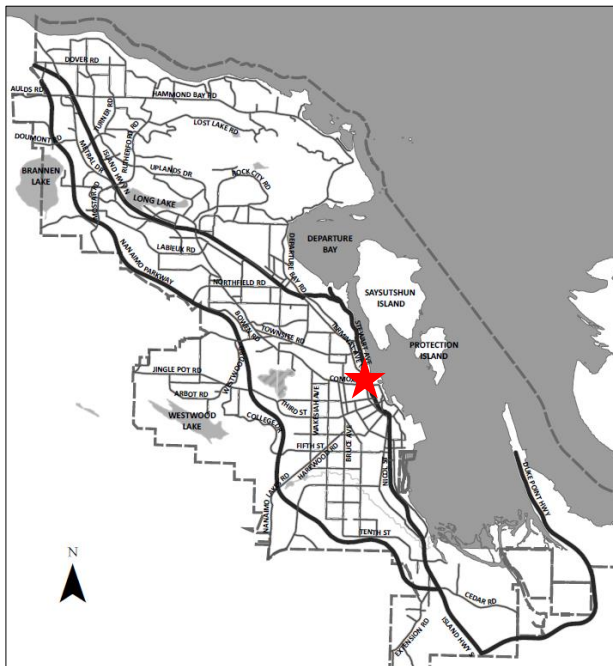


DATE OF MEETING | February 27, 2023

AUTHORED BY | LAINYA ROWETT, MANAGER, CURRENT PLANNING

SUBJECT | **REZONING APPLICATION NO. RA475 – 444, 450, 500 COMOX ROAD, 55 MILL STREET, AND 1 TERMINAL AVENUE**



Current Zoning:

CD7 – Comprehensive Development District Zone Seven;
R8 – Medium Density Residential; and
DT12 - Gateway



Proposed Zoning:

CD7 – Comprehensive Development District Zone Seven

City Plan Land Use Designation:

Primary Urban Centre (Downtown)

Lot Area:

563m² – 444 Comox Road
611m² – 450 Comox Road
1,223m² – 500 Comox Road
1,046m² – 55 Mill Street
2.59ha – 1 Terminal Avenue



OVERVIEW

Purpose of Report

To seek Council direction regarding Rezoning Application No. RA475 (for 444, 450, 500 Comox Road, 55 Mill Street, and 1 Terminal Avenue) and its associated bylaws.

Recommendation

That Council:

1. rescind Third Reading of “Land Use Contract Discharge Bylaw 2022 No. 7355” (to discharge an existing Land Use Contract from the property title of 500 Comox Road); and,
2. rescind Third Reading of “Zoning Amendment Bylaw 2022 No. 4500.204” (to rezone 444, 450, 500 Comox Road, 55 Mill Street, and 1 Terminal Avenue from Medium Density Residential [R8] and Gateway [DT12] to Comprehensive Development District Zone Seven [CD7] and to amend the CD7 zone with new zoning regulations, to facilitate a mixed-use development and subdivision).

BACKGROUND

A rezoning application, RA475, was received from Strongitharm Consulting Ltd. on behalf of 490892 BC Ltd. (444, 450, 500 Comox Road and 1 Terminal Avenue) and Brad Martin and Ralston Alexander (55 Mill Street) to rezone the subject properties and amend the City of Nanaimo “Zoning Bylaw 2011 No. 4500” (the “Zoning Bylaw”) to revise Comprehensive Development District Zone Seven (CD7). The proposed rezoning will facilitate a mixed-use residential, commercial, and hotel development and subdivision.

On 2022-AUG-29, Council passed First and Second Readings of the associated Land Use Contract Discharge and Zoning Amendment Bylaws. A Public Hearing was held on 2022-SEP-29 and Third Reading of the bylaws was passed on 2022-OCT-24. At the In Camera Meeting of 2023-FEB-06, Council directed Staff to:

1. Prepare a report outlining how the proposed rezoning amendment bylaw complies with the policies contained in Section C4.1 Truth and Reconciliation of *City Plan: Nanaimo Reimagined*; and,
2. To place associated “Zoning Bylaw Amendment Bylaw 2022 No. 4500.204” and “Land Use Contract Discharge Bylaw No. 7355” on an upcoming open Council meeting agenda for consideration of rescinding third reading.

This report is in response to Council’s direction. As this report is following a public hearing, Staff recommend rescinding Third Reading of both bylaws and scheduling the application to return to an upcoming Public Hearing in order to preserve the integrity of the rezoning process. |

DISCUSSION

Proposed Development

The existing zoning (CD7/DT12/R8) permits a wide variety of uses and significant re-development potential on the lands. The owner could at any time apply for a development permit and building permit for uses currently permitted.

The applicant proposes to rezone the subject properties to a revised CD7 zone to facilitate a six lot subdivision and mixed-use (commercial and residential) development. The conceptual development plans include a mix of townhouses, mixed-use buildings ranging from 5 to 16 storeys in height, and a hotel. The proposed revised CD7 zone narrows the permitted uses to better align with City Plan policies and further restricts the use of the land by removing some uses that are currently permitted including, auto-oriented and land intensive uses permitted under existing zoning for the site (e.g. auto sales and repair, transportation terminal, car wash, gas station, recycling depot, wholesale). The proposed zoning is informed by a functional parcel layout and road network to guide future build-out. The proposed zoning also provides for riparian restoration and enhanced riparian area protection and public access improvements through park dedication.

As part of the rezoning application, a number of conditions will be secured including road and park dedication and the provision of amenities and habitat restoration within the dedicated park. A complete description of the proposed zone and conceptual development can be found in the Staff Report to Council dated 2022-AUG-29 (Attachment A).

Site Context

The subject properties are located at the northern edge of Downtown Nanaimo, next to the mouth of the Millstone River. The Snuneymuxw First Nation traditionally inhabited the mouth of the Millstone River where a significant ancestral village site known as Sxwayxum was located.

The *Heritage Conservation Act* (HCA) provides protection to sites designation as “Provincial heritage sites”, as well as, automatic protection to sites of particular historic or archaeological value as defined by the *Act*. Protected archaeological sites may not be altered, without a permit issued by the Province. An Archaeological Impact Assessment (AIA) in support of the rezoning application to assess potential impacts to archaeological resources resulting from the proposed development was conducted. The study recommends monitoring of ground disturbing construction activities and identifies that a further HCA alteration permit must be obtained to authorize any ground disturbance within the recorded area of a registered archaeological site (DhRx-1).

The property at 1 Terminal Avenue contains a former hotel building that closed in 2018 (Howard Johnson Harbourside Hotel, previously Tally-Ho Travelodge). A secondary retail building on the site was most recently utilized as a home heating supply store and showroom. The entire property has been previously disturbed by prior development and is substantially covered with buildings and paved surfaces.

