

Memorandum

OUR FILE # 141

TO Cheam First Nation
FROM Holly Vear
DATE September 22, 2023
RE Summary of the *Regulation Addressing Historic Claims to an Allotment*

REPLY TO Holly Vear
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Background

- Before the Cheam First Nation Land Code (the “Land Code”) took effect, approval under the *Indian Act* by the federal government was required to finalize an Allotment of land to a Member.
- At the time the Land Code took effect, there were some Allotments that had been submitted to the federal government but were not approved before all land management responsibilities transferred to Council. We use the term “Historic Allotments” to describe these Allotments.
- It is necessary for the Cheam First Nation to approve a process to assess and finalize these Historic Allotments so that they comply with the Land Code and the *Cheam CP and Allotment Law*.
- The Lands Governance Advisory Committee (the “LGAC”) and Council has been working with a lawyer to develop that process, which is contained in the draft *Regulation Addressing Historic Claims to an Allotment* (the “Regulation”).
- The LGAC and Council are seeking Member feedback on the Regulation.
- This document summarizes the main parts of the Regulation.

1. Eligibility

- The following are eligible to apply for an Allotment under the Regulation:
- An adult Member who is named in a Council Resolution granting the Member an Allotment, but the Allotment was not formalized under the *Indian Act* before the Land Code came into force.
 - If the individual named in a Council Resolution described above is deceased,
 - an adult Member who claims they are entitled to be granted the Allotment based on the wishes of the deceased individual; or
 - the legal guardian of a Minor Member who claims that, upon the Minor Member attaining the age of 18 years, the Member is entitled to be granted the Allotment based on the wishes of the deceased individual.

{Memo - HV.1}

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2. Applying for an Allotment under the Regulation

- The Cheam Lands Governance Office (the “Lands Office”) will prepare an “information package” for each known Historic Allotment claim including a copy of the Council Resolution setting out Council’s intention to grant an Allotment for the applicable land and any additional information related to the proposed Allotment.
- The Lands Office will provide the information package and an application form to the applicable Member and will work with the Member to complete the application.
- The applicant may submit any additional information to support their application, including, if the Member named in the Council Resolution is deceased, any evidence setting out the wishes of the deceased individual, e.g. a will, a bill of sale, a land transfer agreement. An applicant may rely on documents that demonstrate the deceased Member’s intention even if the document is not legally valid, e.g. the applicant may rely on a will that seeks to transfer the applicable land to the applicant even though the deceased individual did not have the legal authority to transfer the land by will because the Allotment was not finalized at the time of their death.

3. Preliminary review of application and report to the Lands Governance Advisory Committee

- The Lands Office will review the application for completeness and will prepare a report that includes a summary of the relevant facts and evidence supporting each application and whether the requested Allotment complies with the requirements in the *CP and Allotment Law*, e.g. compliance with an applicable land use plan or zoning law, no encroachment issues, road access, no environmental concerns, etc.
- The Lands Office will refer the application, including all supporting materials, and the accompanying report, to the LGAC.

4. Lands Governance Advisory Committee Review

- The LGAC will review and consider the application, all supplementary materials and the report prepared by the Lands Office. The LGAC may invite the applicant and any other person who may have helpful information to share to meet with the LGAC. The LGAC may carry out a site visit and make any other enquiries to consider the application and the evidence.

5. Lands Governance Advisory Committee Recommendation

- The LGAC will make a recommendation on whether Council should grant an Allotment to the applicant, or to another Member identified through the review process. Their recommendation will be based on the following factors:
 - the evidence supporting the applicant’s claim to an Allotment, including the location and size of the applicable Allotment;
 - if the Member named in the Council Resolution approving the Allotment is deceased,

- the evidence of the deceased individual's intentions for the land, including to provide for their minor dependents or their non-Member spouse; and
 - the wishes of the family of the deceased individual on who should be the Allotment-holder for the applicable land;
- compliance with the CP and Allotment Law, e.g. compliance with an applicable land use plan or zoning law, no encroachment issues, road access, no environmental concerns, etc;
 - the amount of land or lot size requested and the amount of remaining Cheam Community Reserve Lands and the Cheam First Nation's future needs;
 - Cheam First Nation customs and practices; and
 - any order of a court having jurisdiction relevant to the land.
- The LGAC recommendation will include the recommended size and boundaries of the Allotment and whether the Allotment should include any terms, conditions, or exceptions.
 - The LGAC may recommend an alternative lot of comparable size and features (this may be necessary if the lot in question has serious environmental issues) or that an Allotment be subject to a life estate to a non-Member spouse or that the Allotment be held in trust for a minor Member.

6. Council decision

- Council will consider the LGAC recommendation, the application and supplementary application materials and, in consideration of the same factors guiding the LGAC recommendation, will decide whether to grant the Allotment to the applicant.
- Council may only approve an application if the Allotment will comply with the *CP and Allotment Law*, e.g. the Allotment has/will have road access and complies or will comply with all land use requirements.
- Council's approval of an application may be subject to any reasonable term, condition or exception, including deviating from the size or location of the requested Allotment.
- If it is determined that a minor Member is entitled to the Allotment, Council can make a declaration by Council Resolution that the minor Member will be granted the Allotment upon their 18th birthday.
- If Council denies the application of a Member who claimed they are entitled to an Allotment intended for a deceased Member, but Council determines, on the basis of the review process, that another Member should be granted the Allotment, Council may grant that Member the Allotment, or provide that the Allotment be granted to a minor Member upon that Member attaining 18 years old.