

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
July 2, 2015**

**Hearing Room No. 3
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 3**

TO BE RAISED

I 9:00 A.M. SDAB-D-15-114

Construct a Freestanding Minor Digital On-
premises Off-premises Sign

18304 - 100 Avenue NW
Project No.: 159466458-001

LUNCH BREAK

TO BE RAISED

II 12:30 P.M. SDAB-D-15-102

WITHDRAWN

Comply with an Order to dismantle and remove
the Freestanding Off-premises Signs from the
Site. This Order is to be complied with on or
before June 1, 2015.

6810 - Yellowhead Trail NW
Project No.: 168696143-001

NOTE: *Unless otherwise stated, all references to "Section numbers" refer to
the authority under the Edmonton Zoning Bylaw 12800.*

TO BE RAISED
ITEM I: 9:00 A.M.

FILE: SDAB-D-15-114

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPLICATION NO.:	159466458-001
APPLICATION TO:	Construct a Freestanding Minor Digital On-premises Off-premises Sign
DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
DECISION DATE:	April 22, 2015
DATE OF APPEAL:	May 4, 2015
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	18304 - 100 Avenue NW
LEGAL DESCRIPTION:	Plan 0927895 Blk 1 Lot 27
ZONE:	DC2.876 Site Specific Development Control Provision
OVERLAY:	N/A
STATUTORY PLAN:	Place LaRue West Neighbourhood Area Structure Plan

DEVELOPMENT OFFICER'S DECISION

REFUSED - The proposed development is refused for the following reasons:

- 1) The maximum Area shall be 20 m² for proposed Minor Digital On-premises Off-premises Signs that are Freestanding Signs. The maximum combined Area of Digital Sign Copy and any other type of Copy on the same Sign face shall not exceed 20 m². (Reference Section 59E.3(5)(c)(ii))

Proposed area 31.2 m²
Exceeds by 11.2 m²

In the opinion of the Development Officer, any excess sign area other than permitted for the Minor Digital On-premises Off-premises Sign, would contribute to light pollution and visual intrusion into residential properties south of 100 Avenue, contrary to Section DC2.876.4(z)(i).

2) Minor Digital On-premises Off-premises Signs shall be located such that the Sign does not obscure a driver decision point. The Development Officer and Transportation Services shall be satisfied that each Copy Area:

- a) does not physically obstruct the sightlines or view of a traffic control device or traffic control signal for oncoming vehicle traffic;
- b) is not located in the field of view near or past the traffic control device or traffic control signal in the sightlines of oncoming vehicle traffic;
- c) is not located in the field of view near or past other traffic conflict points such as intersections, merge points, exit ramps, or curved roadways; and
- d) illumination does not compete with or dull the contrast of the traffic control device or traffic control signal for oncoming vehicle traffic. (Reference Section 59.2(2)(a-d))

The proposed location of the Minor Digital On-premises Off-premises Sign is within 20 degree cone of vision, which requires a Safety Review prior to approval. The proposed location of the Minor Digital On-premises Off-premises Sign is in the direct path of an existing traffic control signal. As such, the Transportation Department has determined that the proposed sign location will also backlight the subject traffic control signal on NE corner of intersection.

Note: The applicant has not demonstrated any unnecessary hardship or practical difficulties peculiar to the Use or character of the site in considering any variance to the reasons of the refusal, contrary to Section 11.4 of the Zoning Bylaw.

APPELLANT'S SUBMISSION

1. The subject property was recently re-zoned to accommodate the proposed sign and the proposed sign is now a listed use in the applicable DC-2 Zone.
2. While Sign Schedule 59E does provide that the maximum sign area for Minor Digital On-premises / Off-premises Signs is 20m², that same Schedule contemplates On-premises / Off-premises Signs of greater dimensions and purports to regulate the same on the basis of that greater area. Development along this stretch of 100th Avenue is all of a large scale, highway commercial nature, and the increase in sign area is both available and appropriate at this location.
3. Section 720.3(3) of the Zoning Bylaw provides that all Regulations in the Zoning Bylaw shall apply to development in a DC2 Zone, and this necessarily includes those Regulations that grant the Development Officer discretion to grant variances in appropriate circumstances. Because the variance issue is a matter of discretion, the exercise of that discretion is a fit matter for appeal within the context of section 641(4)(b) of the Municipal Government Act.
4. The Development Officer failed to follow the directions of Council in any event in finding that the proposed would "contribute to light pollution and visual intrusion into residential properties south of 100 Avenue" in circumstances where:

- (a) The proposed sign is oriented to the west as otherwise prescribed by the DC2 zoning; and
- (b) The nature of the proposed sign is such that its light is not diffused but is directed to the west.

