



The Village of
PORT CLEMENTS
"Gateway to the Wilderness"

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7:00 PM, Tuesday, August 8th, 2023
Committee of the Whole

AGENDA

This meeting of the Council of the Village of Port Clements being held on the traditional territory of the Haida People.

1. ADOPT AGENDA

2. REPORTS & DISCUSSIONS

D-1- Cemetery/Columbarium/Vyse Cemetery Status

Consideration:

- April 17th, 2023, Regular Council Meeting Reports on Vyse Cemetery Status, Columbarium Requirements, Cemetery Potential of #20 Grouse Street,



REPORT TO COUNCIL

COPY

Author: Elizabeth Cumming, Deputy CAO
Date: April 17th, 2023
RE: Vyse Cemetery Status

BACKGROUND:

At the February 21st, 2023, Regular Council Meeting, Council made the resolution directing staff to provide an up-to-date report on the existing cemetery in Port Clements, the Vyse Cemetery.

DISCUSSION:

The Vyse Cemetery issue has been ongoing for several decades, with Village looking to sort out the issue to gain ownership over the property since 2001. A chronology of the Vyse Cemetery issue has been attached to this report for review.

There is essentially no update or change in status since 2016. In 2016 it was identified to Council, and to the community via a public survey, that to gain ownership, a representative who is not a part of the Village (due to conflict of interest), such as the Public Guardian and Trustee of BC, must make an application to the Supreme Court of British Columbia to be appointed as Mr. William Vyse's personal representative. Once appointed, then they would be responsible for tracking down all the descendants of the original recipients from Mr. Vyse's estate. All the individuals must either voluntarily sign off on the land and transfer it to the Village for free, or the land must be appraised, and the Village pay money into the courts to have the funds distributed by the Public Guardian and Trustee of BC. In the worst-case scenario, it was identified that the Village would have to pay market value for the land, pay the fees associated with the land, pay the Supreme Court application fees, and the fees for the Public Guardian and Trustee of BC.

After gaining ownership of the property, then the Village would have to apply to have it re-opened as a cemetery. It appears that this might be the same process of getting a notice of a certificate of public interest in relation to the land, as outlined in the report to Council on columbarium requirements (please see that report for further information). However, one point of notable concern for this process, is that the previous update acknowledged that there was an existing note on the title for the cemetery, dating to 1978, that identified that the ground conditions in the cemetery are not suitable for use as "it is hard and the water table is high". If that is the case, an application to re-open the cemetery may be denied, then the obtaining the property loses its intended functional value though it may still have a cultural or social value.

As identified in 2016, if Council wishes to pursue obtaining the Vyse Cemetery, then it needs to hire a lawyer to work through the process for the Village. Council should be aware that given the significant increases in costs in every area since 2016, this process may be upwards of \$50,000 - \$100,000 or more. For example, BC Assessment identifies the property as currently having a value of \$36,600, an appraisal may give an even higher figure.

STRATEGIC

(Guiding Documents Relevancy – Official Community Plan, Strategic Planning)

Cradle-to-grave services better enable a sustainable community and strong community connections. It is identified as a priority on the strategic plan.

FINANCIAL

(Corporate Budget Impact)

In 2016 it was estimated that pursuing ownership of the cemetery and then going through the application process of re-activating as a cemetery would cost between \$35,000 - \$40,000. It has been 7 years since, and costs have increased. It is uncertain if these costs would be eligible for grant funding. It was identified that there was the potential that the application for re-activate would be unsuccessful due to the note on title identifying the property as unsuitable for a cemetery, so these costs incurred may not obtain the result of a functioning cemetery, but for a historical property that the Village would then have to maintain.

ADMINISTRATIVE

(Workload Impact and Consequence)

Significant staff time has been involved over several decades on this topic. If Council wished to continue to pursue this matter, then staff time would continue to be involved (overseeing the project, grant applications, hiring a lawyer, hiring engineers, reporting to Council with results).

Respectfully submitted: Elizabeth Cumming, Deputy CAO.

