



Corporate Report

NO: L003

COUNCIL DATE: March 25, 2009

REGULAR COUNCIL – LAND USE

TO: Mayor and Council DATE: May 25, 2009
FROM: General Manager, Planning and Development FILE: 7996-0292-00
SUBJECT: Proposed Subdivision of 12244 - 102 Avenue -
Application No. 7996-0292-00 - Ernest and Milena Crepnjak

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Allow the subdivision of the lot located at 12244 – 102 Avenue (Application No. 7996-0292-00) to proceed, under the discretion of the Approving Officer, in accordance with its current existing RF zoning and the provisions of Surrey Tree Protection Bylaw, 2006, No. 16100 (the "Tree Protection Bylaw") for tree loss compensation and subject to conditions associated with the watercourse enclosure as set by the Department of Fisheries and Oceans ("DFO"); and
3. Instruct the City Clerk to forward a copy of this report and the related Council resolution to the applicant and to representatives of the delegations that appeared before Council-in-Committee at its meetings on September 25, 2006 and October 16, 2006 related to the subject application.

INTENT

The purpose of this report is to provide Council with information regarding the proposed subdivision of the property, located at 12244 – 102 Avenue, as illustrated in Appendix I (the "Property") and to seek Council approval for a course of action related to the continued processing of this development application.

BACKGROUND

At the July 24, 2006 Regular Council - Land Use meeting, Council considered a Planning Report related to a Development Variance Permit ("DVP") application for the Property. The DVP application was to relax the minimum panhandle width for four proposed single-family lots to allow subdivision of the Property into nine single-family lots, as illustrated in Appendix II. Council approved the DVP application to proceed to public notification.

The subject lot is designated Urban in the Official Community Plan and is zoned Single Family Residential (RF) Zone. With the exception of the width of the four proposed panhandles, the subdivision complies with all of the requirements of the RF Zone. The subdivision also involves the enclosure of an existing yellow-coded watercourse, which requires approval from the DFO. In addition, the subdivision also proposes the removal of approximately 43 of the 47 mature trees on the Property.

At the Council-in-Committee meeting on September 25, 2006, Council received a delegation from the owners of the properties that are adjacent to the Property. These owners expressed concerns with the impact of the proposed development related to the enclosure of the watercourse, the loss of riparian habitat and wildlife and the loss of the existing stand of cedar trees located along the west side of the Property. The delegation suggested that the Property could be developed in a sustainable manner that is financially rewarding to the developer and at the same time respectful of the important habitat and trees on the site.

At its Regular meeting on September 25, 2006, Council considered approval of DVP No. 7996-0292-00 for the subject Property and adopted the following resolution (RES. R06-2234):

"That Development Variance Permit No. 7996-0292-00 be referred to staff to work with the neighbourhood and review tree preservation".

On October 16, 2006, Council received a delegation from the applicant's engineering and environmental consultants in support of the subject application. No further Council resolution was made at that time.

At the September 8, 2008, Regular Council – Public Hearing meeting, Council received Corporate Report No. R174, which presented two options in relation to the subject application, as follows:

- Option 1 – Allow the development to proceed in accordance with the existing RF zoning and accept the provisions of the Tree Protection Bylaw for tree loss compensation.
- Option 2 – That staff continue to work with the applicant to prepare an alternate plan of subdivision and development for the site, which preserves more trees.

Council adopted the following resolution (RES. R08-2043), based on Option 2:

"Refer Application No. 7996-0292-00 back to staff to work with the applicant to design an alternate plan of subdivision and development for the property at 12244 - 102 Avenue, which better addresses tree preservation in comparison to the current proposal for the site".

In parallel with the above actions by the City, a group known as the Manson Creek Watershed Preservation Society sought a judicial review of DFO's decision to authorize the closure of the watercourse within the Property and the disturbance of the associated riparian habitat on the Property.

On January 23, 2009, the judicial review of DFO's decision to authorize the closure of the watercourse was completed and the decision by DFO was upheld. That is, the decision by DFO to allow enclosure of the yellow-coded watercourse, which runs along the west property line of the subject lot, was upheld.

DISCUSSION

Since September 8, 2008, when Corporate Report No. R174 was presented to Council, Planning staff has met with the applicant's consultant to discuss alternative development concepts for the Property that would preserve more trees and at the same time allow the applicant to achieve a lot yield commensurate with the existing RF zoning on the Property.