The sign will be relocated slightly to address the concerns expressed by Transportation Services.

Such further and other reasons as may be presented at the hearing of this appeal.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

The Subdivision and Development Appeal Board at a hearing on May 6, 2015 made and passed the following motion:

“that the appeal hearing be SCHEDULED FOR JUNE 4, 2015 at the written request of Legal Counsel for the Appellant and in agreement with Sustainable Development.”

The Subdivision and Development Appeal Board at a hearing on June 4, 2015 made and passed the following motion:

“that the appeal hearing be SCHEDULED FOR July 2, 2015 at the written request of Legal Counsel for the Appellant and in agreement with Sustainable Development.”

Section 641(4) of the *Municipal Government Act*, Chapter M-26 states despite section 685, if a decision with respect to a development permit application in respect of a direct control district

- (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
- (b) is made by a development authority, the appeal is limited to whether the development authority following the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Minor Digital On-premises Off-premises Signs is a listed Use in the DC2.876 Site Specific Development Control Provision, Section DC2.876.3(g).

Under Section 7.9(7), **Minor Digital On-premises Off-premises Signs** means any Sign that is remotely changed on or off Site and has a Message Duration greater than or equal to 6 seconds. Minor Digital On-premises Off-premises Signs incorporate a technology or method allowing the Sign to change Copy without having to physically or mechanically

replace the Sign face or its components. The Copy on such Sign may include Copy from Minor Digital On-premises Signs and Minor Digital Off-premises Signs.

The submitted plans show that the proposed Sign is located 7.5 metres from the (west) lot line, and 7.5 metres from the (south) lot line. The proposed Sign is single-sided facing west toward eastbound traffic on 100 Avenue. The plans indicate that the proposed Sign has a horizontal dimension of 7.32 metres, a vertical dimension of 4.27 metres, and a height of 7.92 metres from grade to the top of the Sign.

Section DC2.876.4(z) states, in addition to Schedule 59E and any other provisions of the Zoning Bylaw, the following shall apply:

- i. All Digital Signs shall be designed to minimize light pollution and visual intrusion into residential properties south of 100 Avenue;
- ii. Any lighting on a sign higher than 10 m and more than 7.5 m north of 100 Avenue is to be oriented east/west and not face south;
- iii. Any Signs developed on a south facing wall above 10 m in height or attached to any building above 10 m in height that abuts 100 Avenue is to be backlit and designed to prevent light from emitting toward residential areas south of 100 Avenue;
- iv. Individual business identification signs located on the Facades of buildings shall be similar in proportion, construction materials and placement. The sign shall be designed and located so as to ensure that the signage does not detract from the overall appearance of the development and is not obtrusive, having regard to the scale of the buildings on the site and to the distance of the building setback. An exception may be made to this general requirement where the function of an individual business dictates a specific style or image associated with a company. In such cases, the development shall maintain harmony in terms of overall project design and appearance;
- v. Any Signs developed on the south facing walls or area of any of the buildings visible from 100 Avenue shall be designed to prevent light from emitting toward residential areas south of 100 Avenue. Only low light signs shall be used;
- vi. Movement and brightness of perimeter Signs shall be designed to minimize light pollution/visual intrusion on surrounding residential properties;
- vii. There shall be no Digital Sign located in a landscaped yard;
- viii. There shall be no Digital Sign facing 100 Avenue;
- ix. All Digital Signs shall be developed in accordance with Section 59.2 of the Edmonton Zoning Bylaw.

