

# **Staff Report for Decision**

File Number: CA000009

DATE OF MEETING August 13, 2018

AUTHORED BY DAVE STEWART, PLANNER, CURRENT PLANNING AND

SUBDIVISION

SUBJECT COVENANT AMENDMENT APPLICATION NO. CA9 -

**6201 OLIVER ROAD** 

## **OVERVIEW**

## **Purpose of Report**

To present Council with an application to amend the Section 219 covenant registered on the title of 6201 Oliver Road that contains terms that pertain to a previous development plan.

#### Recommendation

That Council direct Staff to proceed with a Public Hearing for Covenant Amendment Application No. CA9 at 6201 Oliver Road.

### **BACKGROUND**

The City has received a covenant amendment application, CA9, for 6201 Oliver Road from MacDonald Gray Consultants on behalf of Insight Holdings Ltd. to amend the Section 219 covenant (FA009239) in order to remove language referencing a previous development plan regarding geotechnical considerations, works and service requirements, tree protection, use, density, and height. The covenant also includes a condition that 57% of the required parking be located underground, which will remain on title.

The existing covenant was registered as part of a rezoning application (RA113), which was adopted on 2005-JAN-24. At the time of the rezoning, the property included the lot now known as 6205 Oliver Road ,which currently includes Origin at Longwood, seniors' housing. The properties were rezoned from RS-1 to RM-5 and C-15 in order to permit the development of multiple-family dwellings and a small office complex. The area of the subject property was rezoned to C-15 at that time. As a condition of rezoning, Council directed that a covenant amendment be registered on title securing the following:

- 1. Limited commercial development scale;
- 2. Off-site road improvements;
- 3. Tree retention;
- 4. Development of land in general compliance with the plan proposed at the time of rezoning;
- 5. Underground parking; and
- 6. Community contribution.

The covenant was later amended on 2005-NOV-28 (RA154) in order to reduce the required amount of underground parking for the residential portion from 65% to 50% and to revise the existing site plan to allow for the development of a seniors' congregate housing facility.



When Zoning Bylaw 4500 was adopted in 2011, the subject property was rezoned to Mixed Use Corridor (COR2).

## **Subject Property**

Zoning	COR2 - Mixed Use Corridor			
Location	The subject is located on the northwest corner of the intersection of Oliver			
	Road and Uplands Drive, to the east of the Origin at Longwood.			
Total Area	2,147m <sup>2</sup>			
Official	Map 1 – Future Land Use Plans – Corridor			
Community Plan	Map 3 – Development Permit Area No. 9 – Commercial, Industrial,			
	Institutional, Multiple Family and Mixed Commercial/ Residential			
	Development			

The subject property is located on the corner of Oliver Road and Uplands Drive. Nanaimo North Town Centre is on the opposite side of the property to the south and the Thornbridge at Longwood multiple-family development is located to the north.

## **DISCUSSION**

The applicant is proposing to amend the covenant in order to remove the following conditions:

Covenant Section	Condition	Rationale for Amendment
2 (a)	Commercial development shall be limited to one professional office building with:  i. no greater than 550m² in gross floor area; and, ii. a maximum height of two storeys above underground parking.	The covenant was created prior to adoption of the current OCP and Zoning Bylaw. The use and size restrictions are inconsistent with the intent of the Official Community Plan, which supports a mixed-use, two- to six-storey building form within the Corridor designation. In addition, the COR2 zone limits the scale of office on the ground floor to 500m².
2 (b)	Residential - the residential development of the land shall be limited to two buildings providing no less than 50% of the required parking underground.	A minimum of 57% of the total required parking must be underground regardless of use. This portion of the covenant was intended to apply to the development at 6205 Oliver Road and creates confusion by having it remain on title for the subject property.
3 (a) and (b)	Storm Water - requires post- development flows to not exceed the pre-development storm flow levels.	Our current engineering requirements match this standard, and as such, the covenant requirement is redundant and can be removed.