The properties at 444 and 450 Comox Road both contain small residential apartment buildings built in the 1950s.

The property at 500 Comox Road previously contained an office building that was partially demolished after fire damage in 1995, leaving the exposed foundation and parkade walls that exist to this day.

The property at 55 Mill Street contains a single residential dwelling. The overall site slopes downhill by approximately 20m from Comox Road in the south to the Millstone River to the north.

Policy Context

Protocol Agreement

The Protocol Agreement between the City of Nanaimo and Snuneymuxw First Nation (Attachment B) was most recently renewed in 2019. This agreement includes guiding principles for collaboration between both parties. While neither provincial legislation nor the Protocol Agreement requires referral of rezoning applications, in the spirit of information-sharing as described by the agreement, the rezoning application was presented at a joint Technical Working Group meeting on 2022-MAR-22 in advance of being referred to Snuneymuxw First Nation for information on 2022-APR-07.

City Plan

The Staff Report to Council dated 2022-AUG-29 (Attachment A) speaks to the consistency of the proposed bylaws with the City Plan and broadly to land use policies.

With respect to Council’s specific direction, Staff have prepared a summary of the relevant objectives and policies of Section C4.1 of City Plan, adopted 2022-JUL-04 relating to truth and reconciliation (Attachment C). Section C4.1 also contains the following preamble:

“We respectfully acknowledge that the city boundary lies within the Traditional Territory of Snuneymuxw First Nation who have many significant ancestral village sites throughout the city including Stilnup (Departure Bay) and Sxwuyum (Millstone River). We recognize the Snuneymuxw Treaty of 1854, a trade and commerce treaty that forever and always preserves and protects Snuneymuxw villages, waters, enclosed fields, harvesting and gathering sites, and the right to hunt and fish as formerly.”

This preamble is intended to be read in view of the specific City Plan policies including those related to land use designation (in this case “Primary Urban Centre”) and truth and reconciliation (such as policy C4.1.9, which also addresses the topic of traditional Snuneymuxw village sites).

The policies of Section C4.1 speak to the significance of government-to-government relations with First Nations and working collaboratively. Staff have summarized some of the key policies in C4.1 and outlined how, in Staff’s opinion, the proposed bylaws and rezoning process are consistent with these policies. The summary also includes comment on key connected policies in related Sections of City Plan.

City Plan Policy Review

Policy	RA475 – Consistency with City Plan
C4.1.6 Engage government-to-government with Snuneymuxw First Nation in accordance with	<ul style="list-style-type: none"> The City has engaged with the Snuneymuxw First Nation in a respectful government-to-government manner respecting the proposed bylaws, and in

protocol agreements as well as guidance for local governments under the Truth and Reconciliation Commission's (TRC) 94 Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Government of British Columbia's Declaration on the Rights of Indigenous Peoples Act (DRIPA). This includes upholding the following guiding principles committed to by the City of Nanaimo and Snuneymuxw First Nation in the 2019 Renewed Protocol Agreement. (See Attachment C guiding principles).

- that effort has acted in accordance with the guidance in the TRC Calls to Action as well as UNDRIP, DRIPA and the Protocol Agreement.
- In March 2022, the City presented the proposed rezoning to the working group that has been established in accordance with the Protocol Agreement. In addition to the usual public hearing opportunities, the City also specifically invited the First Nation to participate in the rezoning process by notifying of the rezoning by letter dated 2022-APR-07. These communications reflect the guidance of the Protocol Agreement, as well as Article 18 of UNDRIP. That Article speaks of the right of indigenous peoples to participate in decision making that affects them through representatives of their own choosing.
 - The City appreciates that the land that is the subject of the rezoning may have been part of the Sxwayxum village site, that the site is important to the Snuneymuxw First Nation and that the First Nation may be seeking compensation for the loss of the village site. The adoption of the proposed bylaws will not prevent the City from supporting that effort or from being guided by Article 28 of UNDRIP when doing so. Article 28 acknowledges that there may be cases in which a State should compensate an indigenous people for the loss of their traditional territory. The acknowledgement in Article 28 that traditional territory might not be returned to a First Nation but instead the subject of compensation is consistent with the recognition by a local government that such land may be now owned and used by others and thus subject to regulation by it.
 - The instruments referenced in C4.1.6 do not limit the City's authority to consider a rezoning application under Section 460 of the *Local Government Act*. The City is bound by the *Local Government Act* to consider applications from fee simple owners of properties, irrespective of claims of title and rights in relation to those properties by First Nations.
 - DRIPA is legislation adopted by the Province that is aimed at aligning provincial laws with UNDRIP. Since the proposed bylaws are not contrary to UNDRIP they are also not contrary to the commitment made by the Province in DRIPA to ensure that provincial laws are consistent with UNDRIP.

	<ul style="list-style-type: none"> • DRIPA creates a scheme in which the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to the exercise of a statutory power. There is no DRIPA agreement in effect in relation to the City's zoning power. • The TRC 94 Calls to Action, produced to redress the legacy of residential schools and advance the process of reconciliation, do not contain anything that would, in the context of the OCP and the proposed rezoning, create substantive inconsistency between the proposed bylaws and the OCP. • That the references to UNDRIP, DRIPA, and the TRC 94 Calls to Action in the City Plan were not intended to limit Council's authority to adopt the proposed bylaws is reflected in the fact that the site at issue is identified in the Plan as suitable for the type of development contemplated by those bylaws. • Nothing in C4.1.6 speaks directly to the substance of the proposed bylaws in a manner that would render them inconsistent with the OCP.
Policy	RA475 – Consistency with City Plan
<p><u>C4.1.7</u> Continue to collaborate on referral processes with Snuneymuxw First Nation to more efficiently and effectively address City land use planning decisions that impact Snuneymuxw interests, including treaty rights.</p>	<ul style="list-style-type: none"> • The rezoning application was presented at the Staff-to-Staff Technical Working Group on 2022-MAR-22 with minutes from that meeting received by the Protocol Agreement Working Group on 2022-JUN-15. • The rezoning application was forwarded for information to Snuneymuxw First Nation 2022-APR-07 with the opportunity for Staff to provide additional information. • The City and SFN have been actively collaborating on a referral policy as referenced in the policy. Work has been ongoing prior to adoption of City Plan.
Policy	RA475 – Consistency with City Plan
<p><u>C4.1.9</u> Recognize the importance of Snuneymuxw village sites as identified in the Treaty of 1854 and encourage efforts by the Crown to return land or compensate for losses.</p>	<ul style="list-style-type: none"> • The Crown can be encouraged to compensate for losses relating to the Treaty of 1854 regardless of the adoption of the proposed bylaws. • An amendment to the rezoning of the property is separate and unrelated to the process and in no way precludes or diminishes potential Crown compensation.