Staff has encouraged the applicant to consider a "clustering" concept, as was suggested in Corporate Report No. R174, to better address tree preservation. This approach is not acceptable to the applicant since rezoning the Property would be necessary to achieve "clustering of units" without compromising unit yield.

The applicant's position is that further delays would be inappropriate, particularly as the property is zoned for RF subdivision, which permits single-family lots, and DFO has issued its authorization to proceed in relation to the creek within the Property. The applicant has requested that the Approving Officer issue a Preliminary Layout Approval (PLA) letter for the most recent subdivision layout, dated May 2, 2007, which is the same as that presented to Council in Corporate Report No. R174 on September 8, 2008 (see Appendix III). However, the Approving Officer is unable to consider a subdivision layout that is inconsistent with Council's current direction.

The applicant's preferred subdivision layout (Appendix III) proposes nine single-family lots, all of which comply with the lot area and dimensional requirements of the RF Zone. The proposal involves four panhandle lots; however, unlike the original nine lot proposal with four of the nine lots having 3 metre (10 foot) wide panhandles, which required a DVP related to the width of the panhandles, the current layout proposes four of the nine lots with 4.5-metre (15 foot) wide panhandles. The Zoning By-law permits a panhandle with a minimum width of 4.5-metre (15 foot). Therefore, a DVP is no longer required.

Although the use of panhandles is relatively infrequent, there are circumstances that warrant consideration of such a subdivision solution. In this instance, the Property is encumbered along its east property line by an approximately 18.3-metre (60 foot) wide right-of-way and is located adjacent to (at its south-east property line) an active railway line. To the immediate west of the Property are two, RF-zoned, panhandle lots that were approved in 1976. Farther to the southwest are two more panhandle lots that were approved in 1990 (10105 – 122 Street) and in 1994 (10110 – 121A Street). Also to the immediate west, on 101A Avenue is a duplex (zoned RM-D) with five additional duplexes (zoned RM-D) just to the west of 122 Street. In considering the merits of a subdivision application, the Approving Officer considers the site's zoning, physical constraints and context and is also guided by City Policy No. O-15 Panhandle Lots, which is contained in Appendix IV.

Under the applicant's preferred subdivision layout, some regrading is necessary to provide engineering services to the proposed lots. This regrading along with the filling of the existing stream will result in the removal of the same number of trees as the original proposal (43 out of 47 mature trees on the site).

In light of the recent Court decision, regarding the closure of the watercourse and the submission by the applicant of a subdivision layout which complies with all of the requirements of the RF Zone, staff recommend that the applicant's preferred subdivision layout be allowed to proceed in accordance with the existing RF zoning of the site and that staff be directed to seek compensation for the loss of trees on the site using the current provisions of the Tree Protection Bylaw. Under this approach, the applicant will be required to pay cash-in-lieu to the City for replacement trees that cannot be planted within the proposed subdivision. Upsizing of replacement trees will also be required as part of the tree replacement plan.

The applicant will be required to engage a design consultant to conduct a character study of the surrounding homes and based on the findings of that study, propose a set of building design guidelines for the new homes in the subdivision. Staff will work with the design consultant to ensure that the siting and orientation of the proposed new homes are both consistent and compatible with the existing homes in the surrounding neighbourhood.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Allow the subdivision of the lot located at 12244 – 102 Avenue (Application No. 7996-0292-00) to proceed, under the discretion of the Approving Officer, in accordance with its current existing RF zoning and the provisions of the Tree Protection Bylaw for tree loss compensation and subject to conditions associated with the watercourse enclosure as set by the DFO; and