4 Schedule B	Geotechnical - requires a Geotechnical report be updated with an erosion and sediment control plan for site development.	An updated geotechnical report will be required for a future building permit to meet current standards, so this section is redundant and can be removed.
5	Tree Management - tree removal is prohibited until a Development Permit is issued.	The Management and Protection of Trees Bylaw has been adopted since the covenant was registered and will ensure significant trees are protected prior to construction, and that a tree management plan is submitted prior to development of the property.
6 Schedule C	Works and Services - the covenant requires works and services, including the profiling of Oliver Road.	The re-profiling was completed with the development of 6205 Oliver Road. Any outstanding works in the frontage of the site can be obtained through a future building permit frontage works and services requirements.
7	Community Contribution - the covenant secured a \$25,000 community contribution towards parks.	The community contribution was paid to the City.
8	Highway Improvements - requires the lengthening of a left-turn lane onto Oliver Road from Highway 19A.	The City's Transportation Manager and the Ministry of Transportation have confirmed the turn lane improvements are constructed.
Schedule A	Development Plan - the covenant includes a development plan for the property at 6205 Oliver Road.	The plan does not reference the subject property.

The covenant conditions that no surface parking be provided between the building and adjacent streets (Uplands Drive and Oliver Road) and that no less than 57% of required parking to be underground will remain in the amended covenant. All other restrictions within the covenant will be removed as outlined in the table above.

Staff are requesting Council's direction to proceed with public notification and a Public Hearing for this application.



## **SUMMARY POINTS**

- A covenant amendment application (CA9) was received to amend an existing covenant by removing conditions that relate to geotechnical considerations, works and service requirements, tree protection, use, density, and height.
- The covenant relates to an older development plan and is no longer relevant.
- Underground parking and siting restrictions related to the permitted surface parking will remain.
- Staff support the proposed amendments to the Section 219 covenant.

## **ATTACHMENTS**

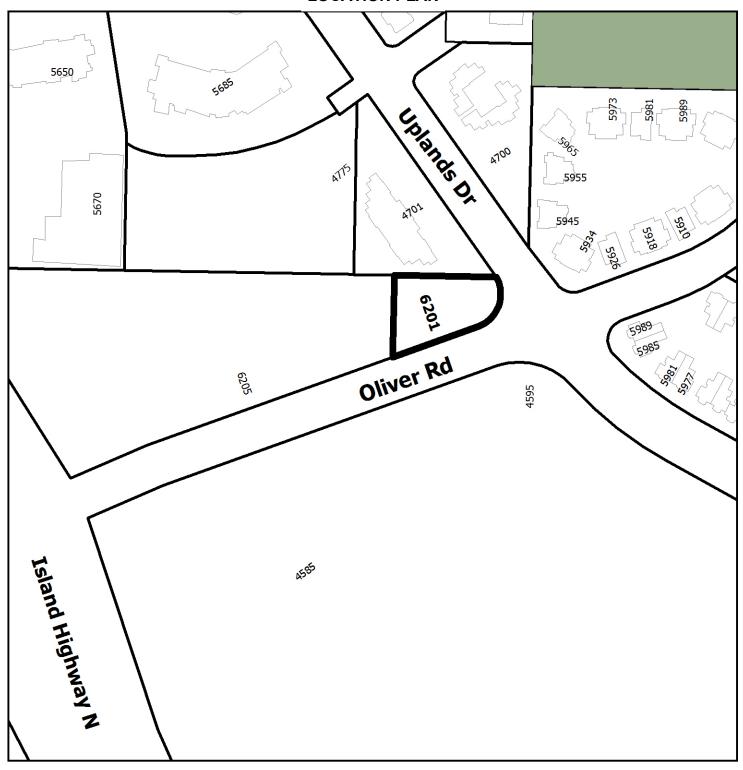
ATTACHMENT A: Location Plan
ATTACHMENT B: Existing Covenant
ATTACHMENT C: Aerial Photo

Submitted by: Concurrence by:

L. Rowett D. Lindsay

Manager, Current Planning and Subdivision Director, Community Development

# ATTACHMENT A LOCATION PLAN



REZONING APPLICATION NO. RA000394



# **LOCATION PLAN**

Civic: 6201 Oliver Road Lot 2, District Lot 14, Wellington District, Plan VIP81792

