

THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 68 (NANAIMO-LADYSMITH)

OLD VICTORIA ROAD SITE DISPOSAL BYLAW, 2017

WHEREAS section 65 (5) of the *School Act* provides that a board of education may exercise a power with respect to the acquisition or disposal of property owned or administered by the board only by bylaw;

AND WHEREAS pursuant to Section 96 (1) of the *School Act*, “land” includes any interest in land, including any right, title or estate in it of any tenure;

AND WHEREAS section 96 (3) of the *School Act* provides that a board of education may dispose of land or improvements, or both, subject to the orders of the Minister of Education (the “**Minister**”);

AND WHEREAS section 3 of Ministerial Order M193/08 Disposal of Land or Improvements Order (the “**Disposal Order**”) provides that boards must not dispose of land or improvements by sale and transfer in fee simple or by way of lease or 10 years or more unless such disposal is to another board or an independent school for educational purposes or is approved by the Minister in accordance with section 5 of the Disposal Order;

AND WHEREAS section 5 of the Disposal of Land or Improvements Order provides that the Minister may approve, with any terms and conditions, a disposition of land or improvements;

AND WHEREAS:

- (i) The Board of Education of School District No. 68 (Nanaimo-Ladysmith) (the “**Board**”) has determined and hereby confirms that the land and improvements at 838 Old Victoria Road, Nanaimo, B.C. (the “**Property**”) is not required for future educational purposes;
- (ii) the address of the Property is 838 Old Victoria Road, Nanaimo, British Columbia, V9R 6A1, and the legal description of the Property is:

Parcel Identifier: 005-493-471
Lot 1, Section 1, Nanaimo District, Plan 8961;
- (iii) the Board entered into a Memorandum of Understanding dated February 24, 2017 with Clay Tree Society for People With Developmental Disabilities (the “**Society**”) providing, among other things, for the negotiation of a Purchase and Sale Agreement (the “**PSA**”) pursuant to which the Board would sell the Property to the Society (the “**Sale**”) for a purchase price of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) (the “**Purchase Price**”), payable over forty-three months with interest at 2% per annum and secured by an Agreement for Sale, subject to conditions including completion of a public consultation process, adoption of a bylaw by the Trustees of the Board in their discretion and approval of the Sale by the Minister;
- (iv) the Board has completed a public consultation process regarding the proposed Sale; and
- (v) the Board is satisfied that the Purchase Price represents fair market value for the Property.

NOW THEREFORE be it resolved as a Bylaw of the Board that, subject to the approval of the Minister, the Board enter into the PSA and complete the sale of the Property to the Society for the Purchase Price, on the terms and subject to the conditions set out in the PSA.

BE IT FURTHER resolved that the Secretary-Treasurer be and is hereby authorized, on behalf of the Board, to settle, execute and deliver the PSA and all such amendments thereto (except as to the Purchase Price) as the Secretary-Treasurer may, in her discretion, consider advisable, and all related and ancillary documents required to complete the sale of the Property to the Society pursuant to the terms of the PSA.

This bylaw may be cited as "School District No. 68 (Nanaimo-Ladysmith) Old Victoria Road Site Disposal Bylaw, 2017".

Read a first time this _____ day of _____, 2017
Read a second time this _____ day of _____, 2017
Read a third and final time, passed and adopted this _____ day of _____, 2017

Chair

Secretary-Treasurer

I HEREBY CERTIFY this to be a true and original "School District No. 68 (Nanaimo-Ladysmith) Portion of Old Victoria Road Site Disposal Bylaw, 2017" adopted by the Board this ___ day of _____, 2017.

