

CITY OF WHITEHORSE
COMMITTEE of the WHOLE

Thursday, December 6, 2018 – 5:00 pm
Council Chambers, City Hall

CALL TO ORDER

ADOPTION OF AGENDA

1. Order Appeal Review (Alpine Aviation)

ADJOURNMENT

PROCEDURES FOR THE CONDUCT OF APPEALS

147. Where a matter is appealed to council in accordance with any bylaw or Act, the proceedings shall be heard by council in a committee of the whole meeting.
148. The mayor shall be the presiding officer at committee of the whole meetings called for the purpose of hearing appeals.
149. A notice of the day, hour, and place of the committee of the whole meeting and the nature of the business to be transacted at the meeting shall be given at least 24 hours before the time of the meeting by posting a copy of the notice at the municipal office and by leaving a copy of the notice for each member of council at the place to which the member has directed such notices to be sent.
150. No business other than that stated in the notice for such committee of the whole meeting shall be transacted at that meeting.
151. Upon the committee of the whole meeting being called to order the by presiding officer, the following shall be the order of business on the agenda unless otherwise determined by unanimous consent of the members present at the meeting:
 - (1) Adoption of the Agenda
 - (2) Presentation from Administration – administration will present the administrative report providing details of the issue, background information, and the reason for the appeal.
 - (3) Questions from Council Members – the presiding officer will ask if council members have any questions for administration. Such questions shall be used for clarification or investigation purposes only.
 - (4) Presentation from Appellants – the presiding officer will call for delegations to speak to the appeal;
 - (a) Electronic participants, if any, will be asked to speak first;
 - (b) Delegates will be limited to five minutes for their presentations but should be prepared for questions from council members. Questions from council members shall be used for clarification or investigation purposes only;
 - (c) Each delegate will be limited to only one presentation, but delegates will be permitted to respond to questions that may arise.
 - (5) Clarification from Administration – when all delegates have spoken, the presiding officer will ask if administration has any clarification to add in response to the presentations from the delegates.
 - (6) Clarification from Appellants – the presiding officer will ask the appellants if they have any clarification to add.
 - (7) In-Camera – the committee will go in-camera to deliberate and make a decision, and will leave council chambers for their deliberations.
 - (a) Only members of council and a legal representative, if desired by council, shall be present at the in-camera portion of the meeting.

- (b) All persons present at the meeting apart from members of council will be invited to remain in council chambers while deliberations take place.
 - (c) If questions arise while members are deliberating, the committee will return to chambers to ask their questions in open meeting. When members have the answers they need, they will leave again to continue their deliberations in-camera.
 - (8) Open Meeting – the committee will return to council chambers and revert to open meeting.
 - (9) Announcement – the presiding officer will announce that the decision of council will be brought forward for ratification at an open meeting and then communicated in writing to the appellant.
 - (10) Adjournment
152. The decision of council made at the in-camera meeting of the committee of the whole shall be brought forward for ratification at the next regularly-scheduled council meeting.
- (1) Where council's meeting schedule does not permit timely ratification, the decision of council may be ratified at a special meeting called for that purpose at the discretion of council.
153. The appellant will be advised in writing within 60 days of council's decision on this matter unless a more restrictive time limit is specified in the bylaw or Act that provided for the appeal.

File #: 3230-02-02 – Alpine Aviation

ADMINISTRATIVE REPORT

TO:	Committee of the Whole
FROM:	Administration
DATE:	December 6, 2018
RE:	Review of Development Officer's Order: Alpine Aviation – Schwatka Lake <i>For Information Only</i>

ISSUE

Council review of a Development Officer's Order regarding enforcement action for the removal of an office container structure owned by Alpine Aviation and located at Schwatka Lake (Dock Sites 12 & 13).

REFERENCE

- *Municipal Act* (2002)
- *Territorial Lands (Yukon) Act* (SY 2003, c.17)
- 2002 Official Community Plan ("OCP")
- Zoning Bylaw 2012-20
- Schwatka Lake Area Plan (2015)
- Land Disposition Policy 2017-03
- *Building Standards Act* (2002) and Regulations
- Snow & Ice Control Policy 2015-26-07
- Order Letter dated Nov. 7, 2018
- Bylaw Enforcement Notes
- Location Sketches

HISTORY

(See attached document "Bylaw Enforcement Notes: Alpine Aviation – Schwatka Lake Dock Sites 12 & 13" and the attached Order – Nov 7, 2018)

The City is currently pursuing enforcement action for the removal of an office container structure owned by Alpine Aviation and located at Schwatka Lake (Dock Sites 12 & 13). Alpine Aviation submitted a request for appeal of the order on November 16th, 2018.

