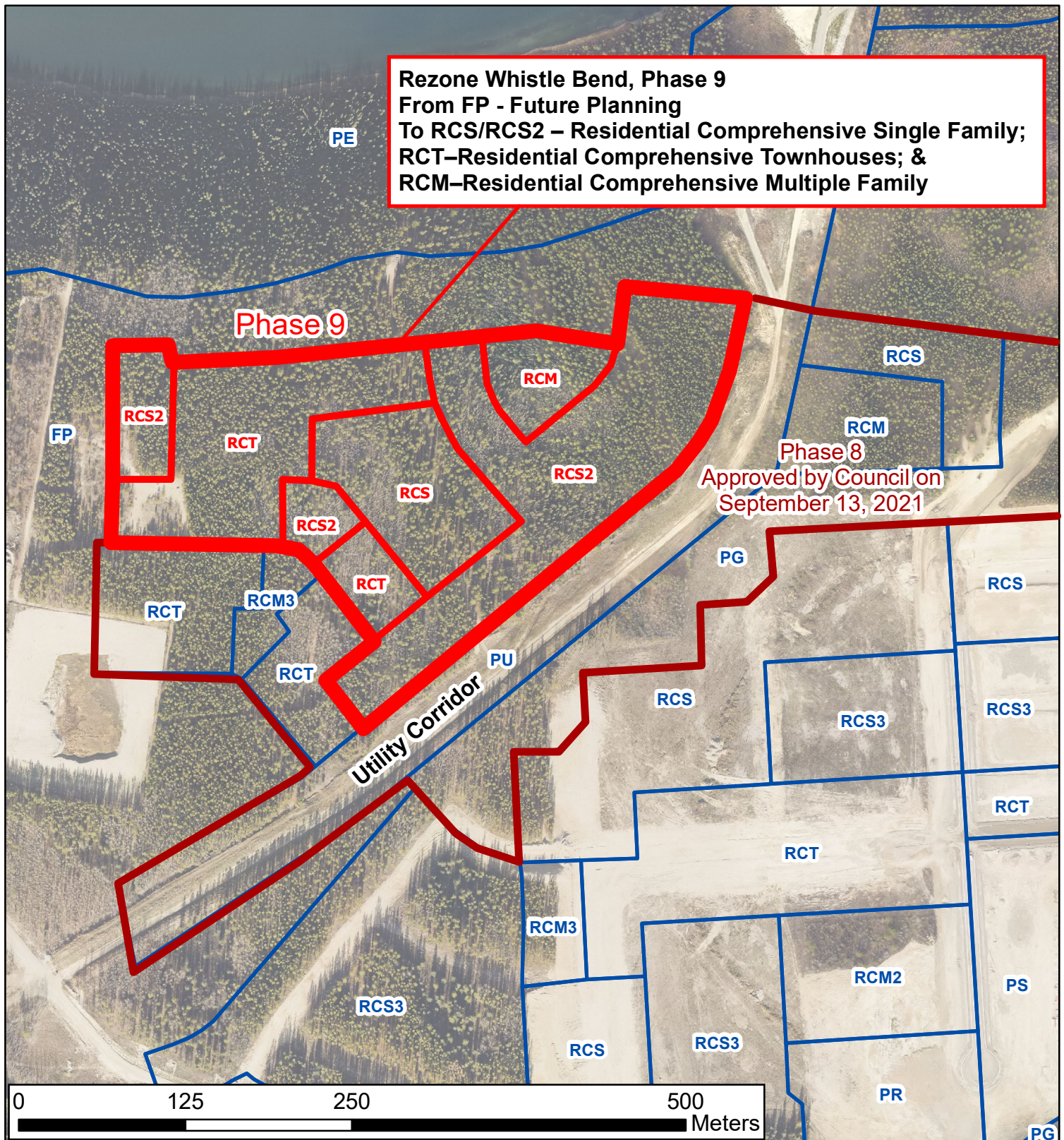
Council approved an Official Community Plan amendment in January 2021 to allow residential development in Area C. The proposed zones align with the OCP designation and is compatible with surrounding uses and zones.

If Council approves this amendment, the City and YG can move forward with detailed engineering design and the subdivision process. Lot lottery release for Phase 9 is anticipated to begin in Fall/Winter 22/23.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2021-42, a bylaw to amend the zoning for Phase 9 of Whistle Bend, from FP-Future Planning to RCS-Comprehensive Residential Single Family, RCS2-Comprehensive Residential Single Family 2, RCM-Comprehensive Residential Multi-Family, and RCT-Comprehensive Residential Townhouses, be brought forward for second and third reading under the bylaw process.

**Rezone Whistle Bend, Phase 9
From FP - Future Planning
To RCS/RCS2 – Residential Comprehensive Single Family;
RCT–Residential Comprehensive Townhouses; &
RCM–Residential Comprehensive Multiple Family**



DATE:
Dec 6, 2021

FILE NO:
Z-12-2021

 Phase 9

CITY OF WHITEHORSE - PLANNING AND SUSTAINABILITY SERVICES

Bylaw 2021-42

An application to amend the zoning of approximately 8.5 ha parcel of vacant Commissioner's land, comprising phase 9 of Whistle Bend, to allow for a range and mix of house types.



CITY OF WHITEHORSE
DEVELOPMENT SERVICES COMMITTEE
Council Chambers, City Hall



Chair: Jocelyn Curteanu

Vice-Chair: Mellisa Murray

February 7, 2022

Meeting #2022-03

1. New Business

CITY OF WHITEHORSE
CITY OPERATIONS COMMITTEE
Council Chambers, City Hall



Chair: Ted Laking

Vice-Chair: Dan Boyd

February 7, 2022

Meeting #2022-03

1. New Business

CITY OF WHITEHORSE
COMMUNITY SERVICES COMMITTEE
Council Chambers, City Hall



Chair: Mellisa Murray

Vice-Chair: Michelle Friesen

February 7, 2022

Meeting #2022-03

-
1. New Business

CITY OF WHITEHORSE
PUBLIC HEALTH AND SAFETY COMMITTEE
Council Chambers, City Hall



Chair: Kirk Cameron

Vice-Chair: Jocelyn Curteanu

February 7, 2022

Meeting #2022-03

-
1. New Business