Policy	RA475 – Consistency with City Plan
<p><u>C4.1.16</u> Partner with First Nations to increase their visible presence and recognize their Traditional Territories through a variety of projects, including signage, place-naming, art, incorporation of Hul’qumi’num language into public spaces, communications materials, and other ideas.</p>	<ul style="list-style-type: none"> • The dedication of public park as proposed through rezoning will provide greater opportunities for achieving multiple objectives than if that portion of land were to remain privately-owned (e.g., collaboration on park amenities, signage, creation of greenspace, riparian restoration, trail connections, public gathering spaces, etc.). • The applicant has indicated to Staff and Council their intent to incorporate recognition of the site’s cultural significance in future site design.
Policy	RA475 – Consistency with City Plan
<p>C4.6.1 Protect archaeological features located on lands owned by the City by avoiding archaeological features wherever feasible, or through appropriate mitigation measures if avoidance is not possible.</p> <p>C4.6.3 Work with Snuneymuxw First Nation to identify and understand sites of special cultural and traditional significance in order to support future designation of heritage conservation areas.</p>	<ul style="list-style-type: none"> • As part of the application submission, the applicant had an Archaeological Impact Assessment (AIA) prepared by a qualified professional that recommends monitoring of ground disturbing construction activities and identifies that an HCA alteration permit must be obtained to authorize any ground disturbance within the recorded area of site DhRx-1. Staff note that additional archaeological approvals may be required in accordance with Provincial regulations. The AIA was forwarded to the Provincial Archaeology Branch, and also forwarded to Snuneymuxw First Nation for information. • The rezoning provides for the dedication of river front parkland, which provides opportunities for the City and Snuneymuxw First Nation to work on initiatives that would support these policy objectives.

In addition to consistency with respect to key policies in Section C4.1 of City Plan, the proposed rezoning also meets the intent of Section C5 (“A Prospering Nanaimo: Thriving & Resilient Economy”), by facilitating a mixed-use development to revitalize an under-utilized site, as well as the land use policies in section D4 (“Future Land Use Designations”) as outlined in the Staff Report of 2022-AUG-29. Staff of are the opinion that the proposed rezoning and associated land use bylaws are consistent with City Plan policies, including Section C4.1 Truth and Reconciliation.

Next Steps

Staff recommend rescinding Third Reading of the associated Land Use Contract Discharge and Zoning Amendment Bylaws. Rescinding the Third Reading of these bylaws will allow Council to consider additional information regarding City Plan compliance as outlined in this report. Should both bylaws be rescinded, the application will be scheduled for an upcoming Public Hearing. |

SUMMARY POINTS

- The application is to rezone 444, 450, 450 Comox Road, 55 Mill Street, and 1 Terminal Avenue from Medium Density Residential (R8) and Gateway (DT12) to Comprehensive Development District Zone Seven (CD7) and to amend the CD7 zone with new zoning regulations, to facilitate a mixed-use development and subdivision.
- A Public Hearing was held on 2022-SEP-29 and Third Reading of the two bylaws was passed on 2022-OCT-24.
- The proposed rezoning and associated land use bylaws are consistent with City Plan policies, including Section C4.1 Truth and Reconciliation.
- Staff recommend rescinding Third Reading of the associated Land Use Contract Discharge and Zoning Amendment Bylaws and scheduling the application to return to an upcoming Public Hearing.
- Rescinding these bylaws will allow Council to consider additional information regarding City Plan compliance as outlined in this report.

ATTACHMENTS

- ATTACHMENT A: RA475 Staff Report for Decision – 2022-AUG-29
ATTACHMENT B: Protocol Agreement between the City of Nanaimo and Snuneymuxw First Nation
ATTACHMENT C: City Plan section C4.1 – Truth & Reconciliation
ATTACHMENT D: “Land Use Contract Discharge Bylaw 2022 No. 7355”
ATTACHMENT E: “Zoning Amendment Bylaw 2022 No. 4500.204”

Submitted by:

Lainya Rowett
Manager, Current Planning

Concurrence by:

Jeremy Holm
Director, Development Approvals

Lisa Bhopalsingh
Director, Community Development

Dale Lindsay
General Manager, Development Services
/ Deputy CAO

ATTACHMENT A

Link to RA475 Staff Report for Decision – 2022-AUG-29

<https://pub-nanaimo.escribemeetings.com/Meeting.aspx?Id=c83ab903-de62-4b38-a7bf-67336cdd443a&Agenda=Merged&lang=English>



PROTOCOL AGREEMENT

between

THE CITY OF NANAIMO

a municipality in the Province of British Columbia, as represented by its Mayor and Council,
having an administrative office at 455 Wallace Street, Nanaimo, British Columbia, V9R 5J6

[the "City"]

and

SNUNEYMUXW FIRST NATION

as represented by the Snuneymuxw Chief and Council,
having an administrative office on their territory at 668 Centre Street, Nanaimo, British Columbia, V9R 4Z4

["Snuneymuxw"]

[collectively referred as the "Parties"]

WHEREAS:

- A. On December 23, 1854, the Crown as represented by Sir James Douglas and the Snuneymuxw people entered in to the Treaty of 1854, which is a treaty within the meaning of section 35 of the *Constitution Act, 1982* [the "Constitution"];
- B. On December 24, 1874, the City was incorporated as a municipality by Letters Patent and continues to be a local government pursuant to both the *Community Charter* [British Columbia] and the *Local Government Act* [British Columbia];
- C. The Parties signed a Memorandum of Understanding on April 20, 2005 to develop a strong, committed and fair working relationship for the benefit of all individuals in the Nanaimo region;
- D. The Parties signed a Protocol Agreement on October 15th, 2005 [the "Protocol"] with the intent to establish a government to government relationship;
- E. The Parties renewed the Protocol on April 30th, 2009;
- F. The Parties wish to renew their commitment to developing a working relationship that is based on mutual respect and recognition;
- G. Canada and British Columbia have endorsed without qualification the United Declaration on the Rights of Indigenous Peoples which set out the minimum standards for the survival, dignity and wellbeing of Indigenous Peoples;
- H. The Province of British Columbia has proposed Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples to help inform the development of relationships based on the recognition and implementation of Indigenous Rights, including Indigenous self-determination and Indigenous self-government as recognized and affirmed under section 35 of the Canadian Constitution, 1982; and
- I. The relationship between the Parties are informed by the final Report of the Truth and Reconciliation Commission, and the Calls to Action issued by the Commission, which promote the approach of advancing reconciliation in Canada through direct work on matters of historic dispute, and setting a foundation for more respectful and meaningful partnerships in the future.



