

CITY OF WHITEHORSE – STANDING COMMITTEES

Monday, July 18, 2022 – 5:30 p.m.

Council Chambers, City Hall

CALL TO ORDER

ADOPTION OF AGENDA

PROCLAMATIONS

DELEGATIONS David Jennings – Public Safety
 Jordan Stackhouse and Daniel Schneider – Restricted Retail
 Zoning
 Roxanne Stasyszyn – Skookum Drive Crosswalk/Traffic Calming

PUBLIC HEALTH AND SAFETY COMMITTEE

1. New Business

CORPORATE SERVICES COMMITTEE

1. Budget Amendment – Crosstown Water Main
2. Budget Amendment – Takhini Sanitary Trunk Replacement
3. Budget Amendment – Emergency Escarpment Repairs
4. Budget Amendment – Heavy Equipment Fleet
5. City Manager Bylaw
6. New Business

CITY PLANNING COMMITTEE

1. Zoning Amendment – 2220 2nd Avenue
2. Subdivision Approval – Whistle Bend Phase 9
3. Whistle Bend Community Garden Lease Agreement
4. New Business

DEVELOPMENT SERVICES COMMITTEE

1. New Business

CITY OPERATIONS COMMITTEE

1. Snow and Ice Program Review – For Information Only
2. New Business

COMMUNITY SERVICES COMMITTEE

1. New Business

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



Chair: Kirk Cameron

Vice-Chair: Jocelyn Curteanu

July 18, 2022

Meeting #2022-17

1. New Business

CITY OF WHITEHORSE
CORPORATE SERVICES COMMITTEE
Council Chambers, City Hall



Chair: Michelle Friesen

Vice-Chair: Kirk Cameron

July 18, 2022

Meeting #2022-17

-
1. Budget Amendment – Crosstown Water Main
Presented by Manager Taylor Eshpeter
 2. Budget Amendment – Takhini Sanitary Trunk Replacement
Presented by Manager Taylor Eshpeter
 3. Budget Amendment – Emergency Escarpment Repairs
Presented by Manager Taylor Eshpeter
 4. Budget Amendment – Heavy Equipment Fleet
Presented by Director Tracy Allen
 5. City Manager Bylaw
Presented by Director Valerie Braga
 6. New Business

ADMINISTRATIVE REPORT

TO:	Corporate Services Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	Budget Amendment - 2022 Cross Town Water Main

ISSUE

Creation of a new capital project and corresponding budget amendment is required to commence preliminary and detailed design for the further repairs and/or replacement of a section of critical water main.

REFERENCE

- [2022 to 2025 Capital Expenditure Plan](#)
- Map of alignment of Cross Town Water Main (with location of leak showing)

HISTORY

In early May two significant leaks were discovered on the Cross Town Water Main at the base of Two Mile Hill. The Cross Town Water Main is a key supply main that provides potable water from the Selkirk Aquifer to every serviced neighborhood other than Downtown and Riverdale. The leak was a result of significant corrosion of the pipe wall and was repaired by the City's Utility Systems crew. During the repair, other exposed sections of the main showed additional areas of corrosion. Based on the severity of the corrosion in this area, there is a high risk of additional pipe failures until such time that the pipe can be replaced in this section.

ALTERNATIVES

1. Amend the 2022 to 2025 Capital Expenditure Plan as recommended.
2. Refer the matter back to Administration.

ANALYSIS

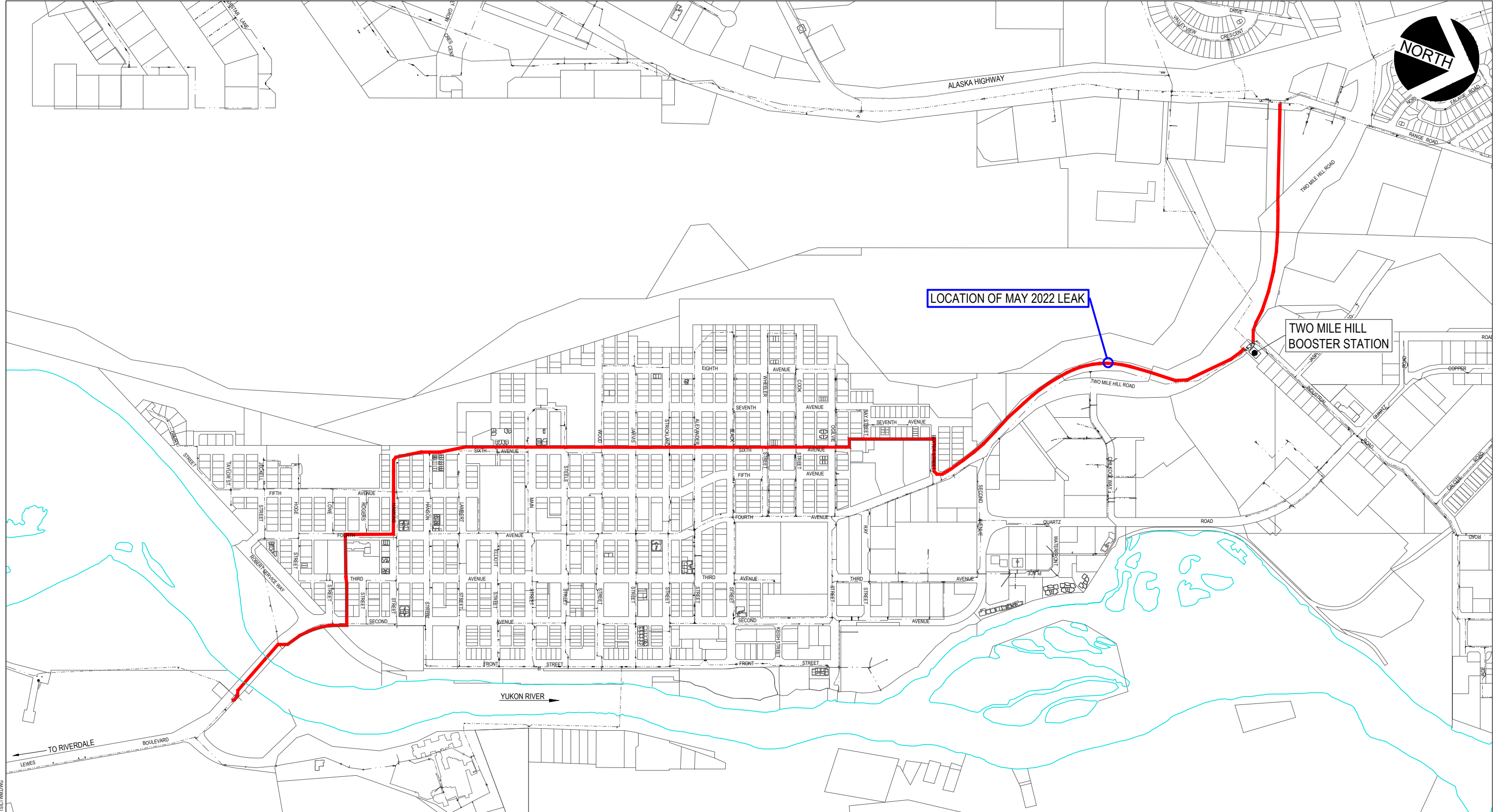
The Cross Town Water Main is a 600mm diameter main that runs from the Selkirk Aquifer to the Two Mile Hill Booster Station. From there the water is pumped to several neighborhoods throughout the City. This line was installed in the early 1990's and is a critical piece of the City's infrastructure for the distribution of drinking water. The line is approximately 30 years old, and the significant corrosion found in the Spring of 2022 was unexpected and premature for a water main constructed of ductile iron material. At this time is expected that the corrosion is isolated to about a 1km section of the main and that this area is not representative of the condition of the entire main. Additional inspections will be completed to confirm the condition of the entire main and also identify precise limits of corrosion.


The line feeds Two Mile Hill Booster Station and cannot be placed out of commission for extended periods of time without adversely impacting the consistent and safe supply of potable water to numerous neighborhoods.

Administration has retained a consultant to complete a preliminary analysis of the information known to date as well as possible repair and/or replacement opportunities with order of magnitude costs. This work is being completed within existing budgets and will be used to feed the preliminary and detailed engineering design. Completion of the detailed design work will include a life cycle assessment of the entire line and the optimal repair or replacement strategy for the area of concern. A capital budget request for the construction portion of the project will be considered as part of the 2023-2026 capital budget request process. Administration continues to work with external funding agencies for possible sources of alternative funding to support all water and storm infrastructure repairs.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that the 2022 to 2025 Capital Expenditure Plan be amended by adding a new capital project titled “2022 Cross Town Water Main” for \$500,000, funded from the General Reserve until external funding can be secured.



REFERENCE DRAWINGS				No. DATE DESCRIPTION BY APP				REVISIONS & ISSUES		SCALE: HOR: 1:10000 VERT: DESIGN: DRAWN: RSC CHECKED:		 THE WILDERNESS CITY		LEGEND CROSSTOWN WATER MAIN		CITY DWG. No.		CONSULTANT DWG. No.		CROSS TOWN WATER MAIN MAY 2022 LEAK REPAIR MAIN LOCATION		SHEET 1 OF 2 REV. 0	
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ADMINISTRATIVE REPORT

TO:	Corporate Services Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	Takhini Sanitary Trunk Replacement

ISSUE

Creation of a new capital project and corresponding budget amendment is required to address a sanitary trunk gravity main replacement.

REFERENCE

- [2022 to 2025 Capital Expenditure Plan](#)
- Takhini Trunk Main – Catchment Area Drawing
- Takhini Trunk Main – Site Plan

HISTORY

The City of Whitehorse owns and operates approximately 140 km of sanitary sewer lines that transport effluent throughout the City. Of the 140 km of the sanitary lines that exist, a portion of those are considered “sanitary trunk” lines that collect effluent from several different neighborhoods into one larger pipe before conveying the effluent to the Marwell Lift Station and subsequently the Livingstone Lagoon for final treatment.

On June 1, 2022 a large tension crack was observed at Manhole #35 located along the Takhini Sanitary Trunk main east of the Pepsi Softball Center. This portion of the sanitary trunk line was installed in 1975 and is located on the face of the escarpment in a relatively steep section. This line transports approximately 40% of the effluent that goes to the Marwell Lift Station at about 200 L/s during peak flows. The tension crack was not present during the last inspection of the area in September 2021.