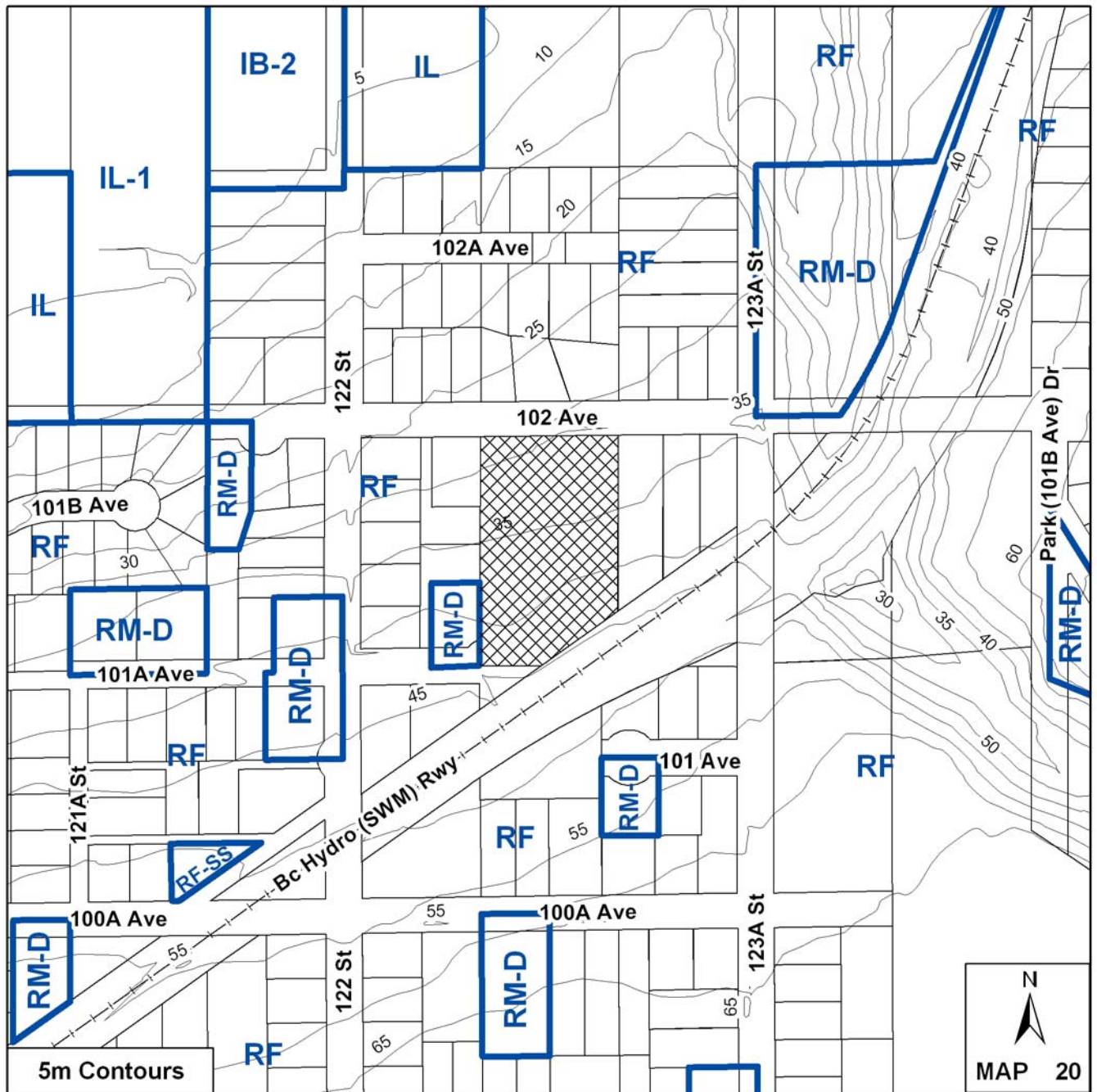
- Instruct the City Clerk to forward a copy of this report and the related Council resolution to the applicant and to representatives of the delegations that appeared before Council-in-Committee at its meetings on September 25, 2006 and October 16, 2006 related to the subject application.