PROTOCOL AGREEMENT

between

THE CITY OF NANAIMO and SNUNEYMUXW FIRST NATION



NOW THEREFORE, the Parties wish to renew their commitment to a true, meaningful and transformative government to government relationship and continue a Protocol Agreement that is designed to deepen the understanding for one another based on the implementation of reconciliation and respect for each others area of jurisdiction, and agree as follows:

1. Purpose

The purpose of this Protocol is to deepen the government to government relationship between the Parties and establish a collaborative process that will meaningfully advance reconciliation and lead to a resolution of shared opportunities, agreements and mutual benefits.

2. Guiding Principles

The City and Snuneymuxw commit to the following guiding principles that will inform a spirit of cooperation to work together:

- a) Act in an open, good faith and transparent manner toward one another;
- b) Nurture trust and collaboration between one another to create confidence in the renewed relationship that will further certainty and reliance of the Nanaimo region on the government to government relationship between the Parties;
- c) Mutual recognition and respect for each other, including Snuneymuxw's connection to Snuneymuxw Territory including the spiritual and cultural importance of Snuneymuxw values and way of life, and the City's legislative authority and responsibility to foster the economic, social and environmental wellbeing of the community within its boundaries; and
- d) Adopt a "solutions oriented" approach in all work together through the creation of a shared vision of greater prosperity and wellbeing for all residents of the Nanaimo region.

3. Protocol Agreement Working Group

- a) The Parties will renew their political relationship by committing to continue the Protocol Agreement Working Group (the "PAWG") comprising:

- i. The Chief of Snuneymuxw and the Mayor of the City who will act as the Chair;
 - ii. Two Snuneymuxw Councillors nominated by the Chief of Snuneymuxw and two City Councillors nominated by the Mayor of the City;
 - iii. One executive staff member from each of Snuneymuxw and the City and nominated by the Chief and Mayor respectively;
 - iv. One alternate, who are elected representatives of Snuneymuxw or the City and appointed by the Chief or Mayor, as the case may be, to ensure the work of the working group continues during temporary absences of a member(s); and
 - v. Appoint a representative who will be responsible for record keeping.
- b) The PAWG is the forum mandated by Snuneymuxw and the City to:
- i. Implement reconciliation by outlining a collaborative process that will lead to the development of a shared vision for the future of the relationship between the Parties;
 - ii. Implement reconciliation by outlining a collaborative process to identify interests, priorities and current initiatives that will allow the Parties to achieve their shared vision;
 - iii. Identify opportunities for collaboration between the Parties that promote the shared vision developed under 3(b)(i) and align with the interests, priorities and current initiatives identified under 3(b)(ii) including, but not limited to, opportunities that address land use, economic opportunities, continuing the provision of services, tourism, recreation, joint communications, community plans, and any other matter(s) identified by the Parties;
 - iv. Meet at least six times each calendar year, and more frequently as it may consider necessary to carry out its responsibilities under this Agreement;
 - v. Share information and documents that are otherwise publicly accessible or were produced at the request of PAWG;



PROTOCOL AGREEMENT

between

THE CITY OF NANAIMO and SNUNEYMUXW FIRST NATION



- vi. Review existing agreements between the Parties; and
- vii. At all times operate to achieve resolution by consensus that may lead to negotiations and agreements ultimately to be authorized by the Snuneymuxw Chief and Council and the Nanaimo Mayor and Council.

4. Communications and Confidentiality

- a) All communications at PAWG meetings, including any written materials which are produced for the purposes of a meeting or are otherwise created at the request of PAWG are to remain confidential, with the exception that any communications subject to the *Freedom of Information and Protection of Privacy Act* must be disclosed by the City in response to a request for information made under that act.
- b) The Parties agree that any information which is otherwise confidential pursuant to 4(a) will only be released to the public upon written agreement by the Parties and will only be released jointly in a manner which is agreed to by both Parties.
- c) Snuneymuxw will notify the City in writing, as soon as reasonably possible, of any issue or matter, including any actions undertaken by third parties, that, in the reasonable opinion of Snuneymuxw, may impact the operation or intent of this Agreement. Any such issues shall be discussed at the next scheduled PAWG meeting.
- d) The City will notify Snuneymuxw in writing, as soon as reasonably possible, of any issue or matter, including any actions undertaken by third parties, that, in the reasonable opinion of the City, may impact the operation or intent of this Agreement. Any such issues shall be discussed at the next scheduled PAWG meeting.

5. Review, Amendment and Termination

- a) The Parties agree that this Agreement:
 - i. Will take effect upon adoption by resolution of both Snuneymuxw Chief and Council and Nanaimo City Council;

- ii. Is subject to an annual review provided that such annual review is requested, in writing, by either Snuneymuxw or the City at least 30 days before the PAWG meeting at which the annual review will take place. An annual review shall occur no more than once every 12 months; and
- iii. Is a living document and may be subject to amendment from time to time by agreement in writing and authorized by both Snuneymuxw Chief and Council and Nanaimo City Council by resolution.

- b) Snuneymuxw or the City may terminate this Agreement upon 30 days notice, in writing, and delivered to the other party via email or letter.

6. Collaboration and Dispute Resolution

- a) The Parties are committed to open and respectful communication with each other in order to effectively achieve shared goals and avoid disputes.
- b) In the spirit of cooperation and collaboration, the Parties will actively listen to each other's concerns, seek clarification of issues and statements, appreciate each others cultural and spiritual way of life and adopt any other guiding standards that will deepen the understanding between each other.
- c) In the event of a dispute between the Parties, Snuneymuxw and the City will review the issue at a PAWG meeting and seek a consensus resolution or a unity-seeking solution, including discuss and explore collaborative options to resolve the issue.
- d) In the event PAWG cannot resolve a dispute, the Chief of Snuneymuxw and the Mayor of the City will meet to discuss solutions to resolve the issue.
- e) The Parties may agree in writing to adopt a formal dispute resolution process with respect to a particular issue, identify a mediator or individual who has the support of both parties to assist in resolving the dispute, and share the costs.



PROTOCOL AGREEMENT

between

THE CITY OF NANAIMO and SNUNEYMUXW FIRST NATION



7. General

- a) The Parties will make all reasonable efforts to identify resources to support the capacity, development and implementation of this Agreement for the benefit of all residents in the Nanaimo region.
- b) The Parties confirm that each have had the full opportunity to review the terms of this Agreement and each have sought legal advice.
- c) Nothing in this Agreement is construed as limiting, defining or abrogating Snuneymuxw Section 35 rights.
- d) Nothing in this Agreement is construed as limiting the City's ability to exercise its rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced, or as limiting or fettering the City's ability to exercise its discretion pursuant to any bylaw, agreement, or legislation.