ALTERNATIVES

1. Amend the 2022 to 2025 Capital Expenditure Plan as recommended.
2. Refer the matter back to Administration.

ANALYSIS

On April 30, 2022 there was a significant landslide along the escarpment on Robert Service Way that covered both the road and the Millennium Trail. Since then, the escarpment has exhibited numerous instabilities and an unprecedented number of events in a single year. These events were mainly in the southern portion of downtown Whitehorse and the Takhini area. On June 1, 2022 a large tension crack was observed along the Takhini Sanitary Trunk main east of the Pepsi Softball Center. Upon further inspection, it was noted that:

- The tension crack is approximately 250 mm wide with approximately 1.4 m vertical displacement immediately adjacent to the manhole;

- The tension crack runs perpendicular to the slope face for about 65m with the manhole at the centre of the worst section;
- The sanitary trunk main is visible through the tension crack and appears unsupported at the base where it exits the manhole; and
- There is active seepage in the area.

Based on the hazard and risk assessment completed by the geotechnical engineers, there is a high probability of imminent slope failure that could damage or destroy this portion of the line within the next year. Given the magnitude of the risk of slope failure and corresponding failure of this portion of the sanitary trunk, the City has constructed a temporary bypass solution to maintain levels of service and mitigate any environmental impacts until a final solution can be implemented.

The next steps are:

- Commence engineering design in 2022 for a permanent solution.
- Keep the bypass on standby for remainder of 2022 and fully commission the bypass in spring 2023 to reduce risk during spring melt and facilitate construction of a new sanitary sewer trunk in summer 2023.
- Construct a new sanitary sewer trunk in a new alignment in summer 2023. A capital project will be requested through the 2023 capital budget request process.

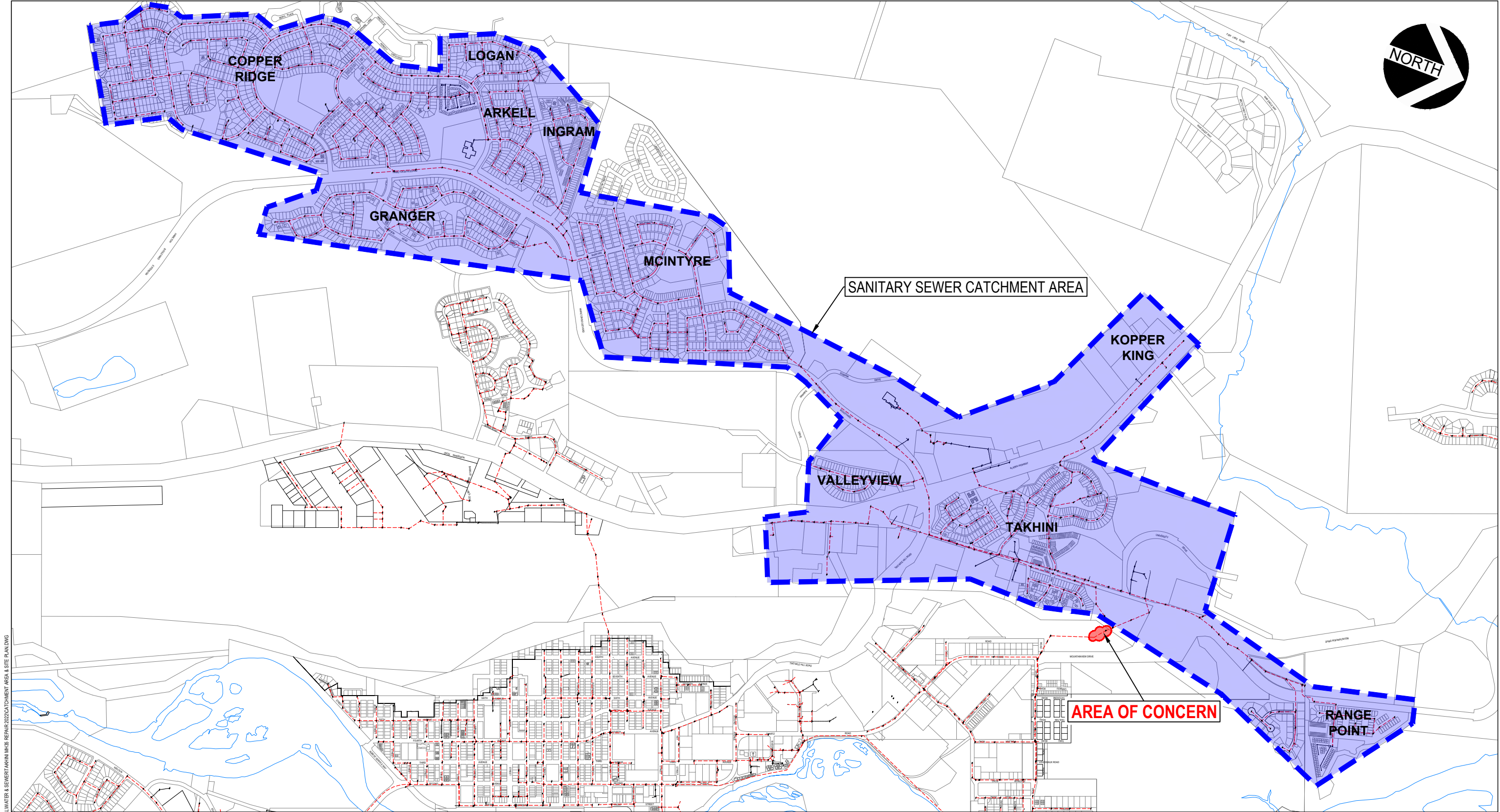
It should be noted that given the age of the existing sanitary trunk and planned future development within this sanitary catchment area, a capital project to provide additional capacity and redundancy would likely have been required in the next 7-12 years, regardless.

Purchasing

The City's consultant has started developing conceptual designs and budgetary cost estimates for the sanitary trunk replacement project. Due to the emergent nature of the work, the City Manager authorized a single source procurement for a design consultant to begin the design work.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that the 2022 to 2025 Capital Expenditure Plan be amended by adding a new capital project titled "Takhini Sanitary Trunk Replacement" limited to engineering design in 2022 for \$350,000, funded from the General Reserve.



R:\DEVELOPMENT SERVICES\ENGINEERING\INTERNAL WATER & SEWER\TAKHINI\10-35-REPAIR 2022\CATCHMENT AREA & SITE PLAN.DWG

REFERENCE DRAWINGS						SCALE:
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			REVISIONS & ISSUES			



CONSULTANT:	
CITY DWG. No.	CONSULTANT DWG. No.

TAKHINI TRUNK GRAVITY MAIN
CATCHMENT AREA

SHEET
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OF
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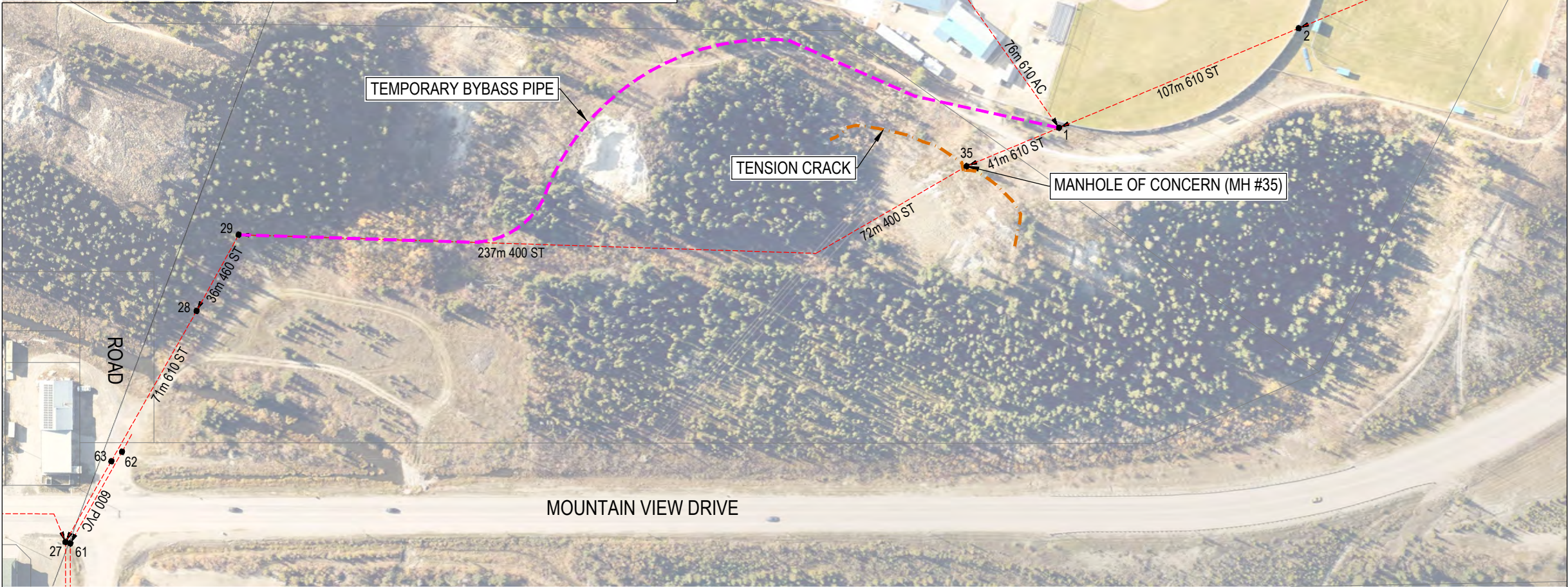
MANHOLE 35



TENSION CRACK @ MH35



EXPOSED PIPE IN TENSION CRACK



ROAD DEVELOPMENT, SERVICES ENGINEERING, INTERNAL WATER & SEWER, TAKHINI MH 35 REPAIR 2022, CATCHMENT AREA & SITE PLAN, DWG

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CONSULTANT:	
CITY DWG. No.	CONSULTANT DWG. No.

TAKHINI TRUNK GRAVITY MAIN	SHEET
	2
	OF
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SITE PLAN	REV.
	0

ADMINISTRATIVE REPORT

TO:	Corporate Services Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	Budget Amendment – 2022 Emergency Escarpment Repairs

ISSUE

Creation of a new capital project and corresponding budget amendment is required to address costs incurred due to the 2022 escarpment slides in the downtown area.