2023-03-27

Chronology of the Vyse Cemetery Issue

this list does not include every activity, but the significant movements

Date	Activity
1925	Mr. William Vyse purchased property.
April 19, 1933	Mr. Vyse made an application for a piece of property (from the 1925 purchase) to become a cemetery and the application was approved by the Lieutenant Governor.
April 1935	First burial in Vyse Cemetery (21 documented burials on record)
1955 - 1960	Mr. Vyse kept a diary, which mentions the cemetery often and which indicates his desire to transfer it to Port Clements (Oct. 4, 1955 entry) however the community was not incorporated at the time. Previous reports to Council identify that he was intending to leave it to the Diocese of Caledonia for the actual transfer.
May 5, 1960	Lot officially subdivided so that cemetery portion had its own title which was in the name of Mr. Vyse.
November 21, 1960	Mr. Vyse died suddenly while in Prince Rupert for medical treatment. As he died without a will, January 17, 1961 Letters of Administration were granted to his brother Robert Vyse to deal with the estate. The cemetery property was not listed as part of the estate, and a previous staff report to Council identifies that his family believed that the cemetery had been transferred to the Diocese at the time.
April 4, 1961	Letter from the Secretary-Treasurer of the Diocese wrote to Rev. C.S. Lutener in Masset regarding a cemetery in Port Clements. She stated that there is a note on an old map in the Prince Rupert Court House which states that this lot was deeded by Mr. Vyse to the Diocese of Caledonia (they also owned St. Mark's Church). No legal paperwork on this "transfer" exists.
October 29, 1963	The Port Clements Improvement District is authorized as a crown-provincial lease and starts to function in 1964.
1973	last known burial at the cemetery.
1975	the Village of Port Clements is incorporated. Per the later patent, the activities and bylaws of the pre-cursor improvement district are included in this incorporation (so the bylaws and agreements of the improvement district carry over to the municipality).
2001	The Port Clements Economic Development Advisory Committee begins to look into correcting the cemetery situation. They received a letter from the Public Guardian and Trustee of British Columbia stating that the land was still in Mr. Vyse's name but they could be of no further assistance to the Village on this matter. Also had correspondence with the Diocese of Caledonia regarding the cemetery.

November 6, 2008	Joan Hein, daughter of historian Kathleen Dalzell, wrote 28 letters to every Vyse she located in British Columbia and Alberta asking if they were, or knew anyone who was, a relative of Mr. Robert Vyse (brother of William Vyse). The letter included email contact, phone number and self-addressed stamped envelope for people to reply - but there were no useful results from the search. She also spoke with Mr. Armstrong of the Diocese of Calendonia who stated that the church would be willing to sign an affidavit to indicate that they do not want to take over the cemetery.
December 18, 2008	All known information about the cemetery was turned over to Notary Caron Moffat who had agreed, pro bono, to work with the Village to get the title changed from Mr. Vyse to the Village of Port Clements.
May 13, 2009	Ms. Moffat wrote to Land Titles office in New Westminster to indicate that she was working on behalf of the Village and asking for direction on how to proceed with getting a transfer filed for the cemetery.
October 5, 2009	Ms. Moffat advised Council that a motion was required as a necessary step for the issue to move forward, this motion was made by Council to proceed with the transfer of property.
March 2011	As directed by Ms. Moffat, Joan Hein signed a Statutory Declaration as to the circumstances of the Cemetery property as they were known. In March, the Village also signed an Indemnity Agreement as a moral claimant under the Escheat Act agreeing to the transfer of the property to the Village. Ms. Moffat noted that the Escheats Department were requiring that a direct descendant of Mr. Vyse give permission for the transfer but the Village had been unable to locate a descendant.
December 31, 2011	Ms. Moffat retired as a Notary of Public having been unable to complete the task of the property transfer.
January 31, 2012	Joan Hein wrote a letter to Gary Coons, MLA, requesting help with the cemetery situation that appeared to hit an immovable wall with the Escheats Department.
February 20, 2012	Kim Mushynsky, as the new CAO for the Village, sent an email to Gary Coons, MLA, also requesting help with moving the issue through the Escheats Department as it seemed that the cemetery stalled with the department.
April 29, 2012	Joan Hein and CAO Mushynsky meet in person with Gary Coons, MLA, to recap and formalize a plan for moving forward with this issue. Information to date was supplied to Mr. Coons who passed it along government channels to see what could be done.
December 2012	CAO Mushynsky received an email from Minister Shirley Bond (then Minister of Justice) indicating that their department would be unable to assist in the matter. It appears the matter with the Escheats Department may have went to them at some point.