# ATTACHMENT B EXISTING COVENANT

Status: Registered

Doc#: FA9239

RCVD: 2006-01-19 RQST: 2017-10-23 11.03.03

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(Se	ction 233)						
	ovince of lish Columbia						
GE	NERAL INSTRUMEN	T PART 1		(This area for	Land Tit.	le Office use)	PAGE 1 of 14 page
1.	APPLICATION (Name, addre	ss, phone number ar	d signat	ure of applicant,	applicant	's solicitor or agent)	
	MACKENZIE FUJISAWA						DURHAM
	Barristers & Solicitors					DIL	X DOMINI
,	1600 – 1095 West Pe						
/	Vancouver, British C (604) 689-3281	olumbia V6E 2	2M6			W	Oller
	10388-002					Signature of a	pplicant, applicant policitor or age
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2.	PARCEL IDENTIFIER AND LEG (PID)	AL DESCRIPTION OF (LEGAL DE		ION)	- Industrial -		1994 J. San
	018-184-669	Lot B, D VIP7117	istrict 7	Lot 14, Well	ington	District, Plan V	/IP56222, Except Plan
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	Section 219 Covenant		Enti	re Instrumen	t	Grantee	
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	(b) Express Charge Ter	ms			X	Annexed as Part	12
	(c) Release					There is no Part	2 of this instrument
	A selection of (a) includes any the charge described in Item 3	additional or modifie is released or discha	d terms i viged as	referred to in flem a charge on the i	7 or in a	i schedule annexed to	this instrument if (c) is selected.
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	INSIGHT HOLDING	SS LTD. (Inc. )	No. 05	21297)			
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10388-002/General/62238.1

Status: Registered

### **GENERAL INSTRUMENT - PART 1**

PAGE 2 of 14 pages

- Additional or Modified Terms: \* N/A
- EXECUTION(5): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any:

Execution Date								
Officer Signature(s)	Υ	М	D_	Party(ies) Signature(s)				
Pinne	06 95	01	6	INSIGHT HOLDINGS LTD. by its				
ROBERT H. WYNICK Berrister & Solicitor MacKENZIE FUJISAWA LLP 1600-1095 West Pender Street Vencouver, B.C. V8E 2M6 604-889-3281			november of the contract of th	authorized signatory  The Auto 1711				
fstare /	06 95	01 12	12	CITY OF NANAIMO by its authorized signatories				
EHAHAM BAVAGE Comministioner for taking Affidevits for British Columb 456 Wallace Street Wantrimo, BC V9R 5J8	a			General Manager of Development Services BEIAN MEHAFFEY  January  General Manager of Administrative Services  KAREN BURLEY				

#### OFFICER CERTIFICATION.

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of

- If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
  If space insufficient, continue executions on additional page(s) in Form D.

10388-002/General/62238-1

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# TERMS OF INSTRUMENT - PART 2

#### WHEREAS

- A. The Grantor is the registered owner in fee simple of:
  - PID 018-184-669 Lot B, District Lot 14, Wellington District, Plan VIP56222, Except Plan VIP71177 (the "Land");
- B. The Grantee is the City of Nanaimo;
- C. The Grantor acknowledges that it is in the public interest that the subdivision, use and development of the Land be limited and that a community contribution be voluntarily provided and wishes to grant this Covenant to the Grantee;
- D. The Grantor has agreed to enter into this Covenant and to register it against the title to the Land as a covenant and indemnity under section 219 of the Land Title Act.

NOW THEREFORE, in consideration of the payment of the sum of \$1.00 by the Grantee to the Grantor and the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree with the other as follows:

- 1. In this Covenant,
  - (a) "Development Plan" means the "Conceptual Site Plan" dated September 29, 2005, as submitted to the Grantee's Council on September 29, 2005, as attached to and forming part of this Covenant as Schedule "A";
  - (b) "Geotechnical Report" means the Geotechnical Evaluation report dated September 15, 2005 and received by City of Nanaimo Development Services on September 19, 2005, as attached to and forming part of this Covenant as Schedule "B";
  - (c) "Oliver Road Reprofiling Plan" means Newcastle Engineering's drawing L230-01-11 dated July 26, 1999, as attached to and forming part of this Covenant as Schedule "C";
  - (d) "Tree" means any standing, living, woody plant which is five (5) metres (16.3 feet) or more in height and ten (10) centimetres (3.9 inches) or more in diameter;
  - (e) "Zoning Byław" means the Grantee's Zoning Byław 1993 No. 4000 as may be amended from time to time; and
  - (f) the definitions of the Zoning Bylaw shall otherwise apply.