REFERENCE

- [2022 to 2025 Capital Expenditure Plan](#)

HISTORY

The Whitehorse escarpment is a 60 m high natural bluff of lacustrine silt that was formed by down cutting of the Yukon River into glacial lake sediments and runs from Robert Service Way along the West side of downtown to Mountain View Drive. While the escarpment has been prone to minor slope instability and slope movements in the past, the months of April, May and June 2022 saw extreme slope instability including landslides that required numerous road, trail and park closures. Erosion of the escarpment is the result of water infiltration. Rain water and snow melt percolates vertically through the sand cap until it hits the impermeable silt layer below. This results in ground water outflow at the sand/silt contact 3-5 m beneath the escarpment crust. Slope movement processes are most active in April and May during the snow melt and subsequent ground thaw.

On April 30, 2022 approximately 2,000 to 3,000 cubic meters of material was released in a landslide that covered a portion of Robert Service Way and the Millennium Trail. Subsequent landslides of varying magnitude over the course of the following six weeks were also observed. Some were relatively minor in nature, others were significant and impacted nearby infrastructure including a downtown park and light standard. The City's Emergency Operations Center (EOC) was enacted in response to the landslides and several concurrent actions were taken to mitigate the immediate risks and clean-up the landslide debris.

ALTERNATIVES

1. Amend the 2022 to 2025 Capital Expenditure Plan as recommended.
2. Refer the matter back to Administration.

ANALYSIS

Since the initial landslide on April 30, 2022 the escarpment has exhibited numerous instabilities and an unprecedented number of events in a single year, mainly in the southern portion of downtown Whitehorse and the Takhini area. Several concurrent responses to the slide event were initiated including:

- Daily visual inspections, surveying and drone monitoring of the escarpment to monitor for future slides and identify areas of concern to be protected;
- Installation of fencing and other barricades to close off high-risk areas;
- Retention of 24 hour security to prevent any access through the closed portion of Robert Service Way (RSW);
- Detailed design and engineering of a temporary solution to mitigate risk and allow the re-opening of RSW;
- Preliminary engineering of a long-term solution to mitigate risk along RSW;
- Construction of a temporary sanitary bypass for the Takhini Sanitary Trunk line; and
- Construction work including purchase of materials such as sheet piles, building a berm and clean-up of debris.

Incurred costs to date are over \$1,600,000 with a number of invoices still outstanding. The majority of the remaining work is related to debris cleanup of landslides, and completion of the containment berm on Robert Service Way. Administration will be pursuing cost recovery through other governmental funding sources.

Based on the hazard and risk assessment completed by the geotechnical engineers, the unusually high levels of activity along the escarpment have abated for the year. However, there is a high probability of slope failures along the escarpment during the freshet period in subsequent years (May to June). There is an existing approved 2022 capital project for \$100,000 that will be used to update geotechnical data for the escarpment and reassess any areas of concern. A separate budget amendment is also being proposed to facilitate the design of a permanent solution for the Takhini Sanitary Trunk line. Any future capital construction budget requirements for mitigation work and/or the Takhini Sanitary Trunk line will be brought forward as part of the capital budget request for 2023.

In the event of an accident or disaster, City Manager Bylaw 2018-17 authorizes the City Manager, in consultation with the Mayor, to take actions necessary to respond to the emergency. These expenditures have previously been reported to Council and now need budgetary authority.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that the 2022 to 2025 Capital Expenditure Plan be amended by adding a new capital project titled “2022 Escarpment Slide Response” in the amount of \$2,300,000, funded from the General Reserve.

ADMINISTRATIVE REPORT

TO:	Corporate Services Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	2022 Fleet Capital Budget Amendment

ISSUE

Administration is requesting a budget amendment to accelerate the procurement for a loader, grader and skid steer from 2023 to 2022.

REFERENCE

- Bylaw 2021-41 [Capital Expenditure Program 2022-2025](#) (320c02410 Skid Steer, 320c03110 Loader, 320c01022 Grader)
- [Procurement Policy 2020-03](#)

HISTORY

Under Bylaw 2021-41 Capital Expenditure Program 2022-2025, there were funds allocated in 2023 for the replacement of a loader and skid steer and procurement of an additional grader. Procurement of this infrastructure is required to maintain existing levels of service.

Cost estimates from the most recent tenders in 2022 were used to inform this request.

ALTERNATIVES

1. Amend the 2022-2025 Capital Expenditure Program for the Skid Steer, Loader and Grader as proposed.
2. Refer back to Administration.

ANALYSIS

These pieces of equipment are integral to the operation of the City's snow and ice control and road maintenance programs. Vehicles and equipment are replaced in accordance with the City's Vehicle/Equipment Replacement Administrative Directive. Replacement of aged equipment and timely additions of new equipment allows maintained, and in some cases, enhanced levels of service to the citizens of Whitehorse.

The procurement of the skid steer, loader, and grader was originally planned for the 2023 budget cycle. However, due to current long lead times for equipment, industry supply issues, and volatility in equipment prices, Administration is recommending advancing the procurement for this equipment to the 2022 budget year so the equipment will be available in 2023.

The budget requires an additional \$307,500 for the three projects, based on recent tenders and current budget pricing. Any amount not needed, will be returned to reserves.

Job #	Equipment	2023 Approved	Additional Budget	2022 Proposed
320c02410	Skid Steer	\$72,500	\$17,500	\$90,000
320c03110	Loader	\$415,000	\$120,000	\$535,00
320c01022	Grader	\$460,000	\$170,000	\$630,000
	Total	\$947,500	\$307,500	\$1,255,000

Original 2023 Capital Budget: \$ 947,500 (for loader, skid steer and grader)
Revised budget: \$1,255,000 (for loader, skid steer and grader)
Additional Budget Required: **\$ 307,500**

ADMINISTRATIVE RECOMMENDATION

THAT Council direct the 2022 to 2025 Capital Expenditure Program be amended by modifying the 2022 and 2023 budgets to advance projects 320c02410 – Skid Steer, 320c03110 – Loader, and 320c01022 – Grader, from 2023 to 2022; and

THAT Council direct the 2022 to 2025 Capital Expenditure Program be amended by increasing the budget for those projects as follows:

- 320c02410 Skid Steer \$ 90,000
- 320c03110 Loader \$535,000
- 320c01022 Grader \$630,000

ADMINISTRATIVE REPORT

TO: Corporate Services Committee
FROM: Administration
DATE: July 18, 2022
RE: City Manager Bylaw

ISSUE

Adoption of the City Manager Employment Bylaw

REFERENCE

- [*Municipal Act*](#)
- Proposed City Manager Bylaw 2022-29

HISTORY

The appointment of a Chief Administrative Officer (the City Manager) is a legislated requirement under the *Municipal Act*. A new City Manager was recruited pursuant to the terms of the proposed bylaw.

ALTERNATIVES

1. Adopt Bylaw 2022-29 as presented.
2. Amend the proposed bylaw.

ANALYSIS

The City of Whitehorse is required under the [*Municipal Act*](#) to enact a bylaw when a new City Manager is appointed. The terms of the proposed bylaw were discussed and approved in principle by Council prior to a Letter of Offer being issued to the successful candidate.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2022-29, a bylaw to appoint a City Manager and delegate certain administrative powers to the position, be brought forward for consideration under the bylaw process.

CITY OF WHITEHORSE

BYLAW 2022-29

A bylaw to establish the position of Chief Administrative Officer

WHEREAS section 183 of the *Municipal Act* (R.S.Y. 2002) provides that the council of a municipality must establish by bylaw the position of Chief Administrative Officer and appoint a person or persons to the position; and

WHEREAS section 188 of the *Municipal Act* provides that the council of a municipality shall by bylaw establish the terms and conditions of employment of the Chief Administrative Officer, including remuneration, benefits, expenses, hours of work, and manner of appointment, promotion, discipline, dismissal, and rules of conflict of interest; and,

WHEREAS the Council of the City of Whitehorse deems it proper and expedient to appoint a Chief Administrative Officer and to enter into a contract of employment with the person appointed;

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

1. This bylaw may be cited as the "**City Manager Bylaw**".

Definitions

2. In this bylaw,

“City” means the City of Whitehorse.

“City Manager” means the Chief Administrative Officer of the City.

“Council” means the duly elected council of the City.

“Designated Municipal Officer” means a person appointed by Council as a municipal officer under the provisions of the *Municipal Act*.

“Mayor” means the duly elected mayor of the City, or in the Mayor’s absence, the Deputy Mayor appointed pursuant to s. 182 of the *Municipal Act*.

3. Where the term "Chief Administrative Officer", "City Manager", "City Manager" or "Municipal Manager" is used in any other bylaw of the City, that term shall be deemed to refer to the position of City Manager or the person appointed to that position pursuant to this bylaw, as the context requires.

Creation of Office

4. The position of Chief Administrative Officer is hereby established and shall be referred to as the City Manager.

Appointment of City Manager

5. The City Manager is appointed pursuant to this bylaw and shall hold office at the pleasure of Council and in accordance with the terms and conditions of employment

City Manager Bylaw 2022-29

stated in this bylaw, including a three month probationary period, and as contractually agreed to by the City Manager pursuant to a letter dated June 16, 2022.

6. The City Manager was selected by Council solely on the basis of executive and administrative qualifications with special reference to experience in or knowledge of accepted practice in respect to the duties of the office hereinafter set forth.
7. Jeff O'Farrell is hereby appointed City Manager for the City of Whitehorse commencing upon the date of adoption of this bylaw.