Alpine Aviation maintains an annual dock permit for its float plane operation at a pull-out area off the Miles Canyon Road that falls within the City's area of jurisdiction. Alpine Aviation does not have lease tenure or a license of occupation for this location that would allow for all-year round occupation of the site. The site is on Commissioner's Land, within a 30 m waterfront reserve established pursuant to s. 11 of the *Territorial Lands (Yukon) Act* and concurrently, within a 30 m riparian setback from waterways established by the 2010 Official Community Plan (OCP).

The City has jurisdiction over the Miles Canyon Road which exists as an un-surveyed highway situated on vacant Commissioner's land. The City permits float plane docks adjacent to Miles Canyon Road through annual development permits issued under the Zoning Bylaw.

A modular office trailer, placed in this location by Alpine Aviation, was permitted by the City in previous years as a summer season temporary structure, however it stayed in place for several recent winter seasons in contravention of the permit conditions. At the time, bylaw enforcement action was not pursued on this matter while the Schwatka Lake Area Planning initiative was underway, to allow for the possibility that year-round occupancy of the site would be recommended through the planning process. The Schwatka Lake Area Plan was completed and adopted as a guiding document by Council in March 2015. No year-round occupancy of the site is supported by the plan, which identifies alternative sites for potential lease occupancy.

In June of this year, the Alpine Aviation modular office trailer was removed from the Schwatka Lake site and replaced with an office (sea-can) container structure without permits in place. A stop work order was issued by the City to Alpine Aviation until the City's requirements for issuance of a permit were met and the required permits were obtained. The development and building permits for the temporary placement of the office container structure were issued with an expiry date of October 31, 2018.

Although that date has passed, to date the structure has not been removed per the conditions of the permits. Accordingly, the City is enforcing the permit conditions via issuance of an Order, dated Nov 7, 2018, to Alpine Aviation for the removal of the office container structure by Nov 27, 2018.

On November 16th, the City received written notice of an appeal of the Order from Alpine Aviation. The *Municipal Act* s. 349 (1) stipulates that a person receiving an order may ask Council to review the order by written notice within 14 days after it is received. S. 349 (2) states that after having reviewed the order, Council may confirm, vary, substitute or cancel the order.

ALTERNATIVES

1. Confirm the Order
2. Vary or substitute the Order
3. Cancel the Order

ANALYSIS

Rationale for Enforcement

Administration's decision to enforce the terms of the expiring Alpine Aviation permit, i.e., to require removal of the structure on site, was based on existing Council direction pursuant to existing plans and bylaws:

The basis for not allowing permanent (all year round) structures at the Schwatka Lake dock site is partially derived from the OCP. Consistent with the requirement of the *Territorial Lands (Yukon) Act* for a waterfront reserve, the OCP states that a 30-metre riparian setback along all rivers (including the Yukon River) shall be protected from development and remain in a natural condition. The intention of this riparian setback is to limit future development in order to protect the biodiversity of waterways and wildlife corridors.

Section 1.3.2 of the OCP states that “*within the downtown area and the western shore of Schwatka Lake, this riparian setback may be relaxed to accommodate heritage and tourism uses **once plans are approved.***” (emphasis added).

As noted above, the Schwatka Lake Area Plan has since been completed. It supports use of the pull-out area adjacent to the Alpine Aviation dock sites only for parking and provides that only temporary buildings and storage should be allowed to continue at the pull-out. The plan identifies five sites that may be occupied via leased tenure in future, however the Alpine Aviation site is not among them.

