

Cheam CP and Allotment Law

REGULATION ADDRESSING HISTORIC CLAIMS TO AN ALLOTMENT

PREAMBLE

WHEREAS

- A. The Cheam Council is aware that certain Members claim they were entitled to receive an Allotment in Cheam Reserve Lands under the *Indian Act* before the Land Code came into force;
- B. The Cheam Council wishes to establish a procedure to assess those claims and, if warranted, grant Allotments in the applicable lands, or in some cases, in alternative lands;
- C. In accordance with sections 5.2(a), (b) and (c) of the Cheam CP and Allotment Law, a new Allotment of Community Lands:
 - (a) may only be granted to a Member;
 - (b) may only be initially granted for Residential Use; and
 - (c) subject to any Cheam Laws and requirements for access agreements, road permits or other related authorizations, must have road access which may include a right-of-way, and must not result in the land locking or blocking of access to another Allotment or CP;
- D. In accordance with sections 7.11, 7.12 and 7.13 of the Cheam CP and Allotment Law,
 - (a) Council may attach reasonable conditions to any Allotment, which may include, without limiting the generality of the conditions, a requirement to begin construction of a new home on any residential Allotment within six months;
 - (b) the conditions for any conditional grants shall be in writing and shall specify if the Allotment will be automatically cancelled if one or more of the conditions are not met; and
 - (c) if a Member fails to comply with specific conditions that leads to automatic cancellation, the Allotment shall be cancelled and Council shall re-issue to another Member in accordance with the Cheam CP and Allotment Law.

NOW THEREFORE, THE CHEAM FIRST NATION COUNCIL MAKES THE FOLLOWING REGULATION UNDER SECTION 7.10 OF THE CHEAM CP AND ALLOTMENT LAW.

1.0 DEFINITIONS

1.1 The following definitions apply in this Regulation:

“applicant” means the Member who submits an application and any additional Member listed on the application seeking to hold the Allotment;

“application” means an application for an Allotment based on a Historic Allotment Claim;

“Historic Allotment Claim” means a claim that a Member was entitled to receive an Allotment but the Allotment was not formalized before the Land Code came into force;

“Minor Member” means a Member who has not attained the age of 18 years.

1.2 In addition to the terms defined at subsection 1.1, capitalized terms used in this Regulation may be defined in the Cheam CP and Allotment Law or the Land Code.

1.3 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it.

1.4 Unless otherwise specified, a reference in this Regulation to a section is a reference to a section of this Regulation.

1.5 Unless otherwise specified, a reference in this Regulation to a subsection or paragraph is a reference to a subsection or paragraph of the section or subsection in which the reference occurs.

2.0 APPLICATION OF THIS REGULATION

2.1 This Regulation only applies to regulate the assessment of Historic Allotment Claims and any subsequent granting of an Allotment based on such a claim.

3.0 ELIGIBILITY TO APPLY FOR AN ALLOTMENT BASED ON A HISTORIC ALLOTMENT CLAIM

3.1 An adult Member may apply for an Allotment under this Regulation if the Member was named in a Council Resolution granting the Member an Allotment in Cheam Reserve Lands, but the Allotment was not formalized under the *Indian Act* before the Land Code came into force.

3.2 If the individual named in a Council Resolution described at subsection 3.1 is deceased, the following individuals may apply for the applicable Allotment:

- (a) an adult Member who claims they are entitled to be granted the Allotment based on the wishes of the deceased individual; or
- (b) 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.

4.0 FACTORS IN ASSESSING A HISTORIC ALLOTMENT CLAIM

4.1 The Lands Governance Advisory Committee's recommendation regarding an application under section 10.0 and Council's decision to approve an application under section 11.0 will be based on the following factors:

- (a) the evidence supporting a Historic Allotment Claim, including the location and size of the applicable Allotment;
- (b) if the applicant is eligible to apply under subsection 3.2 [*individual named in the Council Resolution is deceased*],
 - (i) the evidence supporting the applicant's claim that they are entitled to be granted the applicable Allotment based on the wishes of the deceased individual named in the Council Resolution allotting the land;
 - (ii) the wishes of the family of the deceased individual on who should be the Allotment-holder for the applicable land; and
 - (iii) any evidence of the deceased individual's intentions to provide for their Minor Member dependents or their non-Member spouse;
- (c) compliance with a Land Use Plan, a land use or zoning Law, any other applicable Cheam Law, by-law or policy;
- (d) compatibility with known encumbrances;
- (e) 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;
- (f) Cheam First Nation customs and practices; and
- (g) any order of a court having jurisdiction relevant to the land.

4.2 A recommendation or decision made under subsection 4.1 may also account for a draft Land Use Plan or a draft land use or zoning law.

4.3 For certainty, the Lands Governance Advisory Committee and Council may account for evidence submitted under subsections 4.1(a) or (b) to demonstrate the individual's wishes despite a particular document not having legal force.