Powers and Duties

8. The City Manager is the administrative head of the City. The City Manager shall report to Council and shall be responsible for the proper administration of all affairs of the City. To that end, the City Manager shall:
 - (1) inform themselves of City bylaws, resolutions, policies, procedures, administrative directives, practices and programs that apply to issues they must address in their role;
 - (2) comply with all applicable City bylaws, resolutions, policies, procedures, administrative directives, practices and programs;
 - (3) at all times act in the best interests of the City and comply with the *Employee Code of Conduct Policy* adopted by Resolution of Council and amended from time to time;
 - (4) ensure that the bylaws, resolutions, policies, procedures, administrative directives, practices and programs of the City are implemented and enforced;
 - (5) advise and inform Council on City operations and affairs;
 - (6) carry out the powers, duties, and functions assigned to the Chief Administrative Officer by Council, or by the *Municipal Act*, or by any other applicable legislation;
 - (7) notify Council if any action or inaction by Council or the City administration is contrary to a bylaw or resolution of Council or a provision of the *Municipal Act*, or any other applicable legislation;
 - (8) exercise the powers, duties and functions of any designated municipal officer when necessary;
 - (9) be responsible for policy research and development on matters referred by Council, and on matters arising from the administration of the affairs of the City;

City Manager Bylaw 2022-29

- (10) submit to Council the City's annual estimates of revenue and expenditure (the budget), ensure the estimates reflect priorities defined by Council policies and City administrative directives, and be responsible for the administration of the budget after adoption;
 - (11) ensure the preparation and awarding of contracts are in compliance with Council policies and City administrative directives;
 - (12) monitor the internal and external affairs of the City for the purpose of informing Council of anticipated policy requirements;
 - (13) work with the Mayor and Council in developing proposals for Council's review; and
 - (14) carry out any other duties as may be assigned by Council from time to time, or as are assigned by the *Municipal Act* or by any other applicable legislation.
9. Subject to section 10 of this bylaw, the City Manager may delegate any of their duties, powers and functions to an officer or employee of the City in a manner consistent with the best interests of the administration of the City, but they may not delegate or relinquish overall responsibility for results, or their accountability to Council.
10. Except as is specifically required by any applicable legislation, bylaw, policy, or administrative directive, the City Manager shall not delegate their performance of the following duties:
- (1) personally attending all meetings of Council unless absent with leave of the Mayor, in which case the City Manager shall appoint a delegate to attend in their stead;
 - (2) when requested by Council, attending and participating in discussions at all meetings of committees and boards appointed by Council unless absent with leave of the Mayor;
 - (3) when requested by Council, taking part in the discussion of any matter coming before any meeting of Council; and
 - (4) receiving notice of all regular and special meetings of Council and all meetings of boards and committees appointed by Council.
11. The City Manager is hereby empowered to authorize the expenditure of funds up to the maximum authorized by bylaw in the annual operating and maintenance budgets and in accordance with the thresholds, limits and principles contained within City bylaws and Council policies.
12. Council may, by resolution, delegate to the City Manager the power to authorize the expenditure of funds for budgeted items in excess of those limits prescribed pursuant to section 11 of this bylaw and for specified approved projects, subject to the terms of the bylaw adopting the annual operating and maintenance budget.

City Manager Bylaw 2022-29

13. In the case of an accident, disaster or other circumstance creating a public emergency, the City Manager, in consultation with the Mayor, may make such purchases, award such contracts, or make such other arrangements as are necessary to meet the emergency, but the City Manager shall report on her actions, with an itemized statement of all expenditures, to the next meeting of Council.
14. The City Manager shall be responsible for directing, managing, and supervising the officers and employees of the City. Subject to any bylaw or contract of employment or collective agreement, the City Manager has the authority to appoint, discipline, suspend, or dismiss any employee and, where authorized by Council, may appoint, suspend, discipline or dismiss any designated municipal officer. In the case where a designated municipal officer of the City is suspended for more than five working days, or where any employee or designated municipal officer is dismissed, the City Manager shall report the suspension or dismissal and the reasons for it to Council.

Oath of Office and Secrecy

15. The City Manager shall sign and provide to the City the *Oath of Office and Secrecy*, attached hereto as Schedule "A" and forming part of this bylaw, before commencing employment.

Compensation

16. The base salary for the City Manager shall be prorated and calculated at an acting rate plus five percent (+5%).
 - (1) Subject to the terms stated in the Management and Confidential Exclusion Bylaw and all governing policies and plans as amended from time to time by the City, the following sections of the Management and Confidential Exclusion Bylaw shall apply to the City Manager:
 - (a) Illness;
 - (b) Medical and Group Insurance;
 - (c) Registered Retirement Savings Plan;
 - (d) Leaves;
 - (e) Allowances; and
 - (f) General Provisions, excepting section 119.
 - (2) The City Manager is eligible to earn an annual performance bonus in accordance with Administrative Directive 2006-05 *Directives for the Performance Management Program for the Management Group* based on achieving the target performance determined by the Mayor and Council. A performance bonus shall be payable at the sole discretion of Council at fiscal year end.

City Manager Bylaw 2022-29

Performance Evaluation and Review and Base Salary Increases

17. Performance evaluations will be conducted by Mayor and Council on an annual basis as per standard City practices, based on the detailed review process and schedule set out in Schedule "B" attached hereto.
18. The annual performance evaluation will include a review of the City Manager's base salary. Any proposed base salary increase arising from the City Manager's performance evaluation and review (a performance increase) will be at the sole discretion of Council and must be approved by resolution of Council.
19. In addition to any performance increase, the City Manager's base salary shall increase on January 1 of each year following the City Manager's effective date of commencement of employment by an amount equal to the percentage increase given to management employees pursuant to Schedule "A" of the Management and Confidential Exclusion Bylaw, as amended from time to time, or any bylaw replacing such bylaw.

Expenses

20. The City Manager shall be reimbursed for reasonable expenses incurred on behalf of the City, subject to section 11 of this bylaw and appropriate verification.
21. The City believes in professional development and will support the City Manager in attending conferences and forums that are relevant to the City as per established City policies. All requests to attend professional development seminars or forums shall be approved by the Mayor, and the City Manager shall be reimbursed for expenses incurred in accordance with funds approved during the normal budget process.
22. The City shall pay the costs of reasonable annual membership dues for the City Manager where, in the opinion of Council, such memberships relate to the City Manager's position with the City.

Hours of Work

23. The operation of the City occurs twenty-four hours per day and seven days per week. The City Manager shall ensure that either they or a delegate approved by the Mayor is available to work as necessary at any time on an on-call basis.
24. The regular office hours of the City Manager shall be 8:30 a.m. to 4:30 p.m., consistent with the operating hours of City Hall, or as Council may from time to time determine in accordance with the operating and administrative requirements of the City. The City Manager is expected to work additional hours as necessary to fulfil the duties and responsibilities of the position, including attending meeting and events.
25. The City Manager shall be paid on the same basis as the hours outlined in the Management and Confidential Exclusion Bylaw for management employees. The City manager is not entitled to overtime pay and their salary and benefits fully compensate them for all hours worked.
26. If the City Manager is absent from duty without prior authorization from the Mayor or Council or pursuant to the policies and procedures applicable to leave entitlements contained in the Management and Confidential Exclusion Bylaw, then the City

City Manager Bylaw 2022-29

Manager shall communicate the reason for their absence to the Mayor as soon as reasonably possible.

27. If the City Manager is absent from duty without authorization, they shall forfeit pay for the period of absence in question unless leave with pay in respect of such absence is agreed to by the Mayor or Council.

Termination

28. Termination provisions are as contractually agreed to by the City Manager pursuant to a letter dated June 16, 2022. Any notice, pay in lieu of notice, or combination thereof constitutes full and final settlement of any and all claim or entitlements arising in relation to the termination.

Bylaw Repeal

29. Bylaw 2018-17 including any amendments thereto, is hereby repealed.

Coming Into Force

30. This bylaw shall come into full force and effect on and from final passage thereof.

FIRST and SECOND READING:
THIRD READING and ADOPTION:

Laura Cabott, Mayor

Wendy Donnithorne, City Clerk

City Manager Bylaw 2022-29

SCHEDULE "A"

OATH OF OFFICE AND SECRECY

I, Jeff O'Farrell, of Whitehorse, solemnly and sincerely swear that I will faithfully and honestly fulfil the duties that devolve upon me by reason of my employment in the public service of the City of Whitehorse and that I will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such employment.

SO HELP ME GOD.

Sworn before me at the City of Whitehorse,
in the Yukon Territory, this _____ day
of ____, 2022.

A Notary Public or Commissioner for Oaths
in and for the Yukon Territory

City Manager Bylaw 2022-29

SCHEDULE “B”

CITY MANAGER PERFORMANCE REVIEW PROCESS AND SCHEDULE

Performance Review Timelines

The City Manager Performance Review is scheduled in September of each year. All components of the review, including any salary adjustment will be completed by September 30.

This means that:

- In an election year, the outgoing Mayor and Council evaluates the City Manager's performance over the prior year before the new Council is elected.
- In an election year, the City Manager will already have performance goals/key objectives in place to share with a newly elected Mayor and Council in the first year of their term.
- The newly elected Mayor and Council may use the mid-point evaluation as a way to fine-tune the performance goals/key objectives of the City Manager. Alternately, Council's quarterly strategic priorities review discussion could be used for this purpose.
- The first time the new Mayor and Council evaluates the City Manager is one year after they were elected.

City Manager Review Process

Step 1: Objectives and Goal Setting

The purpose of this step is for the City Manager and Mayor and Council to jointly establish key performance objectives and decide on any personal development goals that are tied to the annual performance review feedback. These objectives should be established within the overall context of the Strategic Priorities for the City.

Goals are established based on annual performance review feedback, City priorities, initiatives and direction for the coming year.

Step 2: Mid-Year Check In

Mayor and Council and the City Manager meet to discuss progress on the achievement of key objectives and determine if there are any impediments to success or if objectives need to change as a result of a shift in strategic direction or priority. Mayor and Council could also complete a periodic review of the City Manager's progress on key objectives through the quarterly strategic priorities discussions.

City Manager Bylaw 2022-29

Step 3: Annual Performance Review (see detailed schedule)

City Manager

City Manager prepares a self-assessment of goals, key performance objectives and accomplishments for the year as well as gathers data from community surveys/feedback and employee surveys/feedback that reflect the satisfaction and well-being of the community and the workforce and provides it to the Mayor.

Mayor/Council

Each Council member completes the City Manager Performance Review form individually and forwards it to the Mayor. The Mayor then collates all feedback into a summary document.

Director Responsible for Human Resources

The Director responsible for Human Resources (HR director) coordinates preparation and administration of any confidential surveys of the Total Management Group and any other members of the City's workforce identified for each annual performance review. If a 360-degree tool is to be used in the Performance Review, the HR director sources and organizes it. Results of these surveys and the 360-degree (if used) are provided to the Mayor.

Pre-Performance Review Meeting

The Mayor collates all information gathered from the City Manager, Council and the HR director and holds a formal meeting with Council to discuss the results of the review and the level of success in achieving the key objectives. Council feedback is documented for provision to the City Manager. Council also determines any salary adjustment (merit increase) based on overall performance.

