



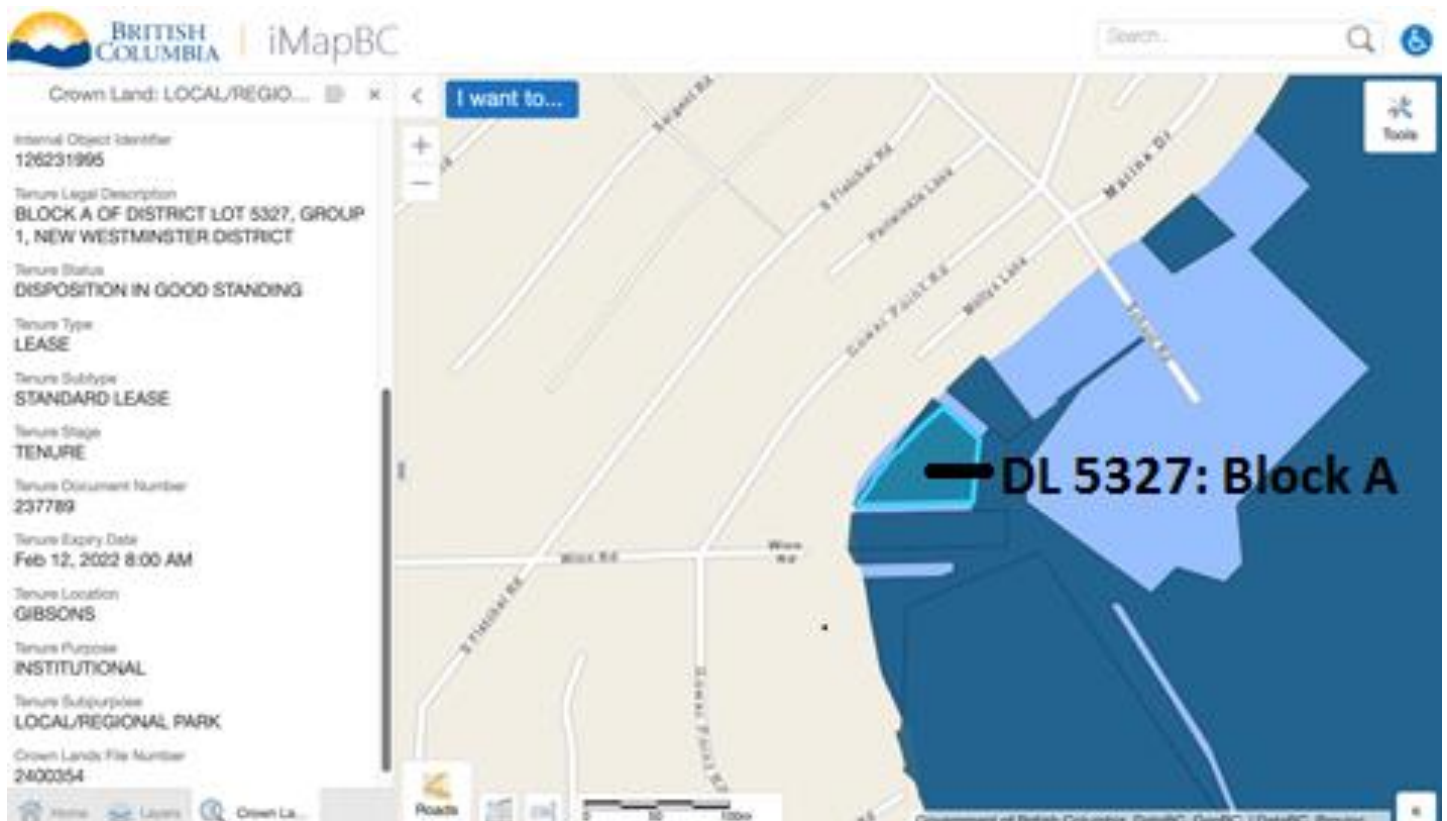
## EXPLAINER: CROWN REFERRAL FILE #241195 AND THE TOWN OF GIBSONS' DECISION TO RELINQUISH INTEREST IN LEASE NO. 237789 (WATER LOT FRONTING WINEGARDEN PARK)