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- 2 Notwithstanding broader or greater permitted uses, density and other regulations in the Zoning Bylaw and other bylaws, as may be amended from time to time, development of the Land shall not proceed except as approved by the Grantee and in general compliance with the Development Plan, and shall be limited as follows:
  - the commercial development of the Land shall be limited to one professional (a) office building:
    - no greater than 550 square metres in gross floor area, 5920 St (i)
    - no higher than two storeys above underground parking, (ii)
    - providing no less than 57% of required parking underground, and (iii)
    - having no surface parking between the building and adjacent streets, being (iv) Uplands Drive and Oliver Road;
  - the residential development of the Land shall be limited to two buildings (b) providing no less than 50% of required parking underground
- 3. The Grantor covenants and agrees to:
  - prior to the issuance of a building permit, determine and provide to the Grantee (a) the level of pre-development flows onto adjacent properties and highways; and
  - at no time permit storm water flows onto adjacent properties and highways to exceed pre-development flow levels.
- The Grantor covenants and agrees not to apply for subdivision, a Development Permit or 4 Building Permit with respect to the Land until it has updated the Geotechnical Report to include provisions dealing with erosion and sediment control during development of the Land The Grantor must not subdivide or develop the Land in a manner inconsistent with the updated geotechnical report
- 5 The Grantor covenants and agrees not to cut, trim, prune, damage, defoliate or remove any Tree until securing a Development Permit for the Land, regardless of whether any Development Permit is normally required by the Grantee's bylaws for tree removal
- The Grantor covenants and agrees not to apply for a Development Permit or a Building 6 Permit with respect to the Land until it
  - has reprofiled and constructed Oliver Road in substantial compliance with the (a) Oliver Road Reprofiling Plan, which shall include:
    - full works and services fronting the Land to the centre line of Oliver Road, (i)
    - full works and services, but not including curb, gutter and sidewalk, from (ii) the centre line of Oliver Road to the side opposite the Land; or

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- (b) has provided an amount of security, as determined by the Grantee in its sole discretion, sufficient to conduct the works and services in paragraph (a) on this clause
- 7. The Grantor covenants and agrees not to apply for a Development Permit or Building Permit with respect to the Land until it has voluntarily provided a community contribution in the amount of \$25,000.00, in addition to and without expectation of credit towards other fees, charges, dedications and other requirements of the Grantee or other governmental authority
- The Grantor covenants and agrees not to apply for a Building Permit to construct any building or structure on the Land until the left turn lane onto Oliver Road from Highway 19A has been lengthened to a sufficient capacity to accommodate the proposed development on the Land, as determined by the Ministry of Transportation in its sole discretion. The Grantor will either conduct the necessary works to satisfy this provision or make arrangements to pay for the works.
- The Grantor and the Grantee agree that the enforcement of this Covenant shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Land shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this Covenant
- Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if the Covenant had not been executed and delivered by the Grantor.
- 11. The Grantor hereby releases and forever discharges the Grantee of and from any claim, cause of action, suit, demand, expenses, costs and legal fees whatsoever which the Grantor can or may have against the said Grantee for any loss or damage or injury that the Grantor may sustain or suffer arising out of the subdivision, development or the use of the Land
- The Granter covenants and agrees to indemnify and save harmless the Grantee from any and all claims, causes of action, suits, demands, expenses, costs and legal fees whatsoever that anyone might have as owner, occupier or user of the Land, or by a person who has an interest in or comes onto the Land, or by anyone who suffers loss of life or injury to his person or property, that arises out of the subdivision, development or the use of the Land
- 13. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Grantor other than those contained in this Covenant
- This Covenant shall be registered as a first charge against the Land and the Grantor agrees to execute and deliver all other documents and provide all other assurances necessary to give effect to the covenants contained in this Covenant