Secretary-Treasurer



From the Board of Education
Email: BoardOfEducation@sd68.bc.ca

February 24, 2017

Confidential

Via Email

Glenys Patmore
Executive Director
Clay Tree Society for People
With Developmental Disabilities
838 Old Victoria Road, Nanaimo, B.C.
V9R 6A1
Email: glenys.claytree@shaw.ca

Re: Memorandum of Understanding regarding Potential Sale of lands located at
838 Old Victoria Road, Nanaimo, B.C., legally described as:
PID: 005-43-471 Lot 1 Section 1 Nanaimo District Plan 8961 (the "Lands")

The purpose of this Memorandum of Understanding is to set out the basic terms and conditions upon which The Board of Education of School District No.68 (Nanaimo) (the "**Board**") would be prepared to negotiate with Clay Tree Society for People With Developmental Disabilities (the "**Society**") to sell the Lands to the Society on such terms as may be agreed between the Board and the Society (collectively, the "**Parties**", and individually a "**Party**"), each in their discretion, subject to settlement and execution of a definitive agreement of purchase and sale (a "**PSA**").

Except as provided in sections 1 and 3 to 6 below, this Memorandum of Understanding is not intended to constitute a binding agreement but rather is merely a statement of the respective intentions of the Parties with respect to the potential negotiation of a PSA. The obligations of the Parties to proceed with a PSA are subject to the Parties negotiating, settling, executing and delivering a PSA that are mutually acceptable to both of the Parties, in their respective discretion, consistent with the terms and conditions set forth herein and containing further terms and conditions. Subject to the foregoing, the Parties agree as follows:

1. Good Faith Negotiations: The Parties agree to negotiate the terms of a PSA in good faith and in accordance with the terms of this Memorandum of Understanding until the earlier of settlement and execution of a PSA or termination of this Memorandum of Understanding under section 3 hereof.
2. Anticipated Business Terms: The Parties anticipate that they will reach mutual agreement on a PSA that contains the following and other terms and conditions:
 - (a) the Board's obligation to complete the sale under the PSA shall be conditional on the Board completing its land disposal process, which includes public consultation, adoption of a bylaw by the trustees of the board in their discretion, and written approval of the sale by the British Columbia Minister of Education (the "**Minister**"), in the Minister's discretion;

- (b) the Society will purchase the Lands from the Board for a purchase price of \$750,000 (the "**Purchase Price**"), payable pursuant to the terms of an Agreement for Sale ("**AFS**") that will be registered against title to the Lands;
 - (c) the Purchase Price shall be payable, with interest, as follows:
 - (i) \$350,000 on the date the Board executes and delivers the AFS (the "**Completion Date**");
 - (ii) \$200,000 on or before the first business day in month twenty-four of the amortization schedule (Attachment B); and
 - (iii) the balance of the Purchase Price, including all accrued and unpaid interest, on or before the first business day in the month following the final monthly payment in month forty-two of the amortization schedule (Attachment B). The final payment is therefore in month forty-three.
 - (d) the Society shall pay the Board interest at a rate of 2% per annum, calculated yearly, not in advance, on the outstanding balance of the Purchase Price from the Completion Date until the Purchase Price and all applicable interest has been paid to the Board in full;
 - (e) the Society shall pay the Board \$3,000 per month on account of the Purchase Price and accrued interest, and each such payment shall be applied firstly to interest and then to principal until the Purchase Price and all applicable interest has been paid to the Board in full;
 - (f) the Society agrees that the down payment, lump sum payment in year 2 and monthly payments will be made as per the amortization schedule attached (Attachment B);
 - (g) the Board will be solely responsible for all costs associated with completion of the Board's land disposal process and for applying for the approval of the Minister;
 - (h) the Society will be solely responsible for any goods and services taxes payable in respect of the Purchase Price or any interest thereon, and from and after the Completion Date, the Society will be solely responsible for any and all applicable property taxes, utility costs, and any other federal, provincial or municipal charges or assessments relating to the Lands;
 - (i) the Society will be solely responsible for the cost to prepare and register discharges of the Society's existing lease of a portion of the Lands and the associated legal notation, and to register the AFS against title to the Lands, and to prepare and register the conveyance to the Society of title to the Lands upon payment in full of the Purchase Price;
 - (j) each Party will be solely responsible for its own legal costs.
3. Termination: If the Parties have not negotiated, settled and executed a PSA on or before that date which is NINETY (90) days following the execution of this Memorandum of Understanding by both Parties, or such longer period as the Parties may agree to in writing, then this Memorandum of Understanding will automatically terminate and be of no further force or effect except as specifically provided herein.