Performance Review Meeting

The Mayor and a selected Councillor meet with the City Manager to provide formal, documented feedback gathered as outlined above, and to communicate Council's compensation adjustment decision.

The cycle repeats annually beginning with Step 1.

Supporting Documents

- Annual Goal Setting
- Mid-Year Check-In
- City Manager Self-Assessment Tool
- Annual Performance Review

Procedures

- 1 Council may use a facilitator to assist with the City Manager's performance evaluation process. A majority of Council may decide to engage a process facilitator or to conduct the process without a facilitator, using the HR director as the process support resource.
- 2 The process shall commence at a time of the choosing of Council but generally annually beginning in June and triggered by the HR director. The process should be completed by September 30 annually.
- 3 In June the HR director shall consult with Council with respect to the preferred process. Engagement of an external facilitator, if requested, will be completed by the end of July.
- 4 Council shall review the previous year's assessment criteria, process and instrument for the current year. The instrument may be adjusted to include assessment of special projects or assigned issues that may arise from time to time.
- 5 Council shall determine whether and how to include the use of 360-degree input or other tool into the process. Council shall determine the sources of input into the chosen instrument. All of the input shall be kept completely confidential. The facilitator may prepare a 360-degree assessment instrument to complement the main assessment instrument. Council will determine to what degree any feedback is used.
- 6 The information shall be consolidated and composite results shall be shared with Council in September. At this point the City Manager shall not receive any of the input.
- 7 An in-camera meeting shall be scheduled with Council to arrive at a consensus that will become the official evaluation.
- 8 The document shall be signed by all members of Council and presented to the City Manager by the middle of September.
- 9 Mayor and one Councillor will meet with the City Manager to discuss the feedback at an in-camera meeting to enable complete feedback.
- 10 To complete the process:
 - (1) The City Manager shall respond in writing to Council with respect to the feedback.
 - (2) The City Manager shall be requested to sign the evaluation and the original shall be kept on file by the HR director with copies to Council and the City Manager.
 - (3) Council shall subsequently determine any salary adjustments and performance bonus based on economic conditions, benchmark data, performance and any other factors.

City Manager Bylaw 2022-29

Detailed Annual Performance Review Schedule

DELIVERABLE	WHO	DUE DATE
Send reminder of City Manager review timelines to Mayor	HR director	June 1
Meet with Mayor & Council to discuss components of evaluation, i.e., 360-degree feedback, survey of direct reports, etc.	HR director	June 15
Source external facilitator if requested	HR director	End of July
Develop and send out surveys for direct reports and/or others (if being used)	HR director	Mid-July
Source and implement a 360-degree process/tool for City Manager (if being used)	HR director	Mid-July
Advise City Manager to complete self-assessment	Mayor	August 1
Advise Council members to complete performance review document for City manager	Mayor	August 1
Complete performance review document for the City Manager, each Council member individually and submit to Mayor	Council Members	August 15
Complete self-assessment of goals, key performance objectives and accomplishments, plus gather data from employee or community surveys or feedback	City Manager	August 15
Collate and summarize Council feedback; collate all other information gathered and send to Council for review	Mayor	August 25
Meet to discuss City Manager review and provide overall feedback; decide on salary adjustment	Mayor and Council	September 1
Summarize all feedback from Council into City Manager performance review document	Mayor	September 10
Meet with City Manager to deliver feedback and advise of salary adjustment	Mayor + Member of Council	September 15
Advise HR director to process salary adjustment for the City Manager.	Mayor	September 15
Process salary adjustment and performance bonus for City Manager, retroactive to January 1 of the current year	HR director	September 20
Develop key performance objectives for coming year	City Manager	September 20
Share and discuss key performance objectives for coming year with Council; finalize	City Manager, Mayor and Council	September 30
Mid-year check in on progress of key initiatives and determination of adjustments required due to emerging issues	City Manager, Mayor and Council	March 30

CITY OF WHITEHORSE
CITY PLANNING COMMITTEE
Council Chambers, City Hall



Chair: Dan Boyd

Vice-Chair: Ted Laking

July 18, 2022

Meeting #2022-17

1. Zoning Amendment – 2220 2nd Avenue
Presented by Manager Mélodie Simard
2. Subdivision Approval – Whistle Bend Phase 9
Presented by Manager Pat Ross
3. Whistle Bend Community Garden Lease Agreement
Presented by Manager Pat Ross
4. New Business

ADMINISTRATIVE REPORT

TO: Planning Committee
FROM: Administration
DATE: July 18, 2022
RE: Zoning Amendment – 2220 2 nd Avenue

ISSUE

An application to amend the zoning of 2220 2nd Avenue from CS – Service Commercial to CSx – Service Commercial (modified) to allow for a Retail Service, Restricted premise on a site located 100 m from a school.

REFERENCES

- Location Map (Appendix A)
- [*2018 Cannabis Control and Regulation Act – General Regulation*](#)
- [*2010 Official Community Plan \(OCP\)*](#)
- [*Zoning Bylaw 2012-20*](#)
- Proposed Zoning Amendment Bylaw 2022-27

HISTORY

The proponent has applied to rezone 2220 2nd Avenue from CS – Service Commercial to CSx – Service Commercial (modified) to allow for a Retail Service, Restricted (cannabis retail store) premise on a site located 100 m from a school.

Under section 11(1) of the *Cannabis Control and Regulation Act – General Regulation* (the Act), a cannabis retail store must be located more than 150 m from a building that is, or is part of, a secondary school. The proposed cannabis retail store does not meet this requirement as it is located within 150 m of the Whitehorse Individual Learning Centre building.

Under section 11(2), a provision of a municipal bylaw however prevails over the requirements of section 11(1). The proponent is therefore seeking to amend the City's Zoning Bylaw to allow a cannabis retail store located more than 100 m from a school.

The proposal was reviewed by the Development Review Committee on June 15, 2022 and no significant concerns were raised.

Administration met with Yukon Liquor Corporation (YLC) staff on June 28, 2022. YLC advised they had no strong objections with the proposed amendment. They researched the reasoning of the 150 m school buffer in the Act and undertook a jurisdictional review of other legislation with school buffers ranging from 100 to 300 m. YLC could not find a rationale for the specific distance or evidence of greater harm occurring between 100 and 150 m. They advised the buffer is not a critical piece of youth protection in this instance as other requirements will remain (ID check, visual and noise screening, etc.).

The Government of Yukon's Department of Education also advised they did not have a strong objection with buffer changes in general, but that any proposed change needs to be

examined individually in how it may affect the local school community. If this application is brought forward for consideration under the bylaw process, a Public Hearing notice will be sent to the Department of Education advising that they may comment on the proposed amendment through verbal or written submission.

The proposed schedule for the Zoning Bylaw amendment is:

Planning Committee:	July 18, 2022
First Reading:	July 25, 2022
Newspaper Advertisements:	July 29 and August 5, 2022
Public Hearing:	September 12, 2022
Report to Committee:	October 3, 2022
Second and Third Reading:	October 10, 2022

ALTERNATIVES

1. Proceed with the amendment under the bylaw process.
2. Do not proceed with the amendment.

ANALYSIS

Site Context

Properties to the north, west and south of the subject site are zoned CS – Service Commercial. To the east is Shipyards Park which is zoned PW – Public Waterfront. The proposed rezoning to CSx (modified) will maintain the existing permitted uses on the site.

Official Community Plan

The subject site is designated as Commercial – Service in the OCP which allows for a wide range of uses designed for and largely dependent upon automobile access. The rezoning aligns with the intent of the OCP designation as it will not enable any new uses which are not already allowed to occur on the site if otherwise in compliance with the specific use requirements of the Zoning Bylaw. The OCP also does not specify minimum separation distances between Retail Services, Restricted uses and other uses.

Proposed Use and Zoning Approach

The current zoning of the subject site is CS, which is intended to provide for a mix commercial uses, including those that are vehicle oriented. Retail Services, Restricted is a permitted use in the CS zone and is subject to specific use regulations under section 6.19 of the Zoning Bylaw. Of note, the lot line of a Retail Services, Restricted operation may not be within 100 m of:

- a lot used for Temporary Shelter Services;
- a lot which provides services to youth at risk or people suffering from substance abuse;
- a lot zoned PR – Parks and Recreation that includes a play structure; and
- of another lot used for Retail Services, Restricted.

The subject site is located more than 100 m from any known temporary shelters, substance abuse treatment centres, youth at risk facilities, neighbourhood parks with play structures and other cannabis retail stores, as required by the Zoning Bylaw provisions.

The special modification therefore seeks to align the school separation requirement with the above separation requirements under the Zoning Bylaw.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2022-27, a bylaw to amend the zoning of 2220 2nd Avenue to allow for a cannabis retail operation located 100 metres of a school, be brought forward for consideration under the bylaw process.