Schedule 59E.3(5)(c)(ii) states for Minor Digital On-premises Off-premises Signs the maximum Area shall be 20 square metres for proposed Signs that are Freestanding Signs. The maximum combined Area of Digital Sign Copy and any other type of Copy on the same Sign face shall not exceed 20 square metres.

The Development Officer determined the maximum Area is 20 square metres. The Development Officer determined the proposed development provides an Area of 31.2 square metres, which is in excess of the maximum by 11.2 square metres.

Section 59.2(2) states Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs shall be

located such that the Sign does not obscure a driver decision point. The Development Officer and Transportation Services shall be satisfied that each Copy Area:

- a. does not physically obstruct the sightlines or view of a traffic control device or traffic control signal for oncoming vehicle traffic;
- b. is not located in the field of view near or past the traffic control device or traffic control signal in the sightlines of oncoming vehicle traffic;
- c. is not located in the field of view near or past other traffic conflict points such as intersections, merge points, exit ramps, or curved roadways; and
- d. illumination does not compete with or dull the contrast of the traffic control device or traffic control signal for oncoming vehicle traffic.

The Development Officer determined the proposed development is within 20 degree cone of vision, which requires a Safety Review prior to approval. The proposed location of the proposed development is in the direct path of an existing traffic control signal. As such, the Transportation Department has determined that the proposed sign location will also backlight the subject traffic control signal on NE corner of intersection.

Under Section 6.2(3), **Copy** means the letters, graphics or characters that make up the message on the Sign face.

Under Section 6.2(4), **Copy Area** means the total area within one or more rectangles which enclose the entire limits of the Copy.

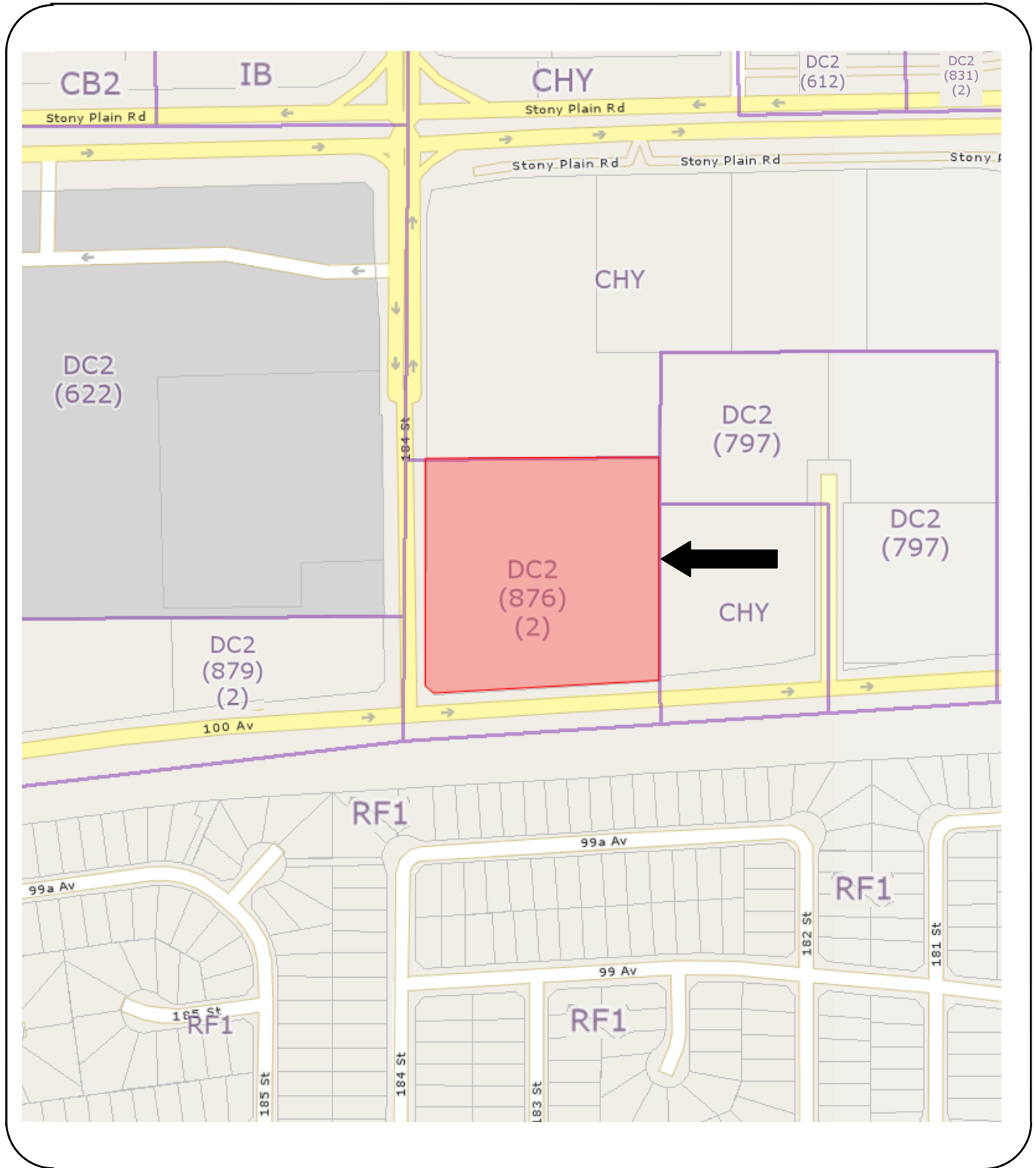
Under Section 6.2(24), **Sign Area** means the entire area of the Sign on which Copy is intended to be placed. In the case of double-faced or multi-faced Sign, only half of the area of each face of the Sign used to display advertising Copy shall be used in calculating the total Sign Area.