- 4. Confidentiality: The Parties will keep the terms of this Memorandum of Understanding and any confidential information received in respect of the Property in strict confidence, other than:
 - (a) to provide the same to their respective representatives and advisors on the condition that such representatives and advisors keep the terms of this Memorandum of Understanding and such information in strict confidence; or
 - (b) to the extent that may be required by law or by a court or regulatory authority having jurisdiction.

If the transaction contemplated by this Memorandum of Understanding is not completed for any reason, then each of the Parties shall, upon the request of the other Party, promptly return to that other Party all confidential documents received from that other Party.

- 5. Exclusivity
Following execution of this Memorandum of Understanding, the Board will not negotiate or enter into discussions with, or offer the Lands or any interest therein to, any party other than the Society, unless and until the time herein provided for settlement and execution of a PSA has expired without a PSA being settled and executed by both Parties.
- 6. Execution and Delivery
This Memorandum of Understanding may be executed by the Parties in counterpart and transmitted by e-mail or facsimile, and if so executed and transmitted, this Memorandum of Understanding will be for all purposes as effective as if the Parties had each executed and delivered a single original instrument.

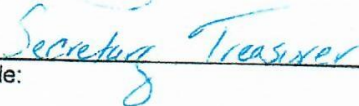
If all the terms and conditions stated herein are acceptable, please sign and return a copy of this Memorandum of Understanding by 4:00 P.M. (local Nanaimo time) on February 27, 2017.

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 68 (NANAIMO)

By its authorized signatory:



Name:



Title:

Accepted and agreed to by
CLAY TREE SOCIETY FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES
this 24 day of February, 2017:

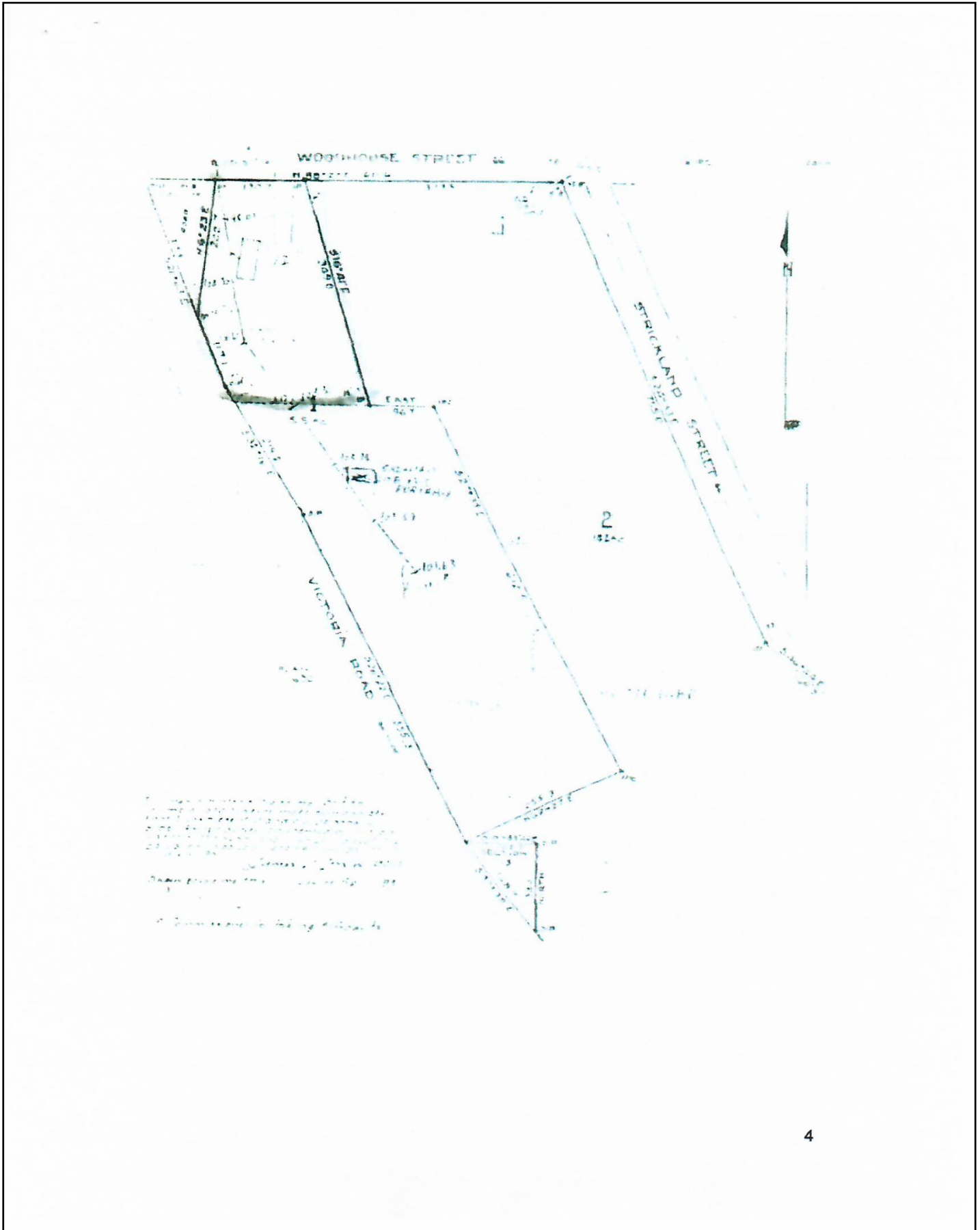
By its authorized signatory:

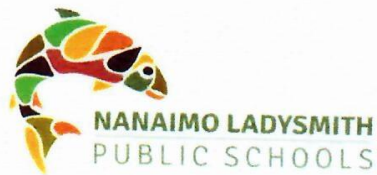


Name:

EXECUTIVE DIRECTOR

Title:





NEWS RELEASE
March 1, 2017

CLAY TREE SOCIETY MAKES OFFER TO PURCHASE PROPERTY

Nanaimo Ladysmith Public Schools (NLPS) and the Clay Tree Society have come to an agreement, in principle, with the signing of a Memorandum of Understanding on the Society's offer to purchase district property located at 838 Old Victoria Road.

Founded in 1957, the Clay Tree Society is a private, non-profit agency that provides community integration programs for individuals 19 years of age and older. The Society has occupied the space on Old Victoria Road for over 50 years.

"I've had the pleasure of taking a tour of Clay Tree's space, and it didn't take me long to see the tremendous value it provides our community," said Steve Rae, Board Chair. "The society and the district have been partners for some time. Their offer to purchase makes complete business sense for all parties involved."

As per the NLPS disposal of property procedures, the School District will complete a public consultation process before a decision is made by the Board of Education.

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CONTACT:

Dale Burgos
Director of Communications
Nanaimo Ladysmith Public Schools
250-741-5273

PUBLIC NOTICE

Seeking Public Input
Nanaimo Ladysmith Public Schools (NLPS) and the Clay Tree Society have signed a Memorandum of Understanding on the Society's offer to purchase district property. The property is located at 838 Old Victoria Road. The Clay Tree Society has occupied the space for more than 50 years.

Feedback will be received until the end of day, Tuesday, March 14.
Visit sd68.bc.ca for our online survey and contact information.