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September 4, 2015	Joan Hein located Ernie Vyse who is the grandson of Robert Vyse, brother of William Vyse and executor of his will. In his correspondence he indicated as a direct descendant he was willing to donate the cemetery to the Village.
September 10, 2015	The conversation with the Ministry of Justice, in light of the location of a descendant, was reinitiated. At some point, the Village is advised to hire a lawyer to proceed with the issue (unclear who advice was from)
2016	The Village hired legal firm Stewart, Macdonald, Stuart to research the Vyse Cemetery issue and make recommendation on how the Village could proceed and what the cost might be. At this point, it appears that the requirement for getting one descendant to sign off on the transfer changed into needing to get all the descendants to sign off
November 2016	It appears that after receiving legal advice, the Village sent out a letter to residents with a survey of public input on whether or not residents felt that there was value in pursuing obtaining the cemetery. Included in that letter was a recap on the chronology of the issue, as well as identifying that they were advised that to gain ownership, a representative who is not part of the Village, such as the Public Guardian and Trustee of BC, must make an application to the Supreme Court of British Columbia to be appointed as Mr. William Vyse's personal representative. Once appointed, the entity, would then be responsible for tracking all the descendants of the original recipients from Mr. Vyse's estate. All of the individuals must either agree to voluntarily sign off on the land and transfer it to the Village for free or the land must be appraised and the Village pay money into the courts to have the funds distributed by the Public Guardian and Trustee of BC. It was expected that in the worst case scenario the Village would have to pay market value for the land, with the fees for the associated with the land, the Supreme Court application and fees for the Public Guardian and Trustee of BC. It was estimated at that point it would cost \$26,000 - \$30,000 to undertake. After gaining ownership, then the Village would have to apply to have it re-opened as a cemetery, including licensing and passing bylaws. However, there is a note on the title for the cemetery dating from 1978 that states that the ground conditions in the cemetery are not suitable for use as it is hard and the water table is high. It was identified that the Village would likely require an Engineers confirmation that the land is suitable for a cemetery before getting to the next step. At the time it was estimated that it would cost \$8,500 to undertake. It was also identified in this letter to the public that the Gwaii Trust Society had confirmed that this initiative would be eligible for grant funding, so the full cost may not be fully on the Village.
Sometime Later in 2016	In a later report to Council in 2020, it was identified that there were minimal responses from the 2016 survey sent out, only around 12-15 responses with the majority luke-warm towards acquisition, with one or two strongly for and one or two against acquiring the Vyse cemetery.
2019	Another descendant of the heirs of William Vyse, Araxie, visited the Port Clements Museum and their contact information was obtained. She later provided contact information her children and grandchildren. However, communication was later unresponsive, but the information remains on file.

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2021	The Village adopted a 2021 - 2025 Strategic Plan that identified the vyse graveyard purchase/transfer ownership to the Village/restoration as a strategic priority for 2023. Part of this strategic planning included a survey for public input on the identified priorities and there were 32 responses received, meaning that only 11% of the Village's 282 residents responded. 47% of respondents (15) identified that the graveyard purchase/restoration was not important, with 34% (11) saying it was important, 16% (5) identifying it as very important, and 3% (1) not responding to it.
2022	In the 2022 update to the 2021- 2025 Strategic Plan, Council removed the cemetary from the list of active and assigned-year priorities but added it to a list of high priorities with no year assigned

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REPORT TO COUNCIL

COPY

Author: Elizabeth Cumming, Deputy CAO
Date: April 17th, 2023
RE: Columbarium Requirements

BACKGROUND:

At the February 21st, 2023, Regular Council Meeting, Council made the resolution directing staff to research the requirements to create a columbarium in the community.

DISCUSSION:

A columbarium is defined as a structure or building or an area in a structure or a building that contains, as an integral part of the structure or building or as a free-standing sections, niches for the inurnment of cremated remains. In this report, this structure or building will be referred to as a "facility".