Section DC2.876 states the purpose of the DC2 Site Specific Development Control Provision is to accommodate the development of three hotels in accordance with the Place La Rue Plan West Neighbourhood Area Structure Plan and the Major Commercial Corridor Overlay in order to achieve a high-quality development that is appropriate for the site's location adjacent to a major "gateway" corridor of the city, and that will not adversely affect neighbouring residential uses and transportation facilities.

Included in the Sustainable Development Department's POSSE system, under "Shared with SDAB", is a Memorandum dated April 22, 2015 from Kelly Sizer, General Supervisor, Development Planning, Transportation Planning Branch, Transportation Services. **A copy of the Memorandum from Transportation Services is on file.**

NOTICE TO APPLICANT/APPELLANT

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the Municipal Government Act.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-114



TO BE RAISED
ITEM II: 12:30 P.M.

FILE: SDAB-D-15-102

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPLICATION NO.:	168696143-001
STOP ORDER TO:	Comply with an Order to dismantle and remove the Freestanding Off-premises Signs from the Site. This Order is to be complied with on or before June 1, 2015.
DECISION DATE:	April 17, 2015
DATE OF APPEAL:	May 1, 2015
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	6810 – Yellowhead Trail NW
LEGAL DESCRIPTION:	Plan 2427MC Blk 23 Lot D
ZONE:	IH Heavy Industrial Zone
OVERLAY:	N/A
STATUTORY PLAN:	Yellowhead Corridor Area Structure Plan

WITHDRAWN

DEVELOPMENT AUTHORITY'S DECISION

April 17, 2015

Our File: 168696143-001

Dear Sir/Madam:

A check with Land Titles Office discloses that you are the registered owner(s) of the property located at 6810 - YELLOWHEAD TRAIL NW, legally described as Plan 2427MC Blk 23 Lot D.

On April 16, 2015 Development Compliance Officer Kenneth Yeung from the City of Edmonton having the authority to exercise development powers under Section 642(1) of the Municipal Government Act, R.S.A. 2000 conducted a site inspection of the above noted property revealing that Freestanding Off-premises Signs have been erected for which, according to our records, no development permit has been issued.

LAND USE INFRACTION:

This property is zoned IH (Heavy Industrial Zone) in accordance with Section 430 of the Edmonton Zoning Bylaw. Our investigation revealed that Freestanding Off-premises Signs have been built. The City of Edmonton has not issued a development permit to construct Freestanding Off-premises Signs, which is contrary to Section 683 of the Municipal Government Act, R.S.A. 2000, c.M-26.1.