In addition to the Schwatka Lake Area Plan content, the Schwatka Lake Dock Policy states: “*If a Commercial Aviation Operator or Commercial Marine Operator requires any form of on-shore storage, office, or overnight trailer facility, the Dock Owner shall make application to the City for a Development Permit to allow for a Temporary Use and, where applicable, shall apply for a Building Permit. Overnight trailers must be self-contained with respect to waste water storage.*”

Two City bylaws help illuminate what constitutes “temporary use”

- Pursuant to the Zoning Bylaw, a temporary structure may be permitted for up to a year for seasonal or temporary use, however the wording of the bylaw clearly contemplates that the structure will be removed once the permit has expired and the site suitably restored for a future use;
- Pursuant to the Building & Plumbing Bylaw, certain requirements are triggered when a temporary (or permanent) structure has been in place longer than nine months. These could include standards for thermal insulation, proper ventilation, other servicing of the structure, etc., and are imported into the bylaw from the National Building Code via the Yukon Government *Building Standards Act* and Regulations. It is unlikely that some requirements could be met in the Schwatka Lake location as there are no water, sewer or electrical services in this area to support on-site development. On-site septic systems are restricted due to the proximity to Schwatka Lake.

Functional, year-round use of the site is not supported by City’s Snow & Ice Control Policy, under which winter road maintenance is completed on low priority basis on the Miles Canyon Road (Priority 3 road).

In other words, in relation to the present Alpine Aviation site, temporary use is effectively limited to nine months or less under the requirements of the Building and Plumbing Bylaw and the constraints of the Snow & Ice Control Policy.

The OCP, in reference to the riparian setback, states that “Environmental regulations and applicable bylaws must be followed in all cases. Where encroachment is required, it shall be minimal, and impacts shall be mitigated.”

The Parks and Public Spaces Bylaw defines public open space as including:

- public open space lands under the ownership or control of the Crown, the Commissioner of the Yukon or the City of Whitehorse; and

- greenbelts and buffer areas under the ownership or control of the Crown, the Commissioner of the Yukon, or the City of Whitehorse.

The bylaw states that no person shall undertake any construction or development in a public open space without prior written approval from the City and that all development and construction shall comply with the terms and conditions of federal, territorial, and municipal legislation and shall be in accordance with approved designs and standards.

In considering whether to proceed to an enforcement action, Administration considered whether extended or permanent occupation (e.g., a lease) of the site by Alpine Aviation could be feasible despite not being supported by the Schwatka Lake Area Plan:

- Issuance of a lease or licence of occupation by the City is not an option because the site is on Commissioner's Land;
- Were issuance of a lease or licence of occupation by the City were to become an option via assignment of that right to the City by the Yukon Government, principles of fairness would lead the City to offer the option publically for proposals rather than to award it to Alpine Aviation without a public process. Administration keeps a list of parties who have expressed interest in locating on the Miles Canyon Road.
- Several options for land dispositions by the City, based on principles of fairness are set out in the Land Disposition Policy 2017-03.

Council Decision-Making

Council has a broad remedial authority in reviewing an order. It may confirm, vary, substitute or cancel the order. As with with any body exercising a quasi-judicial decision making power, Council must exercise that jurisdiction reasonably. In this way, there is no "correct" answer; however, Council's decision must have a reasonable basis that considers the facts and the law. Clearly, in certain cases where an order is reviewed, the reasonableness requirement may constrain the options that are open to Council.

Factors Council may wish to consider in arriving at a decision include:

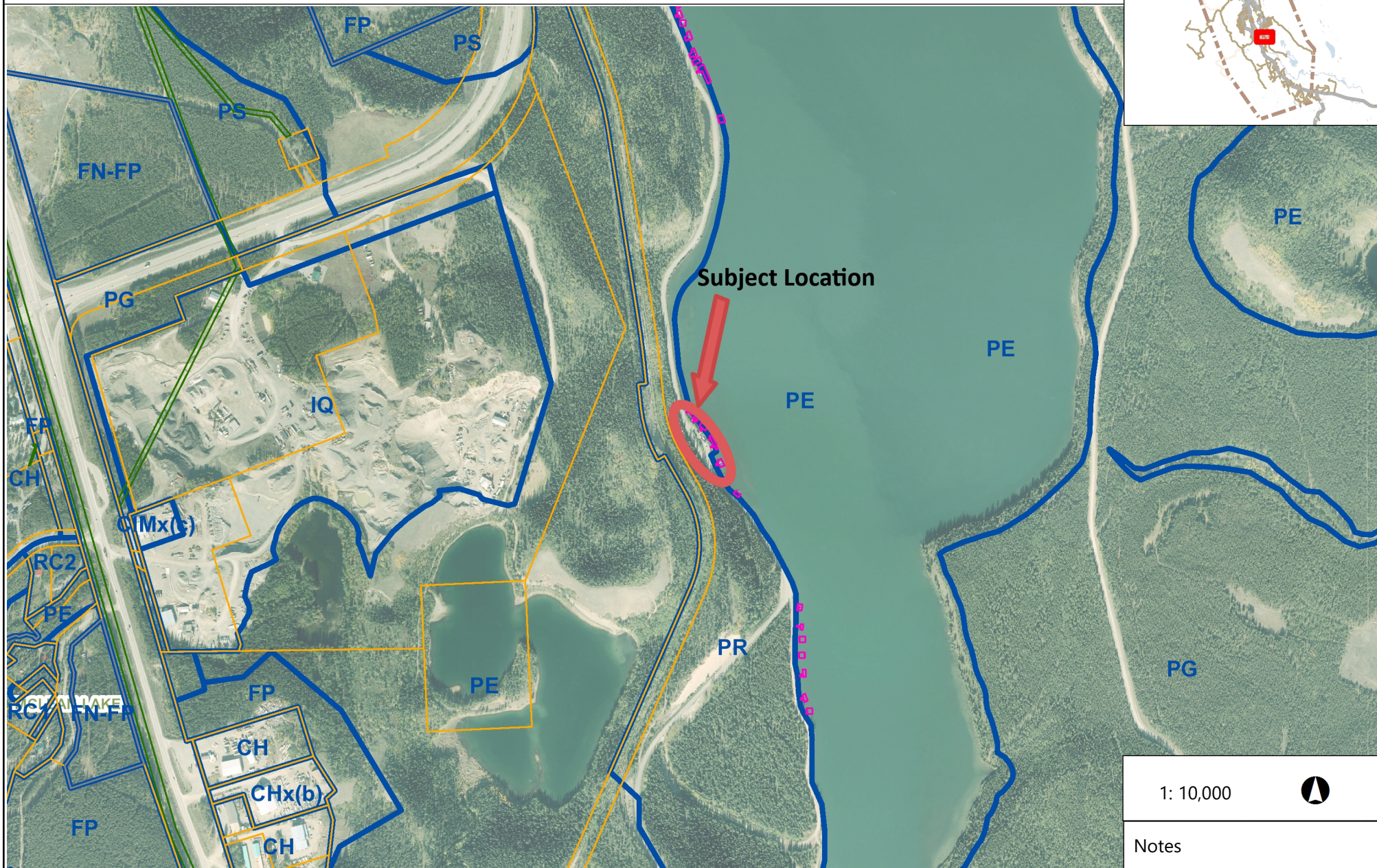
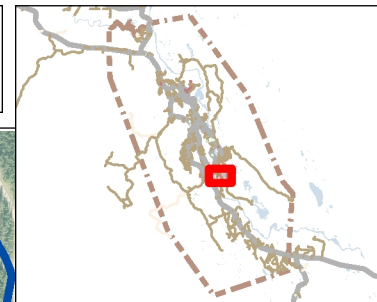
- Consistency with requirements of applicable City bylaws and policies;
- Consistency with recommendations of the Schwatka Lake Area Plan;
- The appellant's requests and interests;
- Interests of other commercial operators, some of which are on waiting lists for access to sites in the vicinity;
- Interests of the general public;
- Impacts or consequences of the alternative decisions Council is permitted to make (i.e., what would Council's intentions be going forward, in the event of a confirmation, variance, substitution or cancellation?);
- Potential for Council's decision to have implications for the forthcoming Official Community Plan review process.



Alpine Aviation Dock Site

Generated:

7/4/2018



508.0 0 254.00 508.0 Meters

NAD_1983_UTM_Zone_8N

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

1: 10,000



Notes

© Latitude Geographics Group Ltd.