The key pieces of provincial legislation that the municipality must follow in this matter is the *Cremation, Internment and Funeral Services Act* as well as the *Community Charter and Local Government Act*, but there are several other Acts that are referenced in the *Cremation, Internment, and Funeral Services Act* as applicable to different parts of approval and operations. The Village also must follow its Zoning Bylaw when it comes to the facility, as the facility can only be located on a property where the zoning permits that activity. While churches are permitted in all zones, cemeteries are only permitted in public use and park zones (P). Under the *Cremation, Internment and Funeral Services Act* it defines a cemetery as including land where interned and/or cremated remains are located, so a columbarium would need to be in a zone that permitted cemeteries as it would be considered a cemetery.

The Village does have properties located in the public use and park zones, excluding the public works yard and firehall area, these properties are the Village's parks and the property it leases to the Port Clements Historical Society where the Museum is located. While the Village's Community Park and Sunset Park are firmly in the public use and park zone, a discrepancy was found with Millennium Park (and thus St. Mark's Church) where our software records indicate that it is in the public use and park zone, while the zoning map in the Official Community Plan identifies it as in the Commercial Core Zone. It is difficult to determine where the error lies as public parks are also identified as permitted in all zones. It is advisable that in any future updates or replacements of the Zoning Bylaw and Official Community Plan this should be rectified and recommended that Millennium Park be put in a public use and park zone. If Council is considering other properties for a columbarium or cemetery, it would need to change the zoning for that property to public use and park zones for it to happen, so this should also be considered during the Official Community Plan and Zoning Bylaw update that is currently occurring.

Except for the Community Park, all the municipal parks are in or very close to low-lying areas of the community, meaning that they may be vulnerable to sea-level rises within the next century. In determining a suitable property for where a columbarium could be located, in addition to zoning, Council should consider that these facilities are intended to be in place permanently, and it may be better to plan for capacity for at least a century of inurnments. Millennium Park may be a more suitable location (if the zoning issue is sorted out), though it may later require relocation, as it is a park focused on remembrance, while the Community Park, though located on higher ground and less likely to require relocation, is more aimed at recreational activities and may be an ill-suited location for a columbarium.

In terms of the requirements to create a columbarium in the community. The *Cremation, Internment and Funeral Services Act* identifies that a municipality that proposes to own or operate a place of internment, must: incorporate a company, and establish itself as a board of trustees or appoint a board of trustees to own and operate the place of internment. Then the operators must make bylaws respecting the organization, operation and management of the place of internment, as well as the rights, privileges and responsibilities of the operator and the rights holders in respect of the place of internment, and any other matter relating to the place of internment.

In addition to that, for land to be used for internment, a notice of a certificate of public interest in relation to the land must be applied for, approved, and then registered in the Land Title Office on the property. The application process includes Council submitting a letter confirming the land is zoned for the use, and it would include an evaluation on whether the land is suitable as a “place of internment in perpetuity”. There may be authorization that must be received under the *Vital Statistics Act*, *Public Health Act*, and *Health Authorities Act*. If the certificate is granted, then it must be filed with the Land Title Office and registered. Part of the granting of the certificate could be an order for the operator of the columbarium to establish a care fund for the place of internment, requiring specified deposits to be made to the fund in prescribed amounts, which must be kept separate and apart from any other funds, though it appears that a municipality that administers its own care fund is deemed as the trustee of that fund and must administer it in accordance with regulations. The funds could only be used for the operations involving the care and maintenance for the place of internment. If a care fund is not ordered to be created, then the operator must provide a reasonable level of care and maintenance at its own expense.

Additionally, given the scope and size of the commitment involved, such as the requirement to create a company and take on a long-term financial responsibility, it is likely that the direct approval of the electors (such as by a referendum or an alternative approval process) will be required at several parts in this process, indeed it may be required for Council to even begin the process.

Proceeding with such a project would require substantial support from legal and other professionals specialized in the subject of interment and creating internment land, to successfully guide staff and Council through the process as the legislative and technical aspects involved as it would be difficult for staff and Council to navigate on their own. It would not be recommended to undertake this process without this support, and frankly, it would be beyond current staff capacity to undertake it without support.