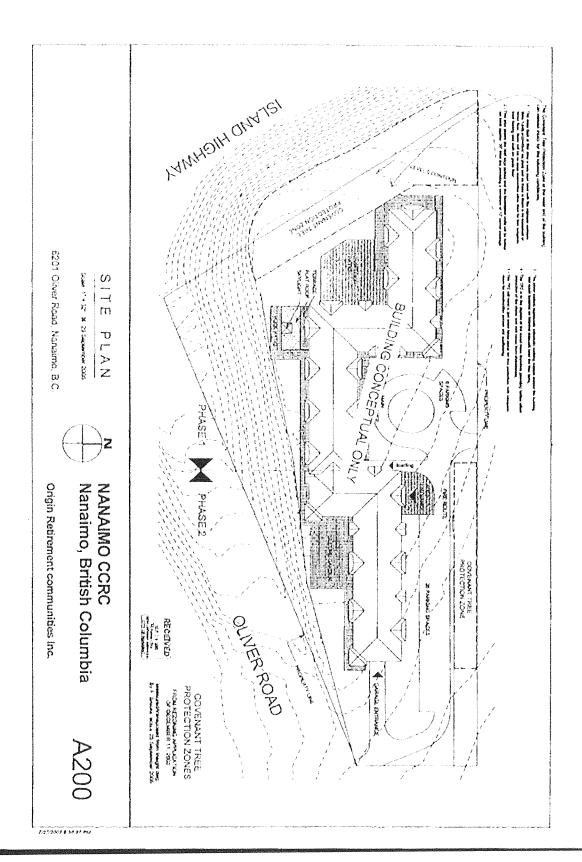
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- 15. The Grantor shall pay the legal fees of the Grantee in connection with the preparation and registration of this Covenant.
- 16. The Grantor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out and they shall be binding upon the Grantor as personal covenants only during the period of its respective ownership of any interest in the Land.
- 17. The restrictions and covenants herein contained shall be covenants running with the Land and shall be perpetual, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the Land Title Act as covenants in favour of the Grantee as a first charge against the Land
- 18. This Covenant shall enure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns
- 19. Wherever the expressions "Grantor" and "Grantee" are used herein, they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Covenant has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

# SCHEDULE A

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Status Registered

# SCHEDULE B

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# Lewkowich Geotechnical Engineering Ltd.



File: G3665.01 September 15, 2005

Insight Group Development Corporation #6 - 5769 Turner Road Nanaimo, B.C. V9T 6L8

Attention: Ms. Tracy McLean

PROJECT:

PROPOSED RESIDENTIAL DEVELOPMENT

6201 OLIVER ROAD, NANAIMO

SUBJECT:

GEOTECHNICAL EVALUATION

Dear Ms. McLean:

#### 1. Introduction

- a. As requested by Ms. Tracy McLean of the Insight Group Development Corporation,
  Lewkowich Geotechnical Engineering Ltd. evaluated geotechnical site conditions at the
  referenced property. The purpose of this work was to determine whether the property is
  geotechnically safe and suitable for the intended use. "Intended use" as defined for the
  purposes of this report is taken as including a multi-phased residential structure up to four
  storeys high with associated parking. This letter summarizes the results of our evaluation,
  and provides our comments, conclusions and recommendations.
- b. Our evaluation was based on the City of Nanaimo "Guidelines for the Preparation of Geotechnical Reports". Briefly, these guidelines stipulate that the report is to identify natural hazards that may affect the "safe" development of the land, and to provide recommendations to reduce the risk of damage to the land, buildings and the Works and Services. Lewkowich Geotechnical Engineering Ltd. had previously evaluated conditions on this property in 2003. However, we have re-visited the site given changes in proposed land use, as well as completion of conceptual drawings prepared by A. Robert Murphy Architect Incorporated.

Suite A - 2569 Kenworth Road, Nanaimo, British Columbia, V9T 3M4 Telephone: (250) 756-0355 Facsimile: (250) 756-3831

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- In general, the proposed project area will include an initial phase consisting of a four storey с. building within the western part of the development area. The second phase will include a three storey addition to the east. The structure will have associated underground and surface parking, as well as ancillary landscaping features. An examination of building elevations indicates that the building area will include excavation into the existing ground surface of about two to three metres.
- d. The site is located north-west of the intersection of the old Island Highway and Oliver Road, and has the legal description of Lot B, District Lot 14, Wellington District, Plan VIP56222 Except Plan VIP71177.

#### 2. Site Conditions

- The study area consists of a triangular shaped property with its long axis parallel to Oliver Road. (For the purposes of description in this report, please note that we have taken Oliver Road as being oriented at an east/west direction, and the Island Highway as being in a north/south direction). The subject property is currently undeveloped.
- The property essentially consists of a knoll, sloping down gently to the north and east. b. However, the southern and western sides of the property have been graded to accommodate road alignments for the old Island Highway and Oliver Road. These excavation faces vary up to about 15 metres in height for the Island Highway. Relief within the property, outside of the two roadway cuts, is about ten metres. Slope inclinations for the roadway cuts are typically 1.7 Horizontal: 1 Vertical for the Highway cut, and 2 Horizontal: 1 Vertical for the Oliver Road cut.
- The roadway cuts are vegetated with grasses and other low shrubs. The upper plateau area is €. largely forested with a mature mixed growth of arbutus, maple, fir, and other mixed coniferous trees.