- e) Any notice, document or communication required to advance this Agreement will be in writing and delivered by hand or facsimile to other party as follows:

To Snuneymuxw:

Chief Councillor
 668 Centre Street
 Nanaimo B.C., V9R 4Z4
 Fax No. (250) 753-3492

To the City:

City of Nanaimo Mayor and Council
 455 Wallace Street
 Nanaimo B.C., V9R 5J6
 Fax No. (250) 755-4436

Executed at Nanaimo, B.C., on the 27 day of MAY, 2019.

SNUNEYMUXW FIRST NATION



 Chief Michael Wyse

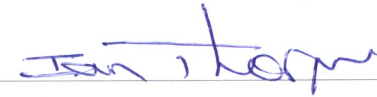


 Witness

CITY OF NANAIMO



 Mayor Leonard Krog



 Witness



C4.1 TRUTH & RECONCILIATION

We respectfully acknowledge that the city boundary lies within the Traditional Territory of Snuneymuxw First Nation who have many significant ancestral village sites throughout the city including Stlilnup (Departure Bay) and Sxwuyum (Millstone River). We recognize the Snuneymuxw Treaty of 1854, a trade and commerce treaty that forever and always preserves and protects Snuneymuxw villages, waters, enclosed fields, harvesting and gathering sites, and the right to hunt and fish as formerly.

We are committed to the hard work of advancing Truth and Reconciliation through government-to-government relations and protocols. This includes working together, in a good way with First Nations leadership, to continue acknowledging and respecting their long standing relationship with these lands and addressing inequities and intergenerational impacts of colonial systems experienced by Indigenous peoples in Nanaimo. Through these government-to-government relations and protocols, we will strive to strengthen positive and constructive relations that respect and raise up Snuneymuxw Government and their Mustimuxw (peoples).

Desired Outcomes

The City of Nanaimo acknowledges that ongoing planning and land development occurs on the Traditional Territory of Snuneymuxw First Nation.

Respectful relations between City of Nanaimo and First Nations governments with a focus on relationship building as a key component of fostering strong government-to-government relationships.

A fully inclusive community that supports the equity, health, and wellbeing of community members of diverse cultural backgrounds, especially those who identify as Indigenous.

Recognition of the guiding principles of the Truth and Reconciliation Commission's (TRC) 94 Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Government of British Columbia's Declaration on the Rights of Indigenous Peoples Act (DRIPA) in all areas where the City has impact or influence.

Improved community cohesion and Indigenous belonging through education and awareness of the culture and strengths of Canada's Indigenous peoples with a focus on the First Nations whose Territories the city boundary lies within, and taking ongoing actions to address and heal the impacts of colonialism and racism.



Policies

AWARENESS, EDUCATION, & EQUITY

- C4.1.1 Recognize and work to implement the guiding principles of the TRC *Calls to Action*, UNDRIP, and DRIPA in all areas where the City has impact or influence.
- C4.1.2 Continue to provide learning opportunities for City Staff and community members on the history of Indigenous peoples in Canada with special focus on the First Nations whose Territories the city boundary lies within. This includes the history and legacy of residential schools, hospitals, and other colonial systems, the United Nations *Declaration on the Rights of Indigenous Peoples*, *Treaties*, and Indigenous rights.
- C4.1.3 Contribute any City records to First Nations and the National Centre for Truth and Reconciliation that are relevant to the history and legacy of the Indian residential school system and hospitals in Nanaimo.
- C4.1.4 Work with First Nations and other government partners to support and encourage partnerships and initiatives that improve the health and wellbeing of all Indigenous community members, including those represented by the Métis Nation, Inuit, and other Urban Indigenous peoples.
- C4.1.5 Continue to work collaboratively with First Nations and other partner organizations to establish culturally sensitive opportunities to honour all the children lost through the residential school system and support healing for survivors and their families.

GOVERNMENT-TO-GOVERNMENT RELATIONS

- C4.1.6 Engage government-to-government with Snuneymuxw First Nation in accordance with protocol agreements as well as guidance for local governments under the Truth and Reconciliation Commission's (TRC) *94 Calls to Action*, the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP), and the Government of British Columbia's *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). This includes upholding the following guiding principles committed to by the City of Nanaimo and Snuneymuxw First Nation in the *2019 Renewed Protocol Agreement*:
 - (a) Act in an open, good faith, and transparent manner toward one another
 - (b) Nurture trust and collaboration between one another to create confidence in the renewed relationship that will further certainty and reliance of the Nanaimo region on the government-to-government relationship between the Parties
 - (c) Mutual recognition and respect for each other, specifically Snuneymuxw's connection to Snuneymuxw Territory including the spiritual and cultural importance of Snuneymuxw values and way of life



- (d) Adopt a “solutions oriented” approach in all work together through the creation of a shared vision of greater prosperity and wellbeing for all residents of the Nanaimo region
- (e) Act consistent with the Draft Principles [of the Protocol Agreement]
- (f) Advance understanding of the rights, obligations, needs, and challenges of one another
- C4.1.7 Continue to collaborate on referral processes with Snuneymuxw First Nation to more efficiently and effectively address City land use planning and decisions that impact Snuneymuxw interests, including treaty rights.
- C4.1.8 Consider collaboration on Traditional Land Use Planning and Studies to support improving City land use planning and decision making processes.
- C4.1.9 Recognize the importance of Snuneymuxw village sites as identified in the Treaty of 1854 and encourage efforts by the Crown to return land or compensate for losses.
- C4.1.10 Work with Snuneymuxw First Nation, the Provincial Government, and the Regional District of Nanaimo to investigate opportunities for Snuneymuxw Mustimuxw (peoples) to participate in City elections.
- C4.1.11 Continue to support collaborative agreements between the City, Snuneymuxw, and other levels of government including the School District, the Regional District of Nanaimo, Nanaimo Port Authority, and BC Housing.
- C4.1.12 Recognize the overlapping interests and jurisdiction between the City of Nanaimo, Snuneymuxw First Nation, and the Regional District of Nanaimo, and consider tripartite government-to-government agreements to facilitate stronger collaboration and cooperation to achieve reconciliation and other shared interests.
- C4.1.13 Recognize and acknowledge the Traditional Territories of First Nations at the start of public meetings and events.
- C4.1.14 Continue to collaborate with First Nations governments on projects of mutual environmental, economic, social, and cultural interest on their Traditional Territories.
- C4.1.15 Encourage and support First Nations government, and as appropriate, other Indigenous representation on committees, task forces, and tables addressing topics of mutual interest.



C4.1.16 Partner with First Nations to increase their visible presence and recognize their Traditional Territories through a variety of projects, including signage, place-naming, art, incorporation of Hul'qumi'num language into public spaces, communications materials, and other ideas.

C4.1.17 Ensure approval by First Nations governments prior to starting any public art, culture, or heritage projects with Indigenous content to be located in City owned spaces on their Traditional Territories.