Council directed staff to research into the requirements to create a columbarium as it was thought that it may be easier to pursue than a full cemetery and may be held to lower standards in legislation. Unfortunately, all places of internment, whether a cemetery or columbarium, are held to the same standard and it will not be easier to create a columbarium then it would be to create a cemetery.

In the development of the 2021-2025 Strategic Plan a community survey was conducted on the plan to determine what the community thought were not important, important, or very important of the included priorities and help Council prioritize. On the topic of the graveyard in town (to pursue it), 47% of survey respondents thought that the graveyard was not important, 34% thought it was important, and 16% thought it was very important. At the time, Council was not considering undertaking the development of a new cemetery/place of internment, just getting ownership of the existing, abandoned cemetery in the Village, so it may be prudent for to undertake an informal survey to assess where the community would stand on it, as well as potentially discussing it more as a topic of a Committee of the Whole meeting.

STRATEGIC	(Guiding Documents Relevancy – Official Community Plan) Cradle-to-grave services better enable a sustainable community and strong community connections.
FINANCIAL	(Corporate Budget Impact) Establishing a columbarium, or any place of internment, is likely to have significant upfront costs and would be a long-term, permanent financial commitment of the Village. Likely, the Village would have to explore having a specific tax to support the columbarium to be collected by the Village, separate and specific from the Village’s general taxation collection, as is collected for the Village’s sewer and water systems.
ADMINISTRATIVE	(Workload Impact and Consequence) Staff time was involved reviewing legislation and preparing the report to Council. Substantial staff time would be involved in setting up and realizing columbarium. The company that is required to be set up to run the columbarium may need to have its own staff capacity, but likely municipal staff capacity would also have to be considered.



REPORT TO COUNCIL

COPY

Author: Elizabeth Cumming, Deputy CAO
Date: April 17th, 2023
RE: Cemetery Potential of #20 Grouse Street

BACKGROUND:

At the February 21st, 2023, Regular Council Meeting, Council made the resolution directing staff to investigate the possibility of using "lot 20", #20 Grouse Street, as a cemetery.

DISCUSSION:

Whether a land is suitable or not for becoming a cemetery is partially determined by zoning, which is controlled by the Village, but ultimately it is determined in the application process where it undergoes an assessment for suitability by the province.

Cemeteries fall under the *Cremation, Internment, and Funeral Services Act*, but for a municipality there are aspects of the *Community Charter* and *Local Government Act* that would also be at play, as well as several other referenced acts by the *Cremation, Internment, and Funeral Services Act* as being applicable to different parts of approval and operations for a cemetery. For property to be used for internment, a notice of a certificate of public interest in relation to the land must be applied for, approved, and then registered in the Land Title Office on the property. This process includes an evaluation on whether the land is suitable as a "place of internment in perpetuity" and may require further authorization under authorities from the *Vital Statistics Act*, *Public Health Act*, and *Health Authorities Act* among others.

The only zone that permits cemeteries in the Village is the public use and park zone (P). #20 Grouse Street is currently zoned Commercial Service Zone (C2). Without changing its zoning, #20 Grouse Street cannot be used as a location for a cemetery. If Council wants to continue to consider this particular property for a cemetery, then it should consider changing its zoning during the Official Community Plan and Zoning Bylaw update that is currently occurring. Zoning is not a particular barrier for the Village if it wanted to pursue a cemetery on this property.

However, staff believe that the property is likely to be unsuitable for use as a cemetery due to its location. It is located in or very close to a low-lying area of the community, which means that it may be vulnerable to sea-level rises within the next century, let alone in "perpetuity", which is an identified criteria for application approval. However, no specific assessments have been undertaken to evaluate suitability, nor are staff qualified to undertake such assessments themselves, so Council would have to hire professionals to undertake the study on the property be certain of its possibility or not as a cemetery location.

Without that, staff would recommend looking at properties that are on high ground in the community for cemetery consideration.

STRATEGIC

(Guiding Documents Relevancy – Official Community Plan)

Cradle-to-grave services better enable a sustainable community and strong community connections.