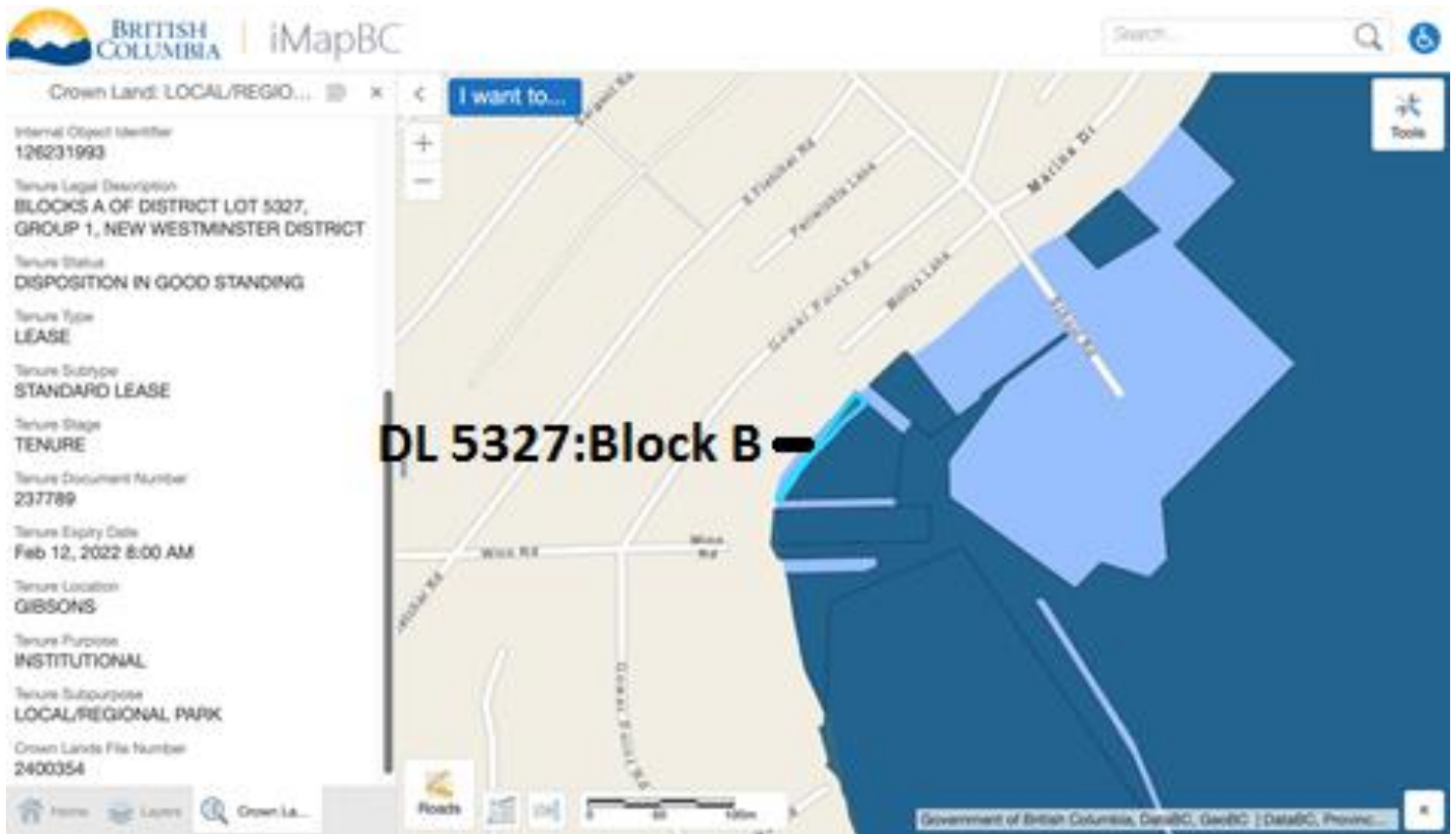
In recent weeks, the Town of Gibsons has received several questions about a referral from the Province of BC (the Province) regarding a request by George Gibsons Development Ltd. (the proponent) to amalgamate three water lot leases that partially front the Town. Questions have also been asked about a related decision by the Town to relinquish its interest in Water Lease No. 237789 (one of the three water lots in question). This document has been prepared to provide historical and present-day information about the referral and the water lease, with the goal of clarifying a complex topic.