Integrated Policy Areas (view the below sections to see related policies)



C3.4
Food Security



C4.2
Equity & Inclusivity



C4.5
Culture



C4.6
Archaeology & Heritage



C4.7
Public Art Projects & Programs



C4.8
Community Events, Festivals, Tournaments, & Gatherings



C4.9
Parkland & Park Amenity Management



C4.10
Waterfront Use & Protection



C5.3
Business Development



C5.5
Place Making & Investment Attraction



C5.6
Tourism

ATTACHMENT D

CITY OF NANAIMO

BYLAW NO. 7355

A BYLAW TO AUTHORIZE THE DISCHARGE OF A LAND USE CONTRACT

WHEREAS the City of Nanaimo entered into a Land Use Contract with KLAUS GERICK and MONA MAXINE, to provide for the development of LOT B, SECTION 1, NANAIMO DISTRICT, PLAN 15272, EXCEPT PART IN PLAN 49116 (500 Comox Road, hereby referred to as the "Lands");

AND WHEREAS the City of Nanaimo adopted "Land Use Contract Authorization Bylaw 1977 No. 1844" on January 26th, 1977;

AND WHEREAS the said Land Use Contract was registered in the Victoria Land Title Office under registration number F90666 on November 4th, 1977;

AND WHEREAS the City of Nanaimo has agreed to release and discharge said Land Use Contract from the Lands;

NOW THEREFORE the Council of the City of Nanaimo, in open meeting assembled, HEREBY ENACTS AS FOLLOWS:

Title

1. This Bylaw may be cited for all purposes as the City of Nanaimo "Land Use Contract Discharge Bylaw 2022 No. 7355".

Discharge

2. The City of Nanaimo does hereby discharge the Land Use Contract registered against the Lands in the Victoria Land Title Office on November 4th, 1977 under registration number F90666.

Execution of Documents

3. The Mayor and Director of Legislative Services are hereby authorized to execute all documents necessary for the discharge of the Land Use Contract.

Repeal

4. The City of Nanaimo "Land Use Contract Authorization Bylaw 1977 No. 1844" is hereby repealed.

PASSED FIRST READING: 2022-AUG-29
PASSED SECOND READING: 2022-AUG-29
PUBLIC HEARING HELD: 2022-SEP-29
PASSED THIRD READING: 2022-OCT-24
MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE: _____
ADOPTED: _____

MAYOR

CORPORATE OFFICER

ATTACHMENT E

CITY OF NANAIMO

BYLAW NO. 4500.204

A BYLAW TO AMEND THE "CITY OF NANAIMO ZONING BYLAW 2011 NO. 4500"

WHEREAS the Council may zone land, by bylaw, pursuant to Sections 464, 465, 469, 479, 480, 481, 482, and 548 of the *Local Government Act*;

THEREFORE BE IT RESOLVED the Municipal Council of the City of Nanaimo, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "Zoning Bylaw Amendment Bylaw 2022 No. 4500.204".
2. The "City of Nanaimo Zoning Bylaw 2011 No. 4500" is hereby amended as follows:
 - 1) By deleting Section 16.7 and replacing it with a new Section 16.7 as shown in Schedule A of this Bylaw.
 - 2) By amending the table in section 17.11 by adding the following row after the row labeled 'CD5':

Subject Property Zoned	Front Yard	Side Yard	Rear Yard	Storage / Landfill / Refuse Receptacles
CD7	1	1	1	2

- 3) By rezoning the lands legally described as LOT 5, BLOCK 48, SECTION 1, NANAIMO DISTRICT, PLAN 584, EXCEPT PART IN PLAN 15272 (444 Comox Road), LOT C, SECTION 1, NANAIMO DISTRICT, PLAN 15272 (450 Comox Road), LOT B, SECTION 1, NANAIMO DISTRICT, PLAN 15272, EXCEPT PART IN PLAN 49116 (500 Comox Road), LOT 25, BLOCK 48, SECTION 1, NANAIMO DISTRICT, PLAN 584 (55 Mill Street), and LOTS A & B, SECTION 1, NANAIMO DISTRICT, PLAN 3360 (portion of 1 Terminal Avenue) from Medium Density Residential (R8) and Gateway (DT12) to Comprehensive Development District Zone Seven (CD7), as shown on Schedule B of this Bylaw.

PASSED FIRST READING: 2022-AUG-29

PASSED SECOND READING: 2022-AUG-29

PUBLIC HEARING HELD: 2022-SEP-29

PASSED THIRD READING: 2022-OCT-24

MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE: _____

ADOPTED: _____

MAYOR

CORPORATE OFFICER

File: RA000475

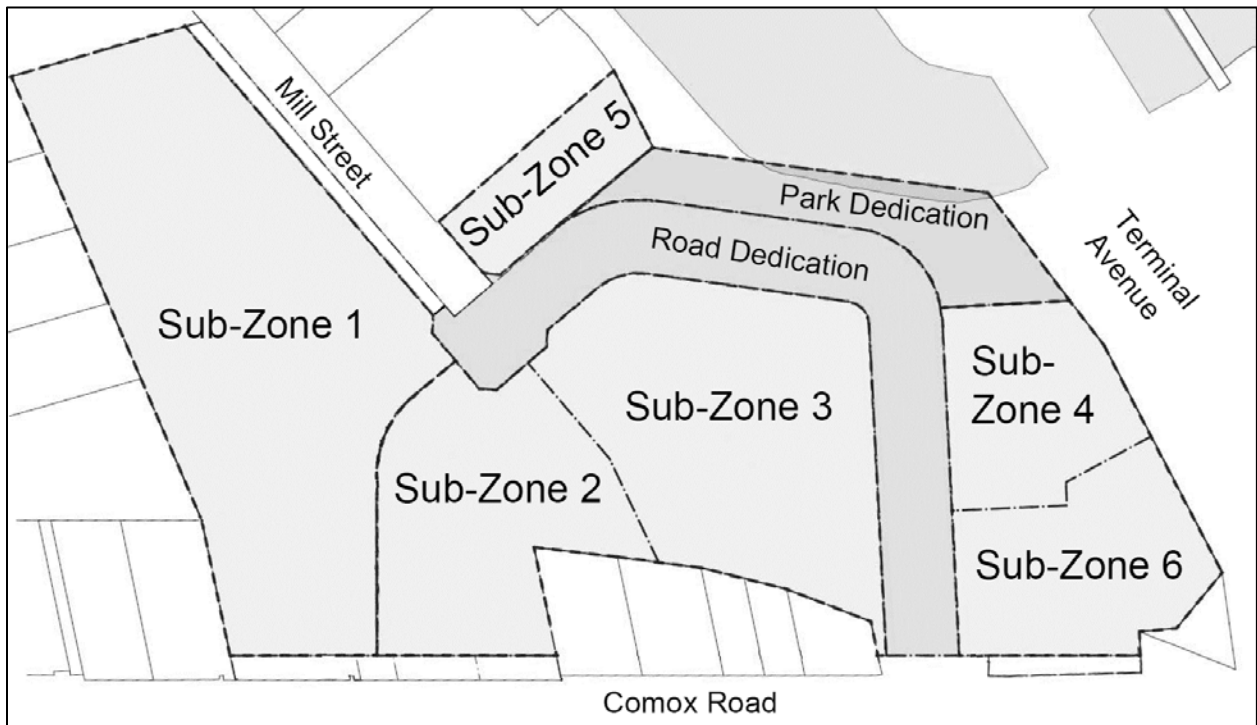
Address: 444/450/500 Comox Road, 55 Mill Street, and 1 Terminal Avenue