FN-PE
FN-RC2

CM2

**Rezone
From CS - Service Commercial
To CSx - Service Commercial
(modified)**

CS

CS

CS

CSx(b)

PW

100.44 m

CM2

CMW

CMWx(b)

SECOND AVENUE

KEISH STREET

CMW

CCC

CM1

CM2x(e)

RD

PS

THIRD AVENUE

CMW

BLACK STREET

PUx(a)

DATE:

July 4, 2022

FILE NO:

Z-15-2022

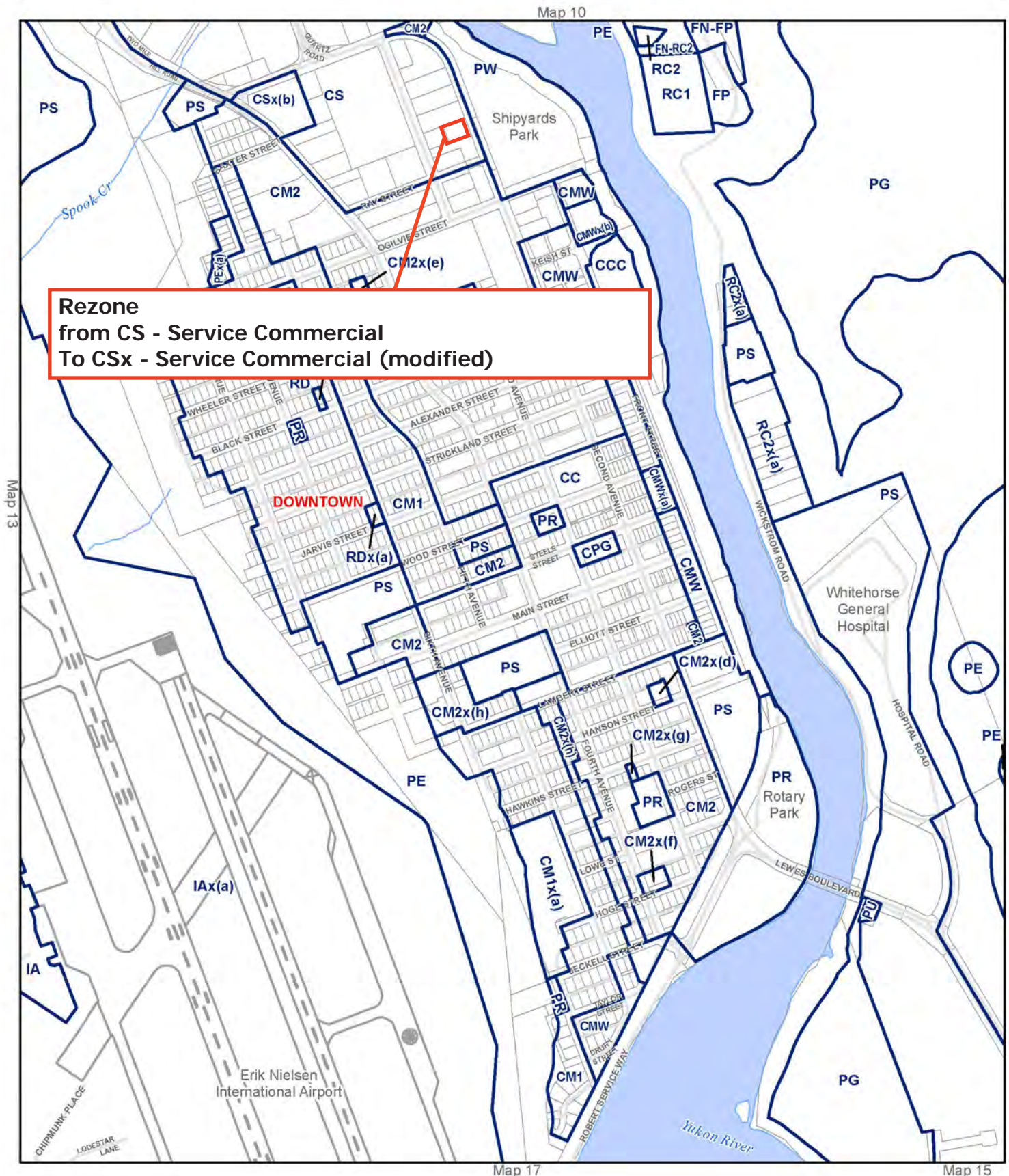
Subject Site
 Individual Learning
Centre

CITY OF WHITEHORSE - PLANNING AND SUSTAINABILITY SERVICES

Bylaw 2022-27

A bylaw to amend the zoning of 2220 Second Avenue from CS to CSx (modified) to allow restricted retail over 100 metres from schools.





**Rezone
from CS - Service Commercial
To CSx - Service Commercial (modified)**

Where a letter appears in brackets following a zoning designation, e.g. RSx(a), the letter corresponds to the 'special restrictions' subsection for that zone.



0 430
Meters

Projection: NAD 1983 UTM Zone 8

Consolidation date:
December 17, 2021

CITY OF WHITEHORSE
BYLAW 2022-27

A bylaw to amend Zoning Bylaw 2012-20

WHEREAS section 289 of the *Municipal Act* provides that a zoning bylaw may prohibit, regulate and control the use and development of land and buildings in a municipality; and

WHEREAS section 294 of the *Municipal Act* provides for amendment of the Zoning Bylaw; and

WHEREAS it is deemed desirable that the Whitehorse Zoning Bylaw be amended to allow for a Retail Service, Restricted premise, located more than 100 metres from a school, on the site; and

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

1. The zoning map attached to and forming part of Zoning Bylaw 2012-20 are hereby amended by changing the zoning of Lot 2A Block 335 Whitehorse from CS – Service Commercial to CSx – Commercial Service (modified), as indicated on Attachment 1 and forming part of this bylaw.
2. Section 10.13 of Zoning Bylaw 2010-20 is hereby amended by adding a new subsection 11.3.7 as follows:

“11.3.7 Special Modifications

- (a) Lot 2A Block 335 Whitehorse is hereby designated CSx, with the special modification being that the lot line of a Retail Services Restricted operation may not be within 100 metres of a lot used for a school.”

FIRST READING:

July 25, 2022

PUBLIC NOTICE:

PUBLIC HEARING:

SECOND READING:

THIRD READING and ADOPTION:

Laura Cabott, Mayor

Wendy Donnithorne, City Clerk

ADMINISTRATIVE REPORT

TO:	Planning Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	Subdivision Approval – Whistle Bend Phase 9

ISSUE

Subdivision approval for 8.3 ha of vacant Commissioner's land comprising Phase 9 of Whistle Bend.

REFERENCE

- [Zoning Bylaw 2012-20](#)
- [Development Cost Charges Bylaw 2012-12](#)
- [Subdivision Control Bylaw 2012-16](#)
- Subdivision Sketches
- Bylaw 2021-42 (WB Ph 9 zoning approval)

HISTORY

The concept for Whistle Bend was developed in 2006 and a Master Plan for the neighbourhood was approved in 2009 for the development of phases 1 - 7. In 2020, the City completed the planning and preliminary engineering work the remaining areas in Whistle Bend – Areas A, B, and C – with Area C comprising the next 4 phases of development (8-11).

As part of planning and development process for Whistle Bend, the City has issued a number of subdivision approvals between 2009 and 2018. The most recent Whistle Bend subdivision approval was issued December 2021 for Phases 7 and 8.

Administration is bringing forward a Phase 9 plan of subdivision for Council approval to ensure the continued development of the Whistle Bend Subdivision. This subdivision approval is being proposed following approval of Bylaw 2021-42 to amend Zoning Bylaw 2012-20 for the phase 9. In accordance with the City's Subdivision Control Bylaw 2012-16, Council is the approving authority for subdivisions that result in the creation of 6 or more lots.

Approvals for subsequent phases of Whistle Bend will be brought forward for Council approval at a later date.

ALTERNATIVES

1. Approve the subdivision.
2. Do not approve the subdivision.

ANALYSIS

Lot Layout and Design

The application area consists of approximately 8.3 ha of vacant Yukon Land. All of the proposed lots conform to the applicable zoning regulations of Zoning Bylaw 2012-20. The details of each phase are as follows:

Phase 9	
Single Family Lots	53 lots
Duplex Lots	28 lots
Townhouse Lots (fee simple)	8 lots
Townhouse Lots (condo)	9 lots (40-50 units)
Multiple Family Lots (RCM)	1 (11-23 units)
Total Lots	99 lots
Estimated Number of Units*	130 – 170 units

**Range in number of units is due to minimum and maximum density requirements in multiple family zones.*

Street naming was identified through the Whistle Bend Master Plan as shown on the application sketch. The theme for street names in Whistle Bend is northern steamships. Three new road names, Alert Avenue, Aurora Drive, and Hope Street, are proposed. Rampart Avenue extends into the subject area from previous phases.

All lots created through the proposed subdivision approval will be accessed by way of a network originating from Whistle Bend Way and Casca Boulevard. The roads and lanes shall be constructed as per the specifications of the City's Servicing Standards Manual. All proposed development lots within the proposed subdivision area will be fully serviced.

Development Agreement

The previous development agreements between the City and YG for other phases of Whistle Bend do not include the current application area. A new agreement will outline the development responsibilities of YG for this area in accordance with the Whistle Bend Master Plan, the Planning and Engineering Design Report for Whistle Bend Future Areas and Town Square, and applicable bylaws and legislation. The development agreement will also set out the engineering and development standards which are applicable to the subdivision area. Development Agreement Bylaw 2012-15 has delegated approval of development agreements to the Director of Development Services.

Public Use Land Dedication and Development Cost Charges (DCCs)

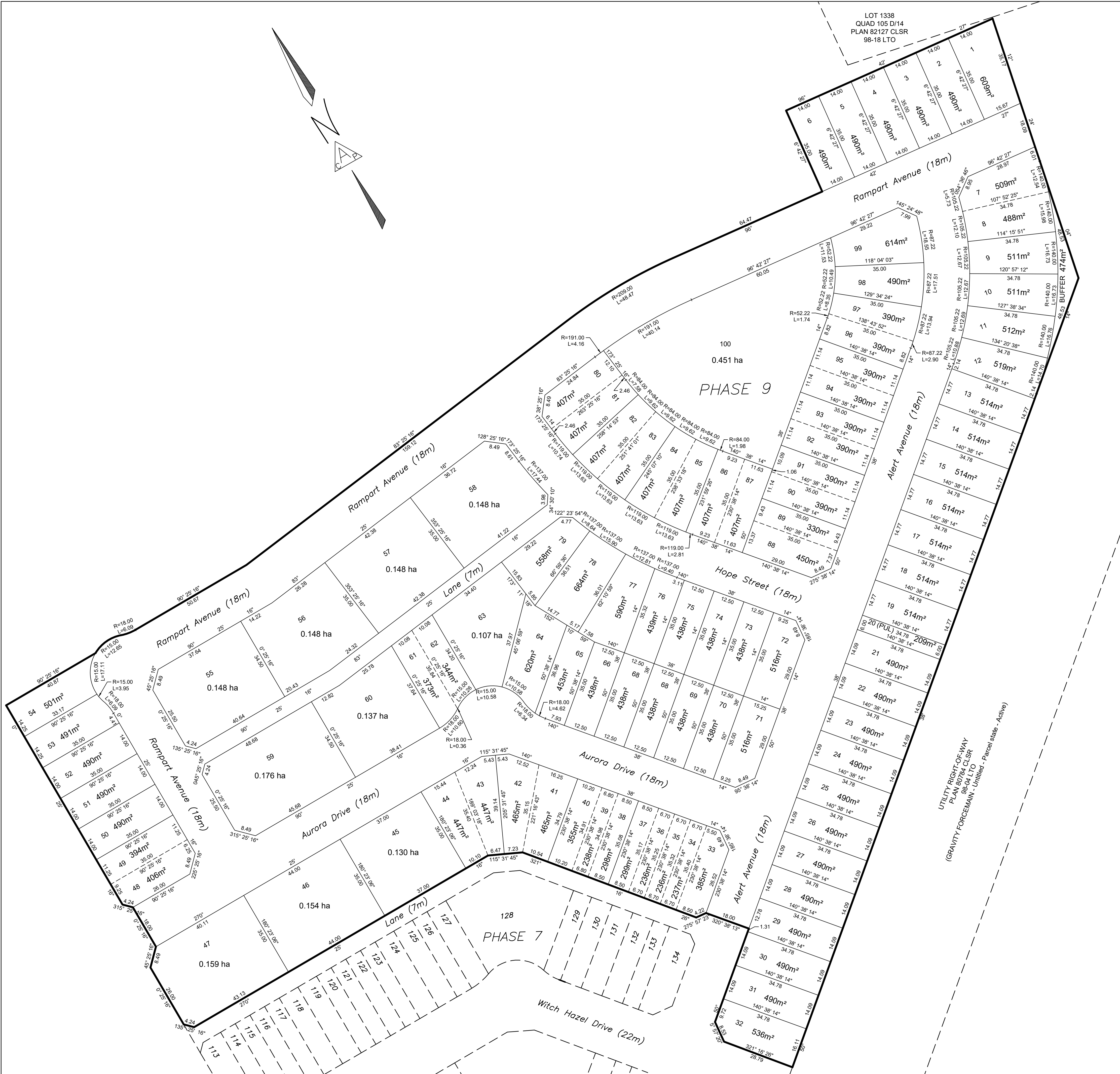
The proposed subdivision is subject to the Public Use Land Dedication requirements of Subdivision Control Bylaw 2012-16. The land dedication proposed through this subdivision will be deferred to future phase of Area C, which contains an approximately 1 ha park and larger greenbelt area. Approximately 30% of the total developed area (255ha) of the complete Whistle Bend neighbourhood is dedicated to greenbelts and corridors.