5.0 INFORMATION PACKAGE

5.1 For each Member who qualifies under section 3.0, the Cheam Lands Governance Office will prepare an information package consisting of

- (a) a copy of the Council Resolution evidencing Council's intention to grant an Allotment for the applicable land and any additional information related to the proposed Allotment, including
 - (i) minutes from a Council meeting at which the applicable Allotment is referenced, or
 - (ii) correspondence from the Cheam First Nation; and
- (b) if a Member is eligible to apply under subsection 3.2 [*individual named in the Council Resolution is deceased*], any documents and related correspondence in the possession of the Cheam First Nation that demonstrates the deceased individual's intention
 - (i) to transfer the applicable land to the applicant, e.g. a will, a bill of sale, a land transfer agreement or a quit claim, or
 - (ii) to grant a life estate or trust in the land to a non-Member Spouse or Minor Member dependent.

6.0 MEMBER'S APPLICATION

Application

6.1 The Cheam Lands Governance Office will

- (a) provide to the applicable Member the information package prepared under section 5.0 and an application that complies with subsection 6.2; and
- (b) work with the Member to complete the application.

Content of application

6.2 An application must be in a form approved by Council that sets out the following information:

- (a) the full legal name, Member number and mailing address for each Member seeking to hold an Allotment in the applicable land;
- (b) the civic address and legal description of the applicable land;
- (c) the contents of the information package prepared under section 5.0;
- (d) any additional relevant materials regarding the applicant's Historic Allotment Claim in the possession of the applicant that is not included in the information package;
- (e) if the applicant is eligible to apply under subsection 3.2 [*individual named in the Council Resolution is deceased*], if applicable, a written summary of the wishes of the family of the deceased individual on who should be the Allotment-holder for the applicable land;
- (f) the applicant's current and intended uses of the applicable land;

(g) information on any known Interests or rights held or claims made by third parties in or to the applicable land; and

(h) a description of all structures and residential homes that exist on the applicable land.

Residential Use

6.3 If the applicant's current uses of the land do not qualify as a Residential Use, the Cheam Lands Governance Office will advise the applicant that they are not eligible for an Allotment with reasons; the applicant is entitled to revise their application or supplement their application with additional documentation for reconsideration.

7.0 PRELIMINARY APPLICATION REVIEW

7.1 For a compliant application, the Cheam Lands Governance Office must prepare a report setting out the following:

- (a) a summary of the information package and any additional evidence that supplements the application;
- (b) whether the requested Allotment complies with a Land Use Plan, a land use or zoning law, any other applicable Cheam Laws, by-laws and policies;
- (c) whether the requested Allotment overlaps or is inconsistent with known encumbrances, including any encumbrances identified on the applicable parcel abstract report, unless the holder for the known encumbrance has provided a written letter setting out that they agree to the Allotment;
- (d) whether the requested Allotment has road access and whether such access complies with all Cheam Laws and requirements for access agreements, road permits or other related authorizations;
- (e) whether there are any known environmental concerns on the applicable land; and
- (f) observations from a site visit to the requested Allotment to assess the status of the applicable lands.

7.2 If the Cheam First Nation has not approved a Land Use Plan or a land use or zoning law, the report prepared under subsection 7.1 must specify if the requested Allotment complies with any draft Land Use Plan or draft land use or zoning Law.

8.0 REFERRAL TO THE LANDS GOVERNANCE ADVISORY COMMITTEE

8.1 The Cheam Lands Governance Office will refer a compliant application to the Lands Governance Advisory Committee in accordance with subsection 8.2 within a reasonable time from the completion of the report under subsection 7.1.

8.2 A referral to the Lands Governance Advisory Committee under this section must include the following:

- (a) a copy of the application including supporting materials submitted under subsection 6.2; and
- (b) the report prepared under subsection 7.1.

9.0 LANDS GOVERNANCE ADVISORY COMMITTEE REVIEW

9.1 Within a reasonable time of receiving a referral under section 8.0, the Lands Governance Advisory Committee will review all materials provided and, in accordance with their terms of reference and any applicable policy,

- (a) may invite an applicant and any witnesses identified by the applicant to a Lands Governance Advisory Committee meeting to present evidence, and answer questions posed by the Lands Governance Advisory Committee;
- (b) may provide notice of and an opportunity to respond to the application to any Member for whom the Lands Governance Advisory Committee believes may have a competing interest or helpful evidence to share;
- (c) may request a meeting with the Lands Governance Director to review any aspect of the referral;
- (d) may carry out a site visit to the applicable land or any alternative lands; or
- (e) may make any other enquiries that the Lands Governance Advisory Committee believes is reasonable and necessary to make a recommendation under section 10.0.

9.2 The Cheam Lands Governance Office will support the Lands Governance Advisory Committee with its review under this section and in making its recommendation under section 10.0.

10.0 LANDS GOVERNANCE ADVISORY COMMITTEE RECOMMENDATION

10.1 Within a reasonable time of completing its review under section 9.0, the Lands Governance Advisory Committee must

- (a) consider the record provided under subsection 8.2 and all relevant evidence gathered under section 9.0;
- (b) consider the factors listed at section 4.0 and any measures that could be taken to ensure compliance or conformity with the factors; and
- (c) make a recommendation on whether Council should grant an Allotment to the applicant, or to another Member identified through the review process, the recommended size and boundaries of the Allotment, and, subject to subsection (c), whether the Allotment should include any terms, conditions or exceptions.