16.7 COMPREHENSIVE DEVELOPMENT DISTRICT ZONE SEVEN (CD7)

The intent of this zone is to provide a comprehensive mixed-use development area at the north edge of Downtown Nanaimo adjacent to the Millstone River, with a range of commercial and residential uses.

16.7.1 ESTABLISHMENT OF SUB-ZONES

16.7.1.1 Regulations in the CD7 zone will be established within sub-zones as identified in the following plan:



16.7.2 PERMITTED USES

16.7.2.1 The uses listed in the following table shall be permitted in sub-zones where indicated with a 'P' within the corresponding column with sub-zone number, as per the conditions of use specified:

Use	Sub-Zone						Conditions of Use
	1	2	3	4	5	6	
Arcade	--	P	P	P	--	P	
Assembly Hall	P	P	P	P	--	P	
Bingo Hall	--	P	P	P	--	P	
Commercial School	--	P	P	P	--	P	
Convention Centre	--	P	P	P	--	P	

SCHEDULE A

Use	Sub-Zone						Conditions of Use
	1	2	3	4	5	6	
Court of Law	--	P	P	P	--	P	
Cultural Facility	P	P	P	P	--	P	
Custom Workshop	--	P	P	P	--	P	
Daycare	P	P	P	P	P	P	
Funeral Parlour	--	P	P	P	--	P	
Hotel	--	P	P	P	--	P	
Laundromat	P	P	P	P	--	P	
Library	P	P	P	P	--	P	
Liquor Store	--	P	P	P	--	P	
Live/Work	P	P	P	P	P	P	
Micro-Brewery	--	P	P	P	--	P	The Gross Floor Area of a micro-brewery shall not exceed 557m ² .
Multiple Family Dwelling	P	P	P	P	P	P	Within sub-zones 3, 4, and 6, multiple family dwelling residential shall only be permitted where a commercial use exists on the same lot.
Neighbourhood Pub	--	P	P	P	--	P	
Office	P	P	P	P	--	P	
Personal Care Facility	P	P	P	P	--	P	
Printing and Publishing Facility	--	P	P	P	--	P	
Recreation Facility	P	P	P	P	--	P	
Religious Institution	P	P	P	P	P	P	
Repair Shop	--	P	P	P	--	P	
Restaurant	P	P	P	P	--	P	
Retail	P	P	P	P	--	P	
Rooming House	P	P	P	P	P	P	
Shopping Centre	--	P	P	P	--	P	
Personal Care Facility	P	P	P	P	P	P	
Seniors' Congregate Housing	P	P	P	P	P	P	
Social Services Resource Centre	P	P	P	P	--	P	
Veterinary Clinic	P	P	P	P	--	P	

P = Permitted Use
-- = Use Not Permitted

SCHEDULE A

16.7.2.2 The uses listed in the following table shall be permitted as an accessory use where indicated with an 'A' within the corresponding column with sub-zone number, as per the conditions of use specified:

Use	Sub-Zone						Conditions of Use
	1	2	3	4	5	6	
Accessory Dwelling	A	A	A	A	A	A	
Boarding and Lodging	A	A	A	A	A	A	Shall not exceed two sleeping units and shall not accommodate more than two persons.
Home Based Business	A	A	A	A	A	A	Subject to Part 6.
Secondary Suite	A	--	--	--	A	--	Subject to Part 6. Must be accessory to a single residential dwelling.
Short-Term Rental	A	A	A	A	A	A	Subject to Part 6.
Teletheatre Outlet	--	A	A	A	--	A	Must be contained within a Hotel or Neighborhood Pub.

P = Permitted as an Accessory Use
-- = Use Not Permitted

16.7.3 DENSITY

16.7.3.1 The following table specifies the maximum allowable base density, expressed as a Floor Area Ratio, per lot in each sub-zone. The additional density columns permit additional density where the specified criteria have been provided. Tier 1 awards additional density where a development meets or exceeds the Tier 1 requirements as specified in Schedule D of this Bylaw, and Tier 2 awards additional density where a development meets or exceeds the Tier 2 requirements as specified in Schedule D. Where a development achieves additional density as established through a development permit process, the additional floor area may be added to the base density within the sub-zone. A development may achieve all of the additional density available within the sub-zone:

Sub-Zone	Maximum Allowable Floor Area Ratio (FAR)	Additional Density	
		Tier 1	Tier 2
1	1.50	+0.2	+0.25
2	3.20	+0.2	+0.25
3	1.50	+0.2	+0.25
4	4.05	+0.2	+0.25
5	0.45	+0.1	+0.15
6	1.50	+0.2	+0.25

SCHEDULE A

16.7.3.2 Notwithstanding Subsection 16.7.3.1, where parking spaces are provided beneath a principal building (where the roof of the underground parking is not more than 0.8m above the adjacent finished grade), an amount may be added to the Floor Area Ratio equal to 0.25 multiplied by the percentage of the total parking spaces provided underground.

16.7.3.3 Notwithstanding Subsection 16.7.3.1, up to 15% of the calculated maximum permitted floor area of a lot in any sub-zone may be transferred to a lot in another sub-zone, with the exception of sub-zone 5, through a form & character development permit process and provided that a Section 219 covenant is registered on the property title of both subject parcels to record the terms of the density transfer.