FINANCIAL

(Corporate Budget Impact)

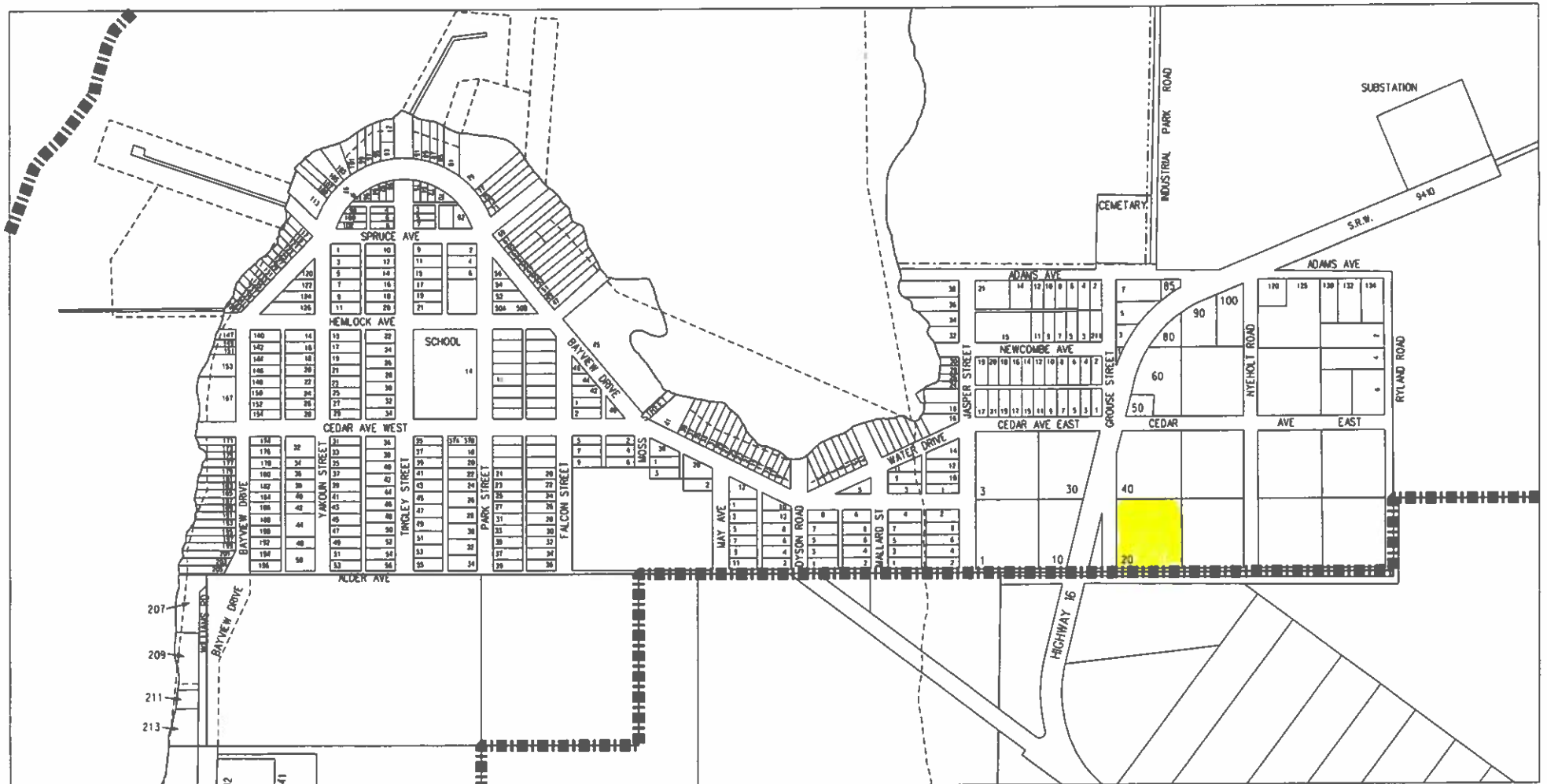
The actual possibility on whether #20 Grouse Street can be used as a cemetery cannot be determined by staff, an assessment by a qualified professional would have to be done, which would have costs though it may be possible to find grant funding for such a study.

ADMINISTRATIVE

(Workload Impact and Consequence)

Staff time was involved reviewing legislation and preparing the report to Council. If Council wanted to pursue an assessment by a qualified professional, then staff would be involved in overseeing the project (grant applications, hiring the assessor, reporting to Council results)

Respectfully submitted: Elizabeth Cumming, Deputy CAO.