Residential Development Cost Charges for the residential lots will be collected at the time of building permit application.

If the subdivision is not approved, there would be delays in construction and lot sales, resulting in significant economic impacts.

ADMINISTRATIVE RECOMMENDATION

THAT Council approve the subdivision of approximately 8.3 ha of land for the creation of new residential lots, lanes, and roads for the areas known as Whistle Bend Phase 9, as shown on the proposed subdivision sketches, subject to the condition that the Government of Yukon enter into a Development Agreement with the City of Whitehorse.



SUBDIVISION SKETCH OF

PROPOSED LOTS 1 TO 100, BUFFER, ROADS AND LANE

Consisting of 98 Lots, 1 PUL, 4 Roads and 1 Lane
(COMPROMISING VACANT YUKON LAND)

WHISTLE BEND SUBDIVISION PHASE 9 CITY OF WHITEHORSE YUKON

The plot size that will provide true scale and optimum readability for this plan is 609mm x 850mm.

LEGEND :

Bearings are UTM Grid, and are referred to the central meridian of UTM Zone 8 (135° W.)

Proposed subdivision dealt with by this plan bounded thus:

Distances shown are horizontal at general ground level and are expressed in metres.

L denotes arc length.
R denotes radius.

Chamfers are 6 metres for Roads and 3 metres for Lane.

Official lot numbers will be assigned once issued by the Surveyor General.
Lot lines and dimensions are subject to final legal survey.

Drawing is based on new Whistle Bend Ground Datum:

- 1) Origin at Point 1
- 2) No rotation
- 3) CSF: 0.999492
- 4) UTM N: 6737653.153 E: 494916.231 EL: 681.549
- 5) Ground N: 150000 E: 50000 EL: 681.549

ADMINISTRATIVE REPORT

TO:	Planning Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	Lease – Whistle Bend Garden Society

ISSUE

Bylaw to enter into a new lease agreement for a city-owned greenbelt located in the Whistle Bend neighbourhood for relocation of the community garden by the Whistle Bend Garden Society (WBGS).

REFERENCE

- [Community Service Grant Policy \(CSGP\)](#)
- [2010 Official Community Plan \(OCP\)](#)
- [Lease, Encroachment and Property Use Policy](#)
- [Zoning Bylaw 2012-20](#)
- Proposed Bylaw 2022-28
- Location Sketch

HISTORY

In 2018, a community garden and cooperate gardening operation was developed on Lot 335, Plan 2015-0011 LTO (10 Eldorado Drive), which was owned by the Government of Yukon. The initial intent was to create a long term local food source through a transition to commercial, soil-based agriculture. The garden functioned briefly under that vision until the start COVID-19 pandemic. However, Lot 335 is now designated for residential development, which requires the relocation of the garden.

Working with the WBGS, the City has identified an approximately 1000 m² parcel of city-owned property that would be suitable for a community garden. This parcel is located on Lot 415, Plan 2016-0047 LTO. The proposed garden site would be accessed from a laneway connecting from Keno Way and is expected to consist of a fenced site with garden boxes, a water tank, and soil and tool storage. It is expected to function similarly to the Downtown Urban Garden located on 7th Avenue.

A lease agreement between the City and WBGS is now being brought forward for Council consideration.

ALTERNATIVES

1. Bring forward Bylaw 2022-28 to enter into a lease with Whistle Bend Garden Society.
2. Do not bring forward the bylaw.

ANALYSIS

OCP and Zoning

The proposed lease area is designated Residential - Urban in the City's OCP. Section 10.6.1 of the OCP provides that:

“The purpose of the Residential – Urban designation is to allow for a variety of serviced residential development in close proximity to services and amenities.”

As well, the OCP supports increasing local food production by providing space for community gardens/greenhouses. Section 17.2.1 of the OCP provides that:

“To support local food production, community gardens, community greenhouses, and non-soil based agricultural pursuits may be allowed in all designations, subject to zoning controls.”

The proposed lease area is zoned PG-Greenbelt which permits “community gardens and greenhouses” as a principal use.

Lease Considerations

The proposed lease term is for three years beginning on September 1, 2022 and ending on August 31, 2025 with an option to renew for an additional 3 years. As per the City's Lease, Encroachment and Property Use Policy, a lease term may not exceed the number of years a society has been in existence. However, Administration considers this a continuation of the previous society, which was active from 2016 to 2019. The WBGS was established in 2021.

The lease has been drafted for a \$10 annual rental amount for the term of the lease, which is the current standard lease rate being applied to non-profit societies entering into a net-net lease with the City. As such, WBGS will be expected to bear all other costs associated with the operation and maintenance of the leased area.

As well, the lease stipulates that no parking or access is permitted on the adjacent paved trail, as well as setbacks from City and/or ATCO infrastructure in the vicinity.

As is now the case with all new City leases, this lease agreement requires that VCA will be required to obtain a minimum \$2,000,000 liability insurance policy pursuant the City's Lease, Encroachment and Property Use Policy.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2022-28, a bylaw to enter into a lease agreement with Whistle Bend Garden Society for a lease area comprised of a 1000 m² portion of Lot 415, Plan 2016-0047 LTO, Whistle Bend Subdivision, Whitehorse, Yukon, be brought forward for due consideration under the bylaw process.



SCALE: NTS	DWN. BY: KK
DATE: July 18, 2022	R.No: 0
FILE No:	

CITY OF WHITEHORSE - LAND & BUILDING SERVICES

LOCATION SKETCH - WB Community Garden
 Bylaw 2022-28 Proposed Community Garden Lease





CITY OF WHITEHORSE
BYLAW 2022-28
APPENDIX 'A'



Bylaw 2022-28

A bylaw to approve a lease with the Whistle Bend Garden Society for a 875 m2 parcel of City owned land.

LEGEND



SUBJECT AREA

CITY OF WHITEHORSE

BYLAW 2022-28

A bylaw to authorize a lease agreement.

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 Council deems it desirable to enter into an agreement with the **Whistle Bend Garden Society** for the lease of a parcel of land for a three-year period from September 1, 2022 to and including August 31, 2025;

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 three (3) year lease agreement with the Whistle Bend Garden Society with a three (3) year renewal option with respect to Lot 415, Plan 2016-0047 LTO, Whistle Bend Subdivision, City of Whitehorse, Yukon Territory, comprising approximately 1000 square metres in area, as shown on the sketch attached hereto as Appendix "A" and forming part of this bylaw.
2. The Mayor and 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:

Laura Cabott, Mayor

Wendy Donnithorne, City Clerk

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

BETWEEN:

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

AND:

Whistle Bend Garden 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 owner of Lot 415, Plan 2016-0047 LTO, Whistle Bend Subdivision, City of Whitehorse, Yukon Territory ("Lot 415"); and
- B. The Tenant desires to lease a portion of Lot 415 for the purpose of operating a Community Garden, 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 registered or entitled to be registered as owner in fee simple, subject however to such mortgages and encumbrances as are indicated herein, does hereby demise and lease unto the Tenant that portion of Lot 415 more particularly described as follows:

That portion of Lot 415, Plan 2016-0047 LTO, Whistle Bend Subdivision, City of Whitehorse, Yukon Territory, comprising approximately 1000 square metres and shown outlined in bold red line 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 all improvements located thereon, including but not limited to fencing, temporary sheds/buildings, planter boxes, water tank, and other gardening related items (the "Premises") for and during the term of this Lease for a period of three (3) years, commencing on the 1st day of September, 2022 to and including the 31st day of August, 2025.

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 September 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 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.

1.6 Parking

The Tenant, their volunteers, and any other individuals associated with the programs and activities associated with Land use designated public parking areas and on-street or adjacent laneway parking in Whistle Bend 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 portion of Lot 415, unless there are exceptional circumstances and the Tenant has received written permission from the Landlord.

1.7 Access

The Tenant agrees that vehicles shall not drive or park on, or block any portion of the paved pathway located on Lot 415, Plan 2016-0047 LTO, Whistle Bend Subdivision, City of Whitehorse, Yukon Territory without prior written permission from the Landlord.

1.8 Renewal of Lease

The Landlord may, in its sole and unfettered discretion, which may be unreasonably withheld, grant to the Tenant a renewal of the Lease for a further three (3) year term.

