

March 8, 2021

City of Penticton  
171 Main Street  
Penticton, B.C.  
V2A 5A9

**Attention:**     *The Mayor and Council*

Dear Sirs/Mesdames:

**Re: 352 Winnipeg Street, Penticton (the "Property")**

We write with respect to the decision of the Penticton City Council on March 2, 2021 concerning the 42-bed emergency winter shelter located at the Property (the "**Shelter**").

The facts relating to this matter are as follows:

On October 27, 2020, Penticton City Council authorized the issuance of Temporary Use Permit PL2020-8834 with respect to the Property (the "**TUP**"). The TUP was issued in accordance with Section 493 of the *Local Government Act* to allow for the temporary use of the Property for an "emergency shelter" subject to the following conditions:

1. Permitting the number of beds for winter emergency shelter at the Property to a maximum of 42 beds;
2. Requiring all of the beds in existing support locations in the community be full before using the Property;
3. Requiring appropriate staffing supports to be on-site 24 hours a day;
4. Requiring security to be provided on-site 24 hours a day;
5. Requiring communication be sent to the neighbouring properties from BC Housing indicating resources available for neighbours; and
6. That operations at Penticton's other shelter location remain operational during the winter months with no consolidation of shelter services to the Property.

The TUP is set to expire on April 1, 2021. Following a meeting between the Attorney General and Mayor and Council on February 3, at which the Mayor indicated support for a renewal of the TUP, on February 4, 2021 an application was made by BC Housing to renew the TUP until March 31, 2022. On March 2, 2021 BC Housing's application to extend the TUP until March 31, 2022 was rejected by Penticton City Council.

## **BC Housing's Use of the Property**

BC Housing's interest in the Property is held pursuant to a facility licence agreement dated for reference May 1, 2020 between the registered owner of the Property, Pentictonia Holdings Ltd., as licensor (the "**Licensor**"), and Provincial Rental Housing Corporation ("**PRHC**"), as licensee, as extended by a facility license amendment dated July 24, 2020, and a facility license amendment dated February 8, 2021 (together, the "**License**"). PRHC is a British Columbia corporation wholly owned by the Provincial Crown and controlled by BC Housing.

The Licence is valid and binding, and gives PRHC the full right and entitlement to exclusively use the Property until March 31, 2022.

## **Paramountcy Option**

Given the dire circumstances surrounding the homeless population in the City of Penticton, which are compounded by the COVID-19 pandemic, the continued use of the Shelter is a matter of urgent need. Were the Shelter to close, at least 42 people would be forced to sleep in outdoor public spaces, such as in encampments in local parks, as has been witnessed in other municipalities in British Columbia. Converting the Shelter to a hygiene and COVID isolation centre would not address the urgent need for indoor spaces in Penticton; isolation spaces can only be accessed by individuals diagnosed as COVID-positive or those who are awaiting test results, and there exist adequate isolation spaces in Penticton.

The Province of British Columbia is required, in the course of its duty to serve the public good, to ensure the health and safety of its citizens. This includes ensuring that the individuals currently staying at the Shelter receive the appropriate care and supports, and do not end up living in unsafe situations subject to the adverse health and social impacts that this would entail. We would draw your attention to the data shared with Penticton Mayor and Council previously, which demonstrates that the Shelter has been operating at full capacity, and that there were 166 people on the Coordinated Access list in January 2021, of whom over 80% have lived in Penticton for more than five years.

One of the powers that is available to the Province in the present circumstances is found in Section 14(2) of the *Interpretation Act*, which grants the "Paramountcy" powers of the Provincial Government.

Paramountcy arises when the provincial government invokes section 14(2) of the *Interpretation Act* of BC, 1996 c 238 (the "**Act**"):

### ***Government bound by enactments; exception***

*14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.*

*(2) Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the Assessment Act, does not bind or affect the government [emphasis added]*

As noted in section 14(1) of the Act, municipal "enactments" are generally binding on the Provincial Government. However, section 14(2) of the *Act* sets out an exception to this general rule, providing that municipal "enactments" do not bind or affect the provincial government if they concern the "*use or development of land or... improvements*".

Section 14(2) of the Act therefore authorizes the Provincial Government to proceed with the "*use or development of land or... improvements*" in particular instances without complying with the bylaws (including zoning bylaws) of a municipal government.

If the Province were to invoke its Paramountcy powers pursuant to Section 14(2) of the Act, it could properly and lawfully override the Bylaws of the City of Penticton that currently prevent the use of the Property as the Shelter.

### **Proposal**

The Province would prefer not to exercise its extraordinary powers under Section 14(2) of the Act to override the Bylaws of the City of Penticton and allow for the continued use of the Property for the Shelter. However, the Province may be left with no alternative but to do so if an accommodation between the Province and the City of Penticton cannot be reached.

We respectfully ask that the Mayor and Council reconsider its rejection of BC Housing's application to renew the TUP, and permit the Shelter to continue operating on the Property until March 31, 2022. We believe that proceeding in this manner will ensure that both the needs of the people experiencing homelessness in Penticton, and the mutual desires of the City Council of Penticton and the Province to avoid the creation of a homeless encampment in Penticton, can be met.

The Province remains committed to working with Penticton on new permanent housing solutions for people in the community to add to the existing more than 1,000 affordable homes funded through the Province. Construction is set to begin soon on approximately 50 new supportive homes with 24/7 support services being developed on Skaha Lake Road, with completion in early 2022. The supportive homes are the first phase of the site's redevelopment; the rest of the site will be kept available for future affordable housing projects for people in Penticton, including seniors, singles, families and/or people with a disability.

We look forward to your response, which we ask that you provide by no later than Monday, March 15, 2021.

Yours truly,

A handwritten signature in black ink, appearing to read 'Shayne Ramsay', written in a cursive style.

Shayne Ramsay, CEO