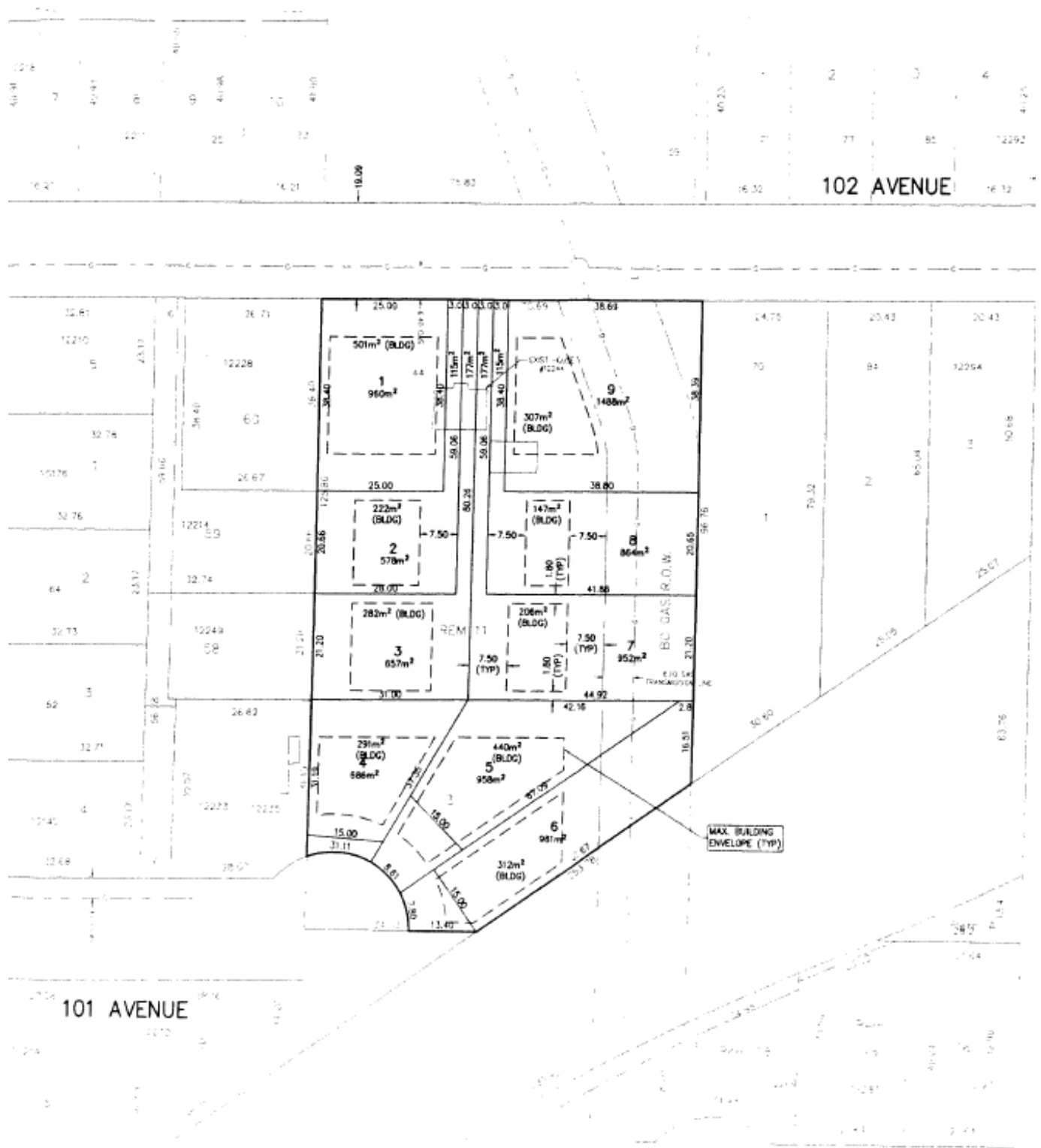
Jean Lamontagne
General Manager
Planning and Development