10.2 If the Lands Governance Advisory Committee recommends that Council grant an Allotment, the Committee's recommendation must identify any measures that can be taken to resolve any of the following issues:

- (a) the requested Allotment does not comply with a Land Use Plan, a zoning or land use Law, any other applicable Cheam Laws, by-laws and policies;
- (b) the requested Allotment overlaps or is inconsistent with known encumbrances and the holder of the known encumbrance has not provided a written letter setting out that they agree to the Allotment;
- (c) the requested Allotment does not have road access or the road access does not comply with any Cheam Laws and requirements for access agreements, road permits or other related authorizations; or
- (d) there are known environmental concerns on the applicable land.

10.3 If the Cheam First Nation has not approved a Land Use Plan or a land use or zoning Law, the recommendation made under this section must specify if the requested Allotment complies with any draft Land Use Plan or draft land use or zoning Law.

10.4 Without restricting the scope of measures that may be recommended under this section, the Lands Governance Advisory Committee may recommend

- (a) an alternative lot of comparable size and features;
- (b) an Allotment be subject to a life estate to a non-Member Spouse, or that the Allotment be granted to a Minor Member upon that Member reaching the age of 18 years; or
- (c) upon consideration of the history of environmental contaminants on the applicable land, requiring the proposed Allotment-holder to remediate the land to a certain standard at the individual's own cost or to contribute to land remediation costs.

10.5 The Lands Governance Advisory Committee's recommendation must include its reasons and be supported with the evidentiary record upon which its recommendation is based.

10.6 The Lands Governance Advisory Committee may engage legal counsel or another professional consultant in developing the Committee's recommendation to Council.

11.0 **COUNCIL DECISION**

11.1 Within a reasonable time of Council's receipt of the Lands Governance Advisory Committee's recommendation and evidentiary record under section 10.0, Council must

- (a) consider the recommendation and supporting materials;

(b) consider

- (i) the factors listed at section 4.0,
- (ii) any measures identified by the Lands Governance Advisory Committee, and
- (iii) any alternative or additional measures that could be taken to ensure compliance or conformity with the factors listed at section 4.0; and

(c) subject to subsection 11.2, approve or deny the application.

11.2 Council may send an application back to the Lands Governance Advisory Committee with instructions to consider additional facts or to reconsider any of the Committee's recommended measures.

11.3 If Council denies an application, it must provide notice of its decision with written reasons to the applicant.

11.4 If Council denies the application of a Member who applied under subsection 3.2 [*individual named in the Council Resolution is deceased*] but Council determines, on the basis of the review process under this Regulation, that another Member should be granted the Allotment, Council may authorize the necessary steps to obtain the Member's permission and other necessary information

(a) to grant the Member an Allotment under subsection 11.7; or

(b) to commit the Cheam First Nation to grant the Allotment to a Minor Member upon that Member attaining the age of 18 years in accordance with section 11.9.

11.5 Council may only approve an application

(a) if the requested Allotment has road access or if Council's approval is conditional on the applicant obtaining road access; and

(b) if the requested Allotment, as modified by any Council-imposed terms, conditions or exceptions, including substituting an alternative lot,

(i) will comply with the Land Use Plan, Zoning and Land Use Law, any other applicable Cheam Laws, by-laws and policies, and

(ii) will be consistent with known encumbrances.

11.6 Subject to subsection 11.5, 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.

11.7 Except for an application made on behalf of a Minor Member, if Council approves an application or makes a determination regarding an adult Member under subsection 11.4(a), Council must pass a

Council Resolution granting an Allotment to the applicable Member that includes the following information:

- (a) the full legal name and membership number of the Member;
- (b) a legal description of the Allotment that refers to a registered plan or official plan;
- (c) a list of all encumbrances on the Allotment;
- (d) any applicable term, condition or exception; and
- (e) a statement setting out that the Allotment must be registered in the Registry.

11.8 If Council grants an Allotment under subsection 11.7, it must prepare, or cause to be prepared, a Certificate of Possession to be issued to the applicant.

11.9 If Council approves an application made on behalf of a Minor Member,

(a) Council must pass a Council Resolution that includes the following information:

- (i) Council's commitment to grant an Allotment to the Minor Member upon the Member attaining the age of 18 years if they are otherwise eligible to hold the Allotment and, at that time, to prepare or cause to be prepared a Certificate of Possession to be issued to the applicant, and
- (ii) the information required at subsection 11.7(a) through (e); and

(b) cause the Council Resolution to be registered in the Registry.

11.10 As soon as practicable after Council issues a Council Resolution under subsections 11.7 or 11.9, the Cheam Lands Governance Office must provide notice of the same to the applicable Member and general notice to all Members.

11.11 Council may engage legal counsel or another professional consultant in developing Council's decision under this section.