Bylaw Enforcement Notes: Alpine Aviation – Schwatka Lake Dock Sites 12 & 13

DATE	ITEM	DESCRIPTION
MARCH 7, 2018	2018-0263 and 2018-0268 annual DP for dock sites	Seasonal development permits issued for float plane docks pursuant to the Schwatka Lake Dock Policy guidelines.
MARCH 7, 2018	2018-0266 seasonal permit for existing office modular building	Use and placement permitted until November 30, 2018. Overnight parking of RV permitted until November 30, 2018.
JUNE 22, 2018	Inspection	City observed that office modular had been removed and 2 storey shipping container structure had been placed without permits
JUNE 26, 2018	Stop Work Order	Doug Thorseth and Pat Ross attended site and posted stop work order
JUNE 26, 2018	Notice of Violation	Office modular building was moved without permit Shipping container office (2 stacked seacans) was placed without permit Corrective measures: <ul style="list-style-type: none"> • Get permit for removal of trailer modular • Remove the container structure (seacans) Compliance date: July 12, 2018 hand-delivered at site along with Stop Work Order
JULY 20, 2018	Amended Notice of Violation	Revised corrective measures: <ul style="list-style-type: none"> • Get permit for removal of office modular • Get DP and BP for temporary placement of container structure - seacans (specifies that permit is only available for temporary placement, May to October annually) Compliance date: August 2, 2018 Delivered by email; discussed same day at counter with Darren Parsons (agent for Alpine Aviation)
JULY 25, 2018	2018-1909 DP for placement of container office	Container structure already placed without permit. Permit issued retroactively. Placement and use permitted until October 31, 2018. Overnight parking of RV permitted until October 31, 2018.
JULY 26, 2018	2018-1954 DP for permanent removal of office trailer	Office modular was removed already without permit. Permit issued retroactively.
AUGUST 3, 2018	2018-1923 BP occupancy approval granted	Structural engineer report was provided Structure to be removed by October 31.
AUGUST 14, 2018	Completion of corrective measures from Notice of Violation June 26	Corrective measures have been completed Container Structure not to be used as sleeping accommodation – office (day-use) only. Structure to be removed by October 31, 2018 Improvements to stairs required for final building permit approval
OCTOBER 30, 2018	Reminder letter	Sent by Darcy, by email Container Structure to be removed by October 31, 2018
OCTOBER 31, 2018	Email from G. Mannsperger	G. Mannsperger confirms receipt and indicates intent to remove structure.
NOVEMBER 5, 2018	Inspection	City observed that Container Structure had not been removed.
NOVEMBER 7, 2018	Order	Remove the Container Structure. Deadline November 27, 2018.



City of Whitehorse 2121 - 2nd Avenue, Whitehorse, Yukon Y1A 1C2 Bus: (867) 667-6401 Fax: (867) 668-8398

November 7, 2018

File No: Schwatka Lake Dock Sites 12 & 13

Alpine Aviation Yukon Ltd.
P.O. Box 6
Whitehorse YT Y1A 5X9

Attention: Mr. Gerd Mannsperger

RE: Order to comply with City of Whitehorse Development Permit 2018-1909 - Temporary Use Permit for placement of structures at Schwatka Lake Dock Sites 12 & 13.

The City of Whitehorse is issuing this Order pursuant to the enforcement provisions of Zoning Bylaw 2012-20 with respect to the violation of a condition of City of Whitehorse Development Permit 2018-1909.

DP 2018-1909 (dated July 25, 2018), Condition No. 2 states:

“2. Placement of container office is permitted until October 31, 2018.”

An inspection of the above noted site was completed on November 5, 2018 and the container office structure was found to be remaining on the site in violation of the above noted permit condition.

The following **corrective measures** are required through this Order:

1. Remove the office container structure and all associated materials from the site.

The deadline to complete the corrective measures is: November 27, 2018.

Failure to complete the corrective measures within the stated timeline will result in the City of Whitehorse taking such further action as is necessary to enforce this Order.

Pursuant to Subsection 14.6 – Offence Tickets – of Zoning Bylaw 2012-20 as amended, you may be issued an offence ticket in the amount specified in section 14.10.2.

Pursuant to Subsection 14.9 – Municipality Remedying Contravention – of Zoning Bylaw 2012-20 as amended, a Development Officer may take such action as is necessary to enforce the Order. The costs and expenses incurred by the City of Whitehorse in carrying out an Order shall be placed on the tax roll as an additional tax against the property concerned, and that amount shall be collected in the same manner as taxes on the land.

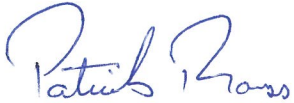


As provided by Section 349(1) of the Municipal Act, you have the right to have this Order reviewed by the Council of the City of Whitehorse. Any request for review of this Order by Council must be submitted to the City in writing within 14 days after receipt of this Order.

If you have any questions with respect to this Order, please contact the undersigned at 668-8339, or email patrick.ross@whitehorse.ca.

Sincerely,

CITY OF WHITEHORSE



Patrick Ross
Manager, Land and Building Services

cc: Director, Development Services
Manager, Bylaw Services