16.7.4 LOT SIZE AND DIMENSIONS

16.7.4.1 The minimum lot size for a serviced lot shall be 1,000m².

16.7.4.2 The minimum lot frontage shall be 20m.

16.7.4.3 The minimum lot depth shall be 40m.

16.7.5 SITING OF BUILDINGS

16.7.5.1 The following table specifies the minimum distance a principal building must be set back from any front or flanking side lot line shared with the respective street identified in the first column:

Street	Front / Flanking Side Yard
Comox Road	0m – for the first five storeys of the building 2.2m – for any portion of the building above the fifth storey
Mill Street	3.5m – for the first four storeys of the building 4.5m – for any portion of the building above the fourth storey
Street labeled 'Road Dedication' in Subsection 16.7.1.1	2.5m
Terminal Avenue	5.5m

16.7.5.2 The following table specifies the minimum distance a principal building must be set back from any side or rear lot line within each respective sub-zone:

Sub-Zone	Side Yard	Rear Yard
1	7.5m	7.5m
2	7.5m	7.5m
3	5.0m	7.5m
4	2.5m	3.0m
5	3.0m	7.5m
6	3.0m	3.0m

16.7.5.3 Notwithstanding Subsections 16.7.5.1 and 16.7.5.2, general provisions in Part 6 of this Bylaw for the siting of buildings near watercourses will also apply.

SCHEDULE A

16.7.5.4 Notwithstanding Subsection 16.7.5.1, the maximum front yard setback shall be 6m from all lot lines shared with a street except for the street known as Terminal Avenue where there is no maximum front yard setback.

16.7.5.4.1 Where only one principal building exists on the lot no more than 50% of the front face of a building façade shall be setback further than the maximum permitted front yard setback.

16.7.5.4.2 Where more than one principal building exists on the lot at least 50% of the property frontage must include a building front face within the maximum front yard setback area.

16.7.5.5 No vehicle parking shall be permitted between the front face of a principal building and any lot line abutting a street.

16.7.5.6 Notwithstanding Subsections 6.5.1, 16.7.5.1, and 16.7.5.2, a minimum setback shall not be required for an underground parking structure except from any lot line shared with the street known as Terminal Avenue where the minimum setback for an underground parking structure shall be 4.5m.

16.7.6 SIZE OF BUILDINGS

16.7.6.1 The following table specifies the maximum permitted lot coverage and building height, as well as the minimum required height of a principal building, within each respective sub-zone:

Sub-Zone	Lot Coverage	Maximum Building Height	Minimum Building Height
1	40%	21m	2 Storeys
2	40%	55m	2 Storeys
3	44%	30m	2 Storeys
4	52%	58m	2 Storeys
5	40%	13m	n/a
6	40%	25m	2 Storeys

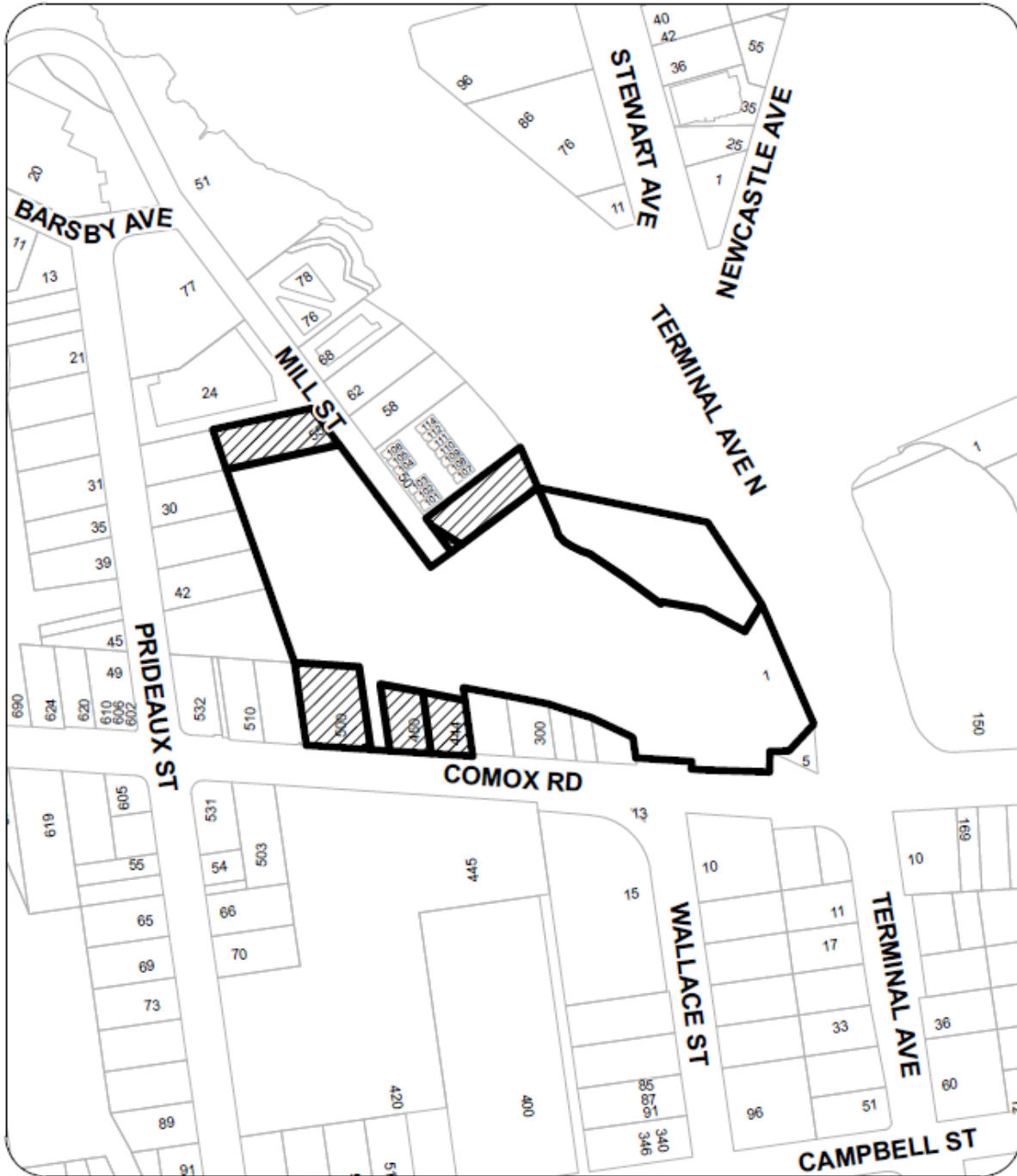
16.7.7 HEIGHT OF FENCES

16.7.7.1 The maximum height of a fence shall not exceed 1.2m where located within 3m of any front or flanking side lot line.

16.7.7.2 The maximum height of a fence shall not exceed 1.8m in any side or rear yard.

16.7.7.3 The maximum height of a fence shall not exceed 3.0m in any portion of the lot that is not within a front, flanking side, side, or rear yard setback.

SCHEDULE B



REZONING APPLICATION NO. RA000475

CIVIC: 1 TERMINAL AVENUE, 444, 450 & 500 COMOX ROAD, 55 MILL STREET
LEGAL: SEE NEXT PAGE FOR LEGAL DESCRIPTIONS

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