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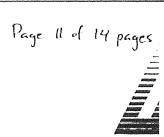


- d. As part of our site assessment, we examined the cut slopes for evidence of instability. There were no signs of any large scale instability at either road cut. A small, localized and shallow area of ravelling is present near the base of the Highway cut, although this area has remained essentially unchanged for several years. Minor rilling appears to have occurred prior to establishment of ground cover vegetation, but there is no evidence of more recent crossion within the property, or within the roadway cuts flanking the site.
- Exposures within the property indicate that the site's soils consist of a vencer of sand and c. gravel below the natural topsoil horizon. Soils exposed at depth along the faces of the roadway cuts indicate that this veneer is underlain by a dense to very dense mixture of silt, sand and gravel with occasional cobbles. This latter material is interpreted to be a glacial till deposit.
- ſ. As part of our site evaluations, we have reviewed composite plans prepared by Island Geotechnical Services Ltd. in 1979. Those plans show the extent of underground abandoned coal mining in the Nanaimo area. This site is well away from any documented mines.
- Following our visual examination of this property, and of immediately adjacent land, we g. conclude that the site is not impacted by flooding, shallow ground water conditions, or liquefaction (such as from seismic action). Slope stability issues are discussed in the following section of this report.

#### 3. Conclusions and Recommendations

Comments and conclusions presented here take into account guidelines dated May, 1997 by а. the City of Nanaimo for the preparation of geotechnical reports. Specifically, our evaluation took into account those natural hazards which may affect the safe development of the land. Therefore, this report is intended to meet the following stated objectives:

Insight Group Development Corporation File: G3665.01 September 15, 2005 Page 4 of 6



- acknowledge that the City, its Approving Officer and building inspectors may rely on i. the Report when making a decision on applications for the subdivision or development of the land;
- ii. whether the land is geotechnically safe and suitable for the intended purpose of siting for residential and commercial structures, with a probability of a geotechnical failure or another substantial geotechnical hazard resulting in property damage of less than 10 percent in 50 years;
- 111 identify any geotechnical deficiency for the design of buildings, proposed service lines, drainage, or roadworks or construction standards intended for the development; and
- prescribe the geotechnical works and any changes in the standards of the design of iv. the development which are required to ensure the land, buildings, and Works and Services are developed safely for the use intended and which maintain the safety of the land, buildings, and any Works and Services as a condition of approval of the development.
- b. We examined the development area relative to Environmentally Sensitive Area (ESA) and Natural Hazard Area (NHA) designations and Development Permit guidelines of the Official Community Plan (OCP). We noted that this property is outside of any designated Natural Hazard Area, and is not within a Development Permit Area (other than Development Permit Area 21 - Form and Charactor).
- Based on our review of available mine information, it is concluded that the site lies outside of the area of influence of known underground coal mine workings.

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Insight Group Development Corporation File: G3665.01 September 15, 2005

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- d. While the site is not designated as a steep sloping area, the proposed development is potentially impacted by cut slopes that were constructed for installation of the old Island Highway and for Oliver Road. It is our opinion that these slopes are currently in a stable condition, with no signs of large scale instability. A localized and minor slough was observed within a segment of the cut face along the Island Highway. However, we conclude that this is a minor slough, probably due to an isolated weeping sand lens. Additionally, this feature has remained unchanged for several years and is not considered to be of concern.
- c. In addition, the cut face inclinations are not considered to be excessively steep considering the competence of the glacial till soils comprising the bulk of the exposed subsurface soils. However, as a precautionary measure, we recommend that buildings be set back a minimum of five metres from slope crests as measured from the outer face of structurally loaded foundation walls to slope crests. This setback is considered warranted to preclude future slope movements as might occur from seismic action, or from severe storm water flows after the property is developed.
- f. The excavation slopes shall be preserved in a vegetated manner, to mitigate the potential for erosion action.
- g. An examination of the proposed building layout indicates that the building area will include soil removals in the range of two to three metres. In general, this removal will enhance overall site stability, since it represents a net "unloading" of stresses - including an accounting of building loads - within the subsurface soils.
- h. Our comments, conclusions and recommendations take into account a maximum probability of risk up to ten percent in fifty years. We conclude that the subject site is geotechnically safe and suitable for the intended use of siting a residential subdivision, provided recommendations given here are followed during design and construction.