### BACKGROUND

#### History of Lease #237789

On December 21, 2001, the Town of Gibsons entered into Lease #237789 with the Province of BC. The lease covered Lot A (the water area) and Lot B (the land area), which together make up "District Lot 5327" or "DL 5327". (See related maps and legal descriptions, below.)





The lease has a 20-year term and the Province designated the area to be used for Parks and Recreation.

On June 14, 2007, the Town of Gibsons signed a Modification Agreement, in which the Province removed Lot B from the lease area.

In 2008, the Province granted the Town the “Free Crown Grant” of Lot B, with the provision that it was to be used for regional park purposes. The value of Lot B was estimated to be \$60,000.

In 2016, Gibsons’ Council passed a resolution to abandon its interest in Water Lot Lease 237789 (Lot A) in exchange for 15% of the gross revenues from all sources, except fuel sales. In the event that the proponent’s application is not approved by the Province of BC, the Town’s interest in the water lot lease area shall remain unchanged.

At this time, the Town intends to maintain full ownership of Lot B and also to continue to use it for regional park purposes. Lot B is not part of the relinquishment of the lease area negotiated with the proponent. Only Lot A is affected by the proposal to amalgamate the three water lot leases. (More information below.)

#### **Crown Referral File No. 2411955 – Foreshore Lease Application for the “New Marina at the George”**

In 2019, as part of its work to build the George Hotel and Residences Development (the George), the proponent submitted an updated request to the Province of BC to amalgamate three existing water lot leases for the primary



purpose of substantiating the “New Marina at the George”, which makes up the waterfront of the George and partial waterfrontage of Winegarden Park.

The three water lot leases include:

- Lease No. 237789, or “Lot A” (water lot fronting Winegarden Park, currently held by the Town of Gibsons);
- Lease No. 238162 (water lot currently held by George Gibsons Development Ltd., formerly Hyak Marine Services Ltd.); and
- Private Moorage Permission No. 243097 (currently held by Klaus Fuerniss).

The area in blue, below, shows the new water lot lease which would be created by amalgamating the three leases. (Note that a portion of the new water lot lease appears to include land, due to the low tide at the time the photo was taken.)



The proponent’s lease application automatically triggered a “referral” (Crown Referral File No. 2411955) from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), which asked stakeholders, including the Town of Gibsons, for input on the developer’s plans for the area.

The referral package included summarized information about the planned marina, pier, and restaurant that would be constructed on the new lot, as well information about the George project as a whole. The referral package also included a summary of the proponent’s dredging and remediation plan, which was updated in 2019, in response to a change in the Province’s environmental requirements.

When the proponent first submitted its remediation plan in early 2017, tributyltin (TBT) was not a regulated contaminant under the Contaminated Sites Regulation (CSR). On November 1, 2017, the CSR was amended to include



TBT as a regulated parameter in soil. As a result, the proponent sampled and tested the project site for TBT. The findings of the investigation indicated there were no exceedances of the CSR soil or groundwater standards for TBT in the upland portions of the site.

To view the referral package in its entirety, [please click here](#).

### **The Town of Gibsons' Response to Crown Referral File No. 2411955**

On March 3, 2020, in response to the provincial referral, Council voted in favour of forwarding the following comments to FLNRORD, along with DPA No. 1 (Geotechnical Hazards), DPA No. 2 (Environmentally Sensitive Areas), and DPA No. 9 (Gibsons Aquifer) guidelines:

That the Town of Gibsons recognizes that:

- The foreshore is zoned Marine Zone 1 (M-1). The marina and restaurant use is permitted in the M-1 zone;
- Development permits under DPA No. 1, DPA No. 2, and DPA No. 9 are required for any land alteration, including soil removal and dredging; and
- A building permit is required for any structures constructed to access the foreshore lease area;

And that the Town of Gibsons has no objections to the foreshore lease application for the "New Marina at the George", Provincial File 2411955, subject to the following conditions:

1. Eelgrass beds in or near the tenure area must be identified and protected;
2. Water quality must not be impacted by the maintenance of the marina, pier, gangway and floats; and
3. The proponent must implement Provincial Best Management Practices for building and maintaining moorage facilities to protect the foreshore ecosystems.

### **FREQUENTLY ASKED QUESTIONS**

The following is a collection of the most common questions that have been asked with regard to FLNRORD Referral #241195 and the Town of Gibsons' decision to relinquish its interest in Water Lot Lease 237789 (Lot A).

If you have other questions related to these issues, please feel free to forward them to the Town's Corporate Officer at [clerk@gibsons.ca](mailto:clerk@gibsons.ca). We will do our best to answer them in as straightforward and timely a manner as possible.

**Q: Why was the Town's response to the FLNRORD referral so limited? Isn't this a sensitive project, with many important issues to be addressed with regard to safeguarding our environment and the aquifer?**

**A:** The Town's response to the FLNRORD referral was focused on addressing whether or not it supported the Foreshore Lease Application for the "New Marina at the George".

It did not comment on other aspects of the referral package, as the most appropriate time for the Town to comment on the details of the proponent's plans (including its remediation plan) is when the proponent applies for its development permits and building permits to undertake works in the foreshore area.

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At that time, staff will request that the proponent submit reports from qualified professionals that demonstrate (in much more detail than was included in the referral package) that the proponent will meet the strict criteria laid out for DPA No. 1 (Geotechnical Hazards), DPA No. 2 (Environmentally Sensitive Areas), and DPA No. 9 (Gibsons Aquifer).

DPA No. 1, DPA No. 2, and DPA No. 9 were specifically created to ensure the protection of our environment and the Gibsons Aquifer.

Additionally, all DPA No. 9 permits for drilling in the Lower Gibsons sub-area are peer-reviewed to ensure any potential impacts to the Town's aquifer and drinking water source are fully understood and addressed.

**Q: What is the 'fair market value' of the lease on water Lot A?**

**A:** An appraisal of the 'fair market value' for the lease on Water Lot A was not obtained, as the area in question belongs to the Province of BC and the Town is not permitted to sell or sub-lease it.

**Q: How does the Town benefit from relinquishing their interest in Water Lot Lease 237789 (Lot A)?**

**A:** In exchange for relinquishing its interest in Lot A, the Town entered into a revenue-sharing agreement with the proponent, authorized by a resolution of Council in September 2016 and signed in January 2017. The agreement states that the Town will receive 15% of the gross revenues from all sources, except fuel sales, collected from the water lot lease area. This agreement only comes into effect if the Province approves and grants the Lot A lease to the applicant.

Benefits to the Town also include: the foreshore will be remediated to remove and contain contaminated sediments; the waterfront walkway will be connected and improved to maintain public access; and the marina will provide a new economic opportunity in the harbour area, including space for a passenger ferry.

**Q: How were the details of the revenue-sharing agreement negotiated?**

The details of the revenue-sharing agreement are based on prior arbitration the Town undertook in 2013 to determine the appropriate rent to be paid by the existing Gibsons Marina. At that time, the Arbitrator held that rent payable to the Town should be based on 15% of gross revenues, plus one third of the annual water lot head lease payment. Council in 2016 used this as the basis for determining the terms of the revenue-sharing agreement for the proposed new marina to be constructed in the new water lot lease area.

[To view revenue-sharing agreement, please click here.](#)

**Q: Isn't Lot A designated for "Parks and Recreation" use only?**

**A:** When the Town of Gibsons entered into DL #23779 in December 2001, the Province did stipulate that the leased area had to be used for Parks and Recreation. However, if the Province enters into a new lease agreement with a new party, it can set new use conditions for that lease.



**Q: Is the Town required to run a Notice of Disposition, as per the *Community Charter*, when they vacate a lease?**

**A:** Yes. The requirement to run a Notice of Disposition applies when a local government intends to dispose of land. Land includes an “interest in land”, and a lease typically qualifies as an interest in land.

**Q: Why didn't the Town run a Notice of Disposition regarding its intent to relinquish its interest in the lease for Water Lot Lease 237789?**

The Town has not yet run a Notice of Disposition, because the agreement to relinquish the Lease is conditional on the Province giving a new or replacement lease to the applicant. At present, there is no legal intent to dispose of the land. When the Province confirms that it has approved the proponent's application for the new lease, the Town will run a Notice of Disposition, as required.