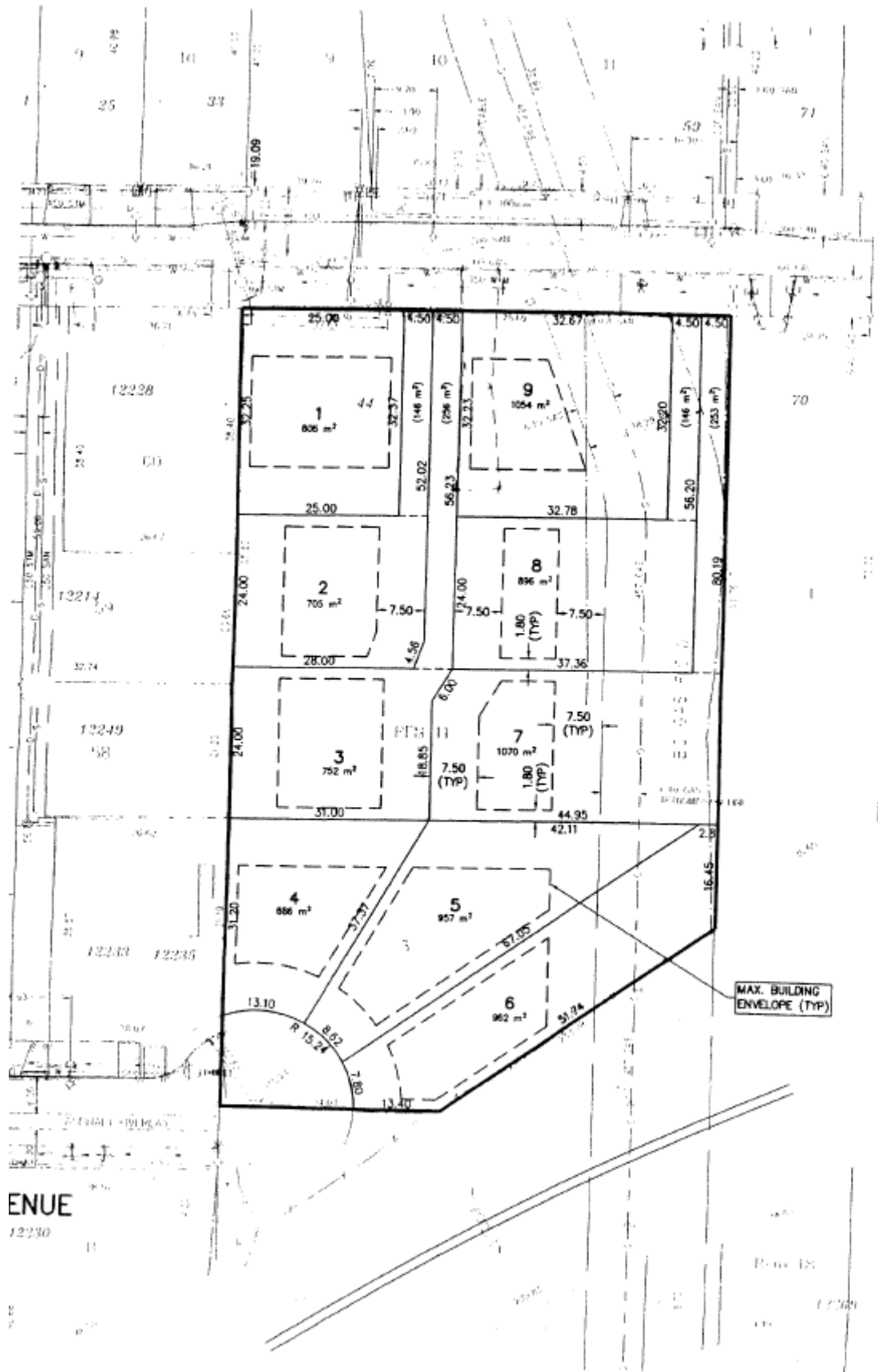
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Attachments:

- Appendix I Map of Subject Site
- Appendix II Previous Subdivision Layout Requiring a DVP and forwarded on July 24, 2006
- Appendix III Current Subdivision Layout, dated May 2, 2007
- Appendix IV City Policy No. O-15 Panhandle Lots









CITY POLICY

No. O-15

REFERENCE:

REGULAR COUNCIL MINUTES
6 MAY 1991
PAGE 9

APPROVED BY:

CITY COUNCIL

DATE: 2 MAY 2005 (RES.R05-1050)

HISTORY: 6 MAY 1991

TITLE: PANHANDLE LOTS

1. The Approving Officer should consider panhandle lots only in the following circumstances:
 - a. The proposed lot is in a suburban or agricultural zone.
 - b. The physical constraints of the site are such that a panhandle lot is the best solution to providing both physical access and legal frontage.
 - c. The physical configuration of the site is such that to refuse a panhandle lot would impose an unreasonable reduction in lot yield.
 - d. Exceptional circumstances prevail which warrant such consideration.
2. In rare instances, where panhandle lots are created in urban residential subdivisions, the buildable area of the lot should be substantially larger than the required minimum so as to alleviate the negative impact on the adjacent lots.