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### 4. Closure

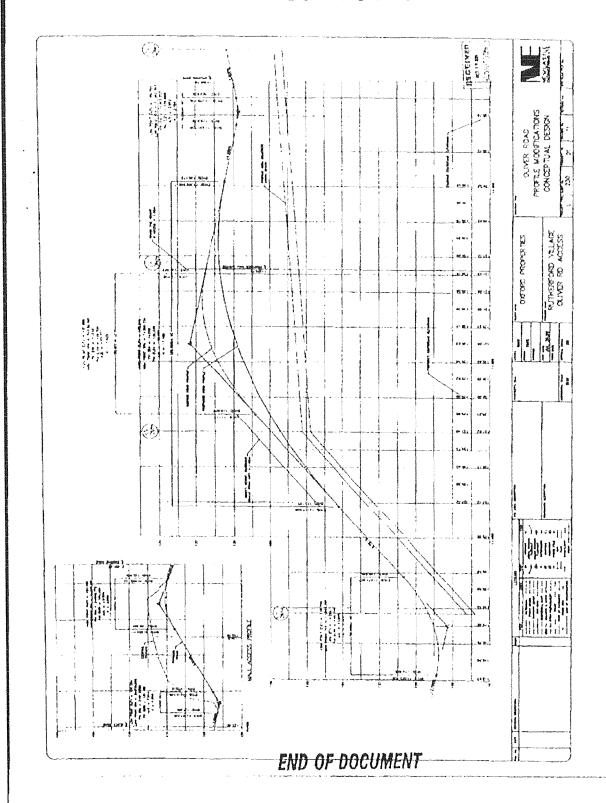
Lewkowich Geotechnical Engineering Ltd. appreciates the opportunity to be of service on this project. If you have any comments, or if we can be of further service, please contact us at your convenience.

Respectfully Submittelt Lewkowich Cooler which teneureering Ltd

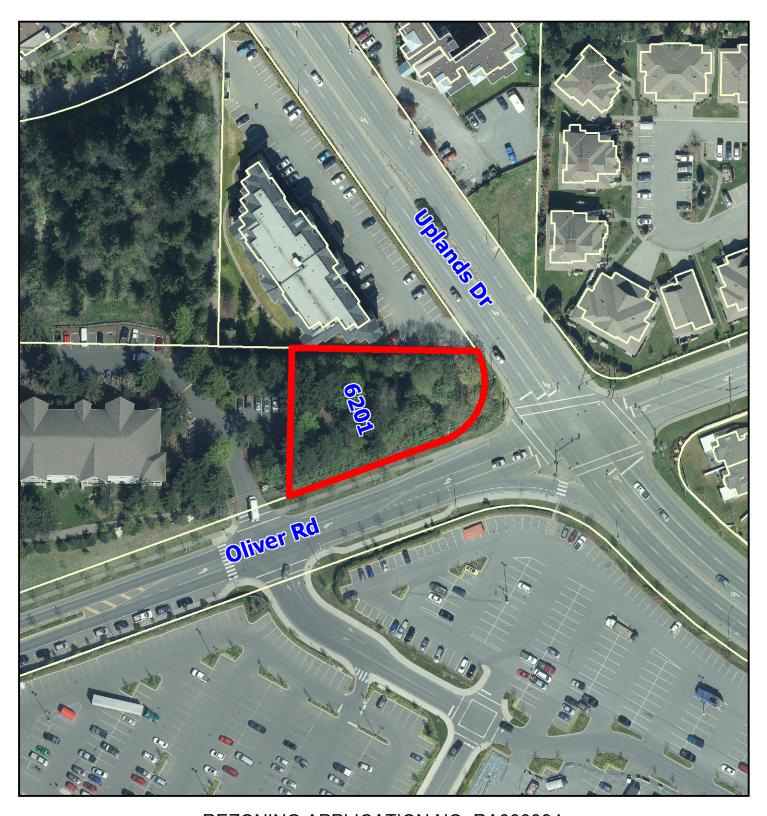
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# SCHEDULE C



# ATTACHMENT C AERIAL PHOTO



REZONING APPLICATION NO. RA000394