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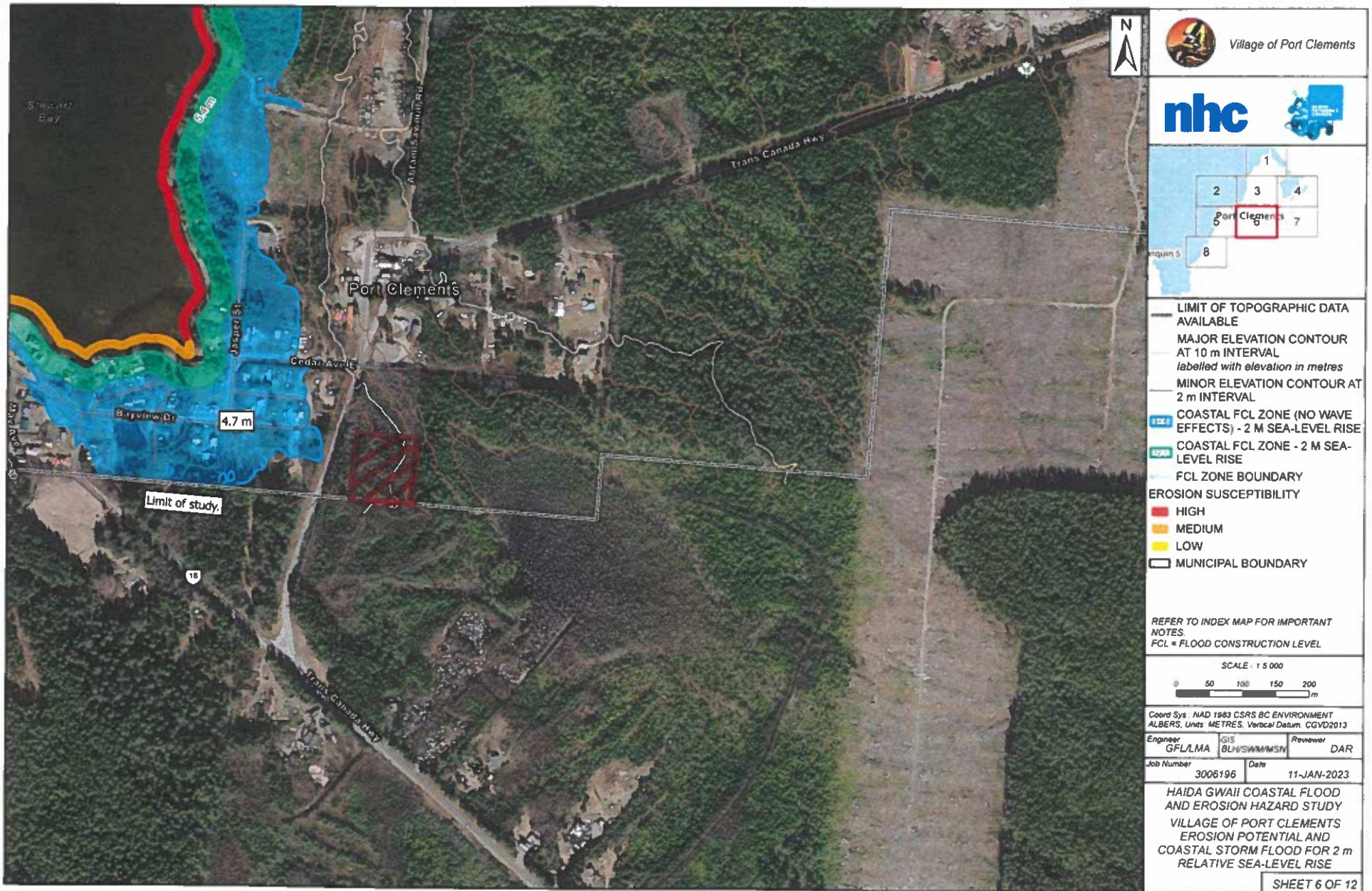
20 Grouse St.

#20
Grouse St.
approx. location



Flooding w/ 1m sea level rise