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 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 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 address in Section 9.5 hereof, the Tenant shall well and sufficiently repair and make good according to such notice within 30 days from the date on which such notice 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;
- (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 on 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 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 organization or in the event that a sublease or licence for a portion of the Lands to any person is required to further the development of the Lands in accordance with the terms of this Lease. In the event that consent to the assignment or subleasing to another society or organization or the subleasing or licensing of a portion of the Lands 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 with the prior written consent of the Landlord, 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 a "Community Garden" and associated secondary uses as provided for by the current zoning of the Lands being "PG - Greenbelt", 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 which may render void or voidable or conflict with the requirements of any policy of insurance, on the Lands, 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 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, which consent may not be arbitrarily and unreasonably withheld;
- (o) *Ownership of Existing or Future Structures* - Any installations and improvements made by the Tenant within the Lands are the property of the Tenant. The Tenant shall, at the expiry of the Lease and at its own expense, remove all such installations and improvements from the Lands and the Tenant shall be responsible for returning the Lands to a condition satisfactory to 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 shall not cause or permit any mechanic's 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 community garden within the Lands is of the utmost importance to the Landlord and the citizens of the City of Whitehorse. The Tenant acknowledges that in the event the community garden within the Lands is not operational in any twelve-month period, the Tenant shall be in default of this Lease, notwithstanding that rent is paid, and the City 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 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 for or in connection with the supply of any service or utility to any part of the Lands;
- (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;
- (u) *Financial Information* - The Tenant shall provide to the Landlord reasonable access to all of its books and records;
- (v) *Use of Facility* - The Tenant shall provide access to the Lands and membership in the Whistle Bend Garden Society shall be available to all persons wishing to join, provided that such persons agree to comply and continue to comply with the rules, regulations and by-laws of the Society and pay the appropriate fees and levies of the Society;
- (w) *Public Accessibility* - The Tenant shall ensure that programs and activities offered on the Lands and Premises are open to the general public and that the Tenant shall work with the Landlord to prepare a weekly schedule to provide access;
- (x) *Conduct of Operations* - The Tenant shall conduct its operations on the Lands to the standard of a reasonably prudent operator and in conjunction with industry best practices and standards associated with a community garden development, maintenance and management. Without limiting the generality of the foregoing, the Tenant shall maintain a regular schedule of inspection and maintenance of the Lands as may be deemed necessary by the Tenant to ensure a safe operating environment and any alterations, installations and improvements made by the Tenant within the Lands shall be made in accordance with industry best practices and standards;
- (y) *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, including those utilities as supplied by the Landlord;
- (z) *Utility Services* - The Tenant shall pay all costs associated with the installation of any utility services to the Lands; and
- (aa) *Setbacks* - The Tenant shall not block access to, nor place any fencing, structures, equipment, or any other gardening related items within x metres of, any electrical equipment located on Lot 415.

3. Covenants of Landlord

3.1 Promises of Landlord

The Landlord covenants with the Tenant as follows:

- (a) *Quiet Enjoyment* - 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 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; and
- (b) *Off-site erosion and drainage issues* – The Landlord accepts responsibility for all off-site erosion and drainage impacts to the Lands and Premises and shall sufficiently maintain and repair the adjacent slope so as not to negatively impact the Tenant's use of the Lands and Premises;

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 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 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 during the remainder of the term after deducting the Landlord's costs of re-letting the Lands.

4.2 Right of Termination

Upon the Landlord becoming entitled to re-enter upon the Lands, 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 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 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, its assets 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 its 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 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 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, 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;

- (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 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 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 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, 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
- (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 by or with the invitation or consent of the Landlord;

except for any latent or patent defect in the Lands, 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 FIVE MILLION (\$5,000,000) DOLLARS 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 & Building Services
Fax No. (867) 668-8395
Email Address: land@whitehorse.ca

If to the Tenant:

Whistle Bend Garden Society

Attention: President

Unit 2 - 97 Olive May Way, Whitehorse, YT Y1A 0R4

Phone No. (867) 668-2814

Email Address: whistlebendgarden@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.

13

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.

c/s

) THE CORPORATE SEAL OF
) **The City of Whitehorse**
) was hereunto affixed in the presence of:
)
)
) _____
) Laura Cabott, Mayor
)
)
) _____
) Wendy Donnithorne, City Clerk

 Witness as to both signatures

 (Print Name of Witness)

) **Whistle Bend Garden Society**
) By its authorized signatories:
)
)
) _____
) Deborah Turner-Davis, Co-Chair
)
)
) _____
) Lindsay Knezevich, Co-Chair

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 **Deborah Turner-Davis** and **Lindsay Knezevich**, named in the within instrument, who identified themselves to me to be the persons named therein, duly sign and execute the same as the authorized signatories for **Whistle Bend Garden 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 parties are in my belief of the full age of nineteen years.

SWORN BEFORE ME
 at the City of Whitehorse,
 in the Yukon Territory,
 this ____ day of _____, 2022.

 A Notary Public in and for
 the Yukon Territory

Cathy Dyson
 Print Name of Notary Public

Commission expires on:
Oct 31, 2023

 Witness Signature

 (Print Name of Witness)

**CORPORATE SIGNING AUTHORITY
AFFIDAVIT**

CANADA) I, **Deborah Turner-Davis and Lindsay Knezevich**,
) of the City of Whitehorse,
 YUKON TERRITORY) in the Yukon Territory,
)
 TO WIT:) SEVERALLY MAKE OATH AND SAY AS FOLLOWS:

- 1) We are the **Co-Chairs** of **Whistle Bend Garden Society** (the "Society").
- 2) We subscribed our names on behalf of the Society to the attached instrument.
- 3) We are authorized by the Society to subscribe our names to the attached instrument.
- 4) The Society exists as of the date hereof.

Severally Sworn before me at the)
 City of Whitehorse, in the)
 Yukon Territory, this _____ day)
 this ____ day of _____, 2022.)

 A Notary Public in and for
 the Yukon Territory

Cathy Dyson
 Print Name of Notary Public

Commission expires on:
October 31, 2023

 Deborah Turner-Davis, Co-Chair

 Lindsay Knezevich, Co-Chair

CITY OF WHITEHORSE
DEVELOPMENT SERVICES COMMITTEE
Council Chambers, City Hall



Chair: Jocelyn Curteanu

Vice-Chair: Mellisa Murray

July 18, 2022

Meeting #2022-17

1. New Business

CITY OF WHITEHORSE
CITY OPERATIONS COMMITTEE
Council Chambers, City Hall



Chair: Ted Laking

Vice-Chair: Dan Boyd

July 18, 2022

Meeting #2022-17

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1. Snow and Ice Control Program Review – For Information Only
Presented by Director Tracy Allen
 2. New Business

ADMINISTRATIVE REPORT

TO:	Operations Committee
FROM:	Administration
DATE:	July 18, 2022
RE:	Snow and Ice Control Program Update – For Information Only

ISSUE

Provide Council with an update on Administration's review of the Snow and Ice Control Program update (SICP).

REFERENCE

- [Snow and Ice Control Policy 2021-05](#)
- [Bylaw 2021-41 Capital Expenditure Program 2022-2025](#)

HISTORY

The City operates with a limited amount of resources for snow and ice control. 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 and these quantities will continue to increase once additional phases are developed. With respect to snow fall, the amount of precipitation for the winter season of 2021/2022 was over 265 cm compared to a historical average of 143 cm. While the volume of snowfall has significantly increased every year since 2018, the City's Snow and Ice Control Policy has not been updated nor have there been any major additions to the fleet capacity. On February 14, 2022 Council approved a new Capital Project to review the existing Snow and Ice Control Policy and identify any changes that may be required to better meet current needs.

ANALYSIS

Completed work to date has included a review of the City's relevant policies and bylaws, research and information gathering interviews with key stakeholders and an environmental scan of similar municipalities. Research completed to date indicates that there are several areas where the City can make changes to both the SICP and its operational practices that would increase efficiency and support equitable access to transportation networks.

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. Population growth, demographic change, and climate change have all affected the City's snow and ice control operations. Further, the City has not reviewed its SICP from an overall Active Transportation perspective. There has been an increased demand in providing consistently maintained winter active transportation routes within the City of Whitehorse over the past few years. Increasing investment in active transportation and public transportation infrastructure tends to be more equitable and benefits all genders.

Key Issues and Challenges: Current Snow and Ice Policy

Key challenges identified based on a review of historical public complaints, preliminary stakeholder engagement and environmental scans of other municipalities include:

1. Fleet and resource constraints with respect to the increased snowfall amounts and growth of the City;
2. Consistency and predictability of clearing (frequency, location and methodology) for active transportation trails;
3. Parked vehicles on identified snow clearing routes;
4. Placement of snow from private property onto public property (i.e. snow from sidewalks on main street placed in accessible parking stalls);
5. Inadequate enforcement mechanisms under the Maintenance Bylaw;
6. Snow site management of Robert Service Way; Changes in neighborhood design (densification);
7. Communications & public awareness; and
8. Changing weather patterns (frequency, duration and intervals).

Opportunities Under Consideration

The research and review work conducted to date has identified the following key themes for improvement of the snow and ice control policy and associated City operations:

1. Modernizing operations through a combination of means including increasing the size of the fleet, utilizing contracted services in extreme weather events and utilizing innovative methods for snow removal (budget 2023-2026);
2. Improving public communication including increased public education, enforced parking bans, increased fines and back charging of snow clearing costs;
3. Increasing snow site permit fees to better offset the costs of maintaining the site;
4. Prioritizing active transportation (increasing equitable access to transportation networks); and
5. Updating planning and design requirements for new and infill developments to consider heavy snowfall events.

It is anticipated that updating the City's SICP to meet current environmental conditions and citizen expectations will be a multi-year approach that will require refinement as more data is collected. Improvements will be achieved through a variety of changes as resources permit. While some adjustments will be made in time for the 2022-2023 season the full impact of all the changes will be implemented over the next few years.

Next Steps

1. Complete targeted stakeholder engagement for July and open online public survey from July 19 - August 19, 2022;

2. Refine potential actions, policy revisions and associated capital and operating costs based on feedback received;
3. Prepare a report for Council by September 2022 that presents options and costs for consideration; and
4. Draft updates to maintenance bylaw and other related policies for Council approval.

CITY OF WHITEHORSE
COMMUNITY SERVICES COMMITTEE
Council Chambers, City Hall



Chair: Mellisa Murray

Vice-Chair: Michelle Friesen

July 18, 2022

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1. New Business