ORDER:

Pursuant to Section 645 of the Municipal Government Act, R.S.A. 2000, YOU ARE HEREBY ORDERED TO:

DISMANTLE AND REMOVE THE FREESTANDING OFF-PREMISES SIGNS FROM THE SITE.

This order is to be complied with on or before June 1, 2015.

CONSEQUENCES FOR NON-COMPLIANCE:

In the event that a person fails to comply with an Order issued under Section 645, Section 646 of the Municipal Government Act authorizes the City to enter on the land and take any action necessary to carry out the Order. Section 553(1)(h.1) of the Act provides that the costs and expenses of carrying out an order may be added to the tax roll of the property and Section 566(1), subject to subsection (2), a person who is found guilty of an offence under this Act is liable to a fine of not more than \$10,000.00 or to imprisonment for not more than one year, or to both fine and imprisonment.

The property will be inspected on or after June 1, 2015 to determine compliance with this Order. Failure to comply will result in action as described in Section 646.

YOU ARE HEREBY NOTIFIED THAT IF YOU HAVE NOT DISMANTLED AND REMOVED THE FREESTANDING OFF-PREMISES SIGNS FROM THE SITE by the June 1, 2015 deadline, the City may carry out the Order by entering onto the property and performing remedial actions as described in Section 646 of the Municipal Government Act R.S.A. 2000, and all the costs and expenses in doing so will be added to the tax roll pursuant to Section 553(1)(h.1) of the Municipal Government Act R.S.A. 2000.

Following are Sections 553, 645, 646, 683, 685 and 686 of the Municipal Government Act, R.S.A. 2000, c.M-26.1, which provides you with the right to appeal this Order and enables the City to add all costs associated with this action to the tax roll of the property.

If you have any questions in regards to this matter, please contact the writer at 780-944-0675.

APPELLANT'S SUBMISSION

Reason for Appeal:

1. The freestanding off-premises signs (the "Sign") should, or ought to have a development permit on record with the City.
2. The Sign is a lawful sign.
3. The Sign either has a valid development permit, does not, or did not, require a development permit, or, in the alternative, the Appellant has not been given an opportunity to obtain a development permit, or an extension of the time to do so, if at all required.
4. The City has not acted in good faith during the Appellant's attempts to obtain permit information nor has it acted in good faith in enforcement activities related to the Sign.
5. The City has improperly and/or unreasonably provided the Stop Order to the Appellant.
6. The City has improperly or unreasonably rescinded an extension granted to the Appellant to prove or provide for compliance with a violation notice.
7. The Appellant relied upon the extension that was granted and incurred substantial costs as a result.
8. Such further and other grounds of appeal as will be presented at the hearing.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

The Subdivision and Development Appeal Board, at a hearing on May 14, 2015, made and passed the following motion:

“that the appeal hearing be SCHEDULED for July 2, 2015 at the written request of the Appellant.”

Section 645 of the *Municipal Government Act* states:

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

(a) this Part or a land use bylaw or regulations under this Part, or

(b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

Section 5.1 of the Zoning Bylaw states:

No Person:

- 1. shall commence, or cause or allow to be commenced, a Development without a development Permit therefore issued under the provisions of Section 12 of this Bylaw; or
- 2. shall carry on, or cause or allow to be carried on a development without a Development Permit therefore issued under Section 12 of this Bylaw.

NOTICE TO APPLICANT/APPELLANT

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the Municipal Government Act.



SURROUNDING LAND USE DISTRICTS

 Site Location

File: SDAB-D-15-102



BUSINESS LAID OVER

APPEAL HEARINGS TO BE SCHEDULED

152684111-003	An appeal to increase the height of an approved Fascia Minor Digital On-premises Off-premises Sign <i>July 8 or 9, 2015</i>
170465146-003	An appeal to construct an uncovered deck (1.95m x 4.90m at 1.10m in height), existing without permits <i>July 15 or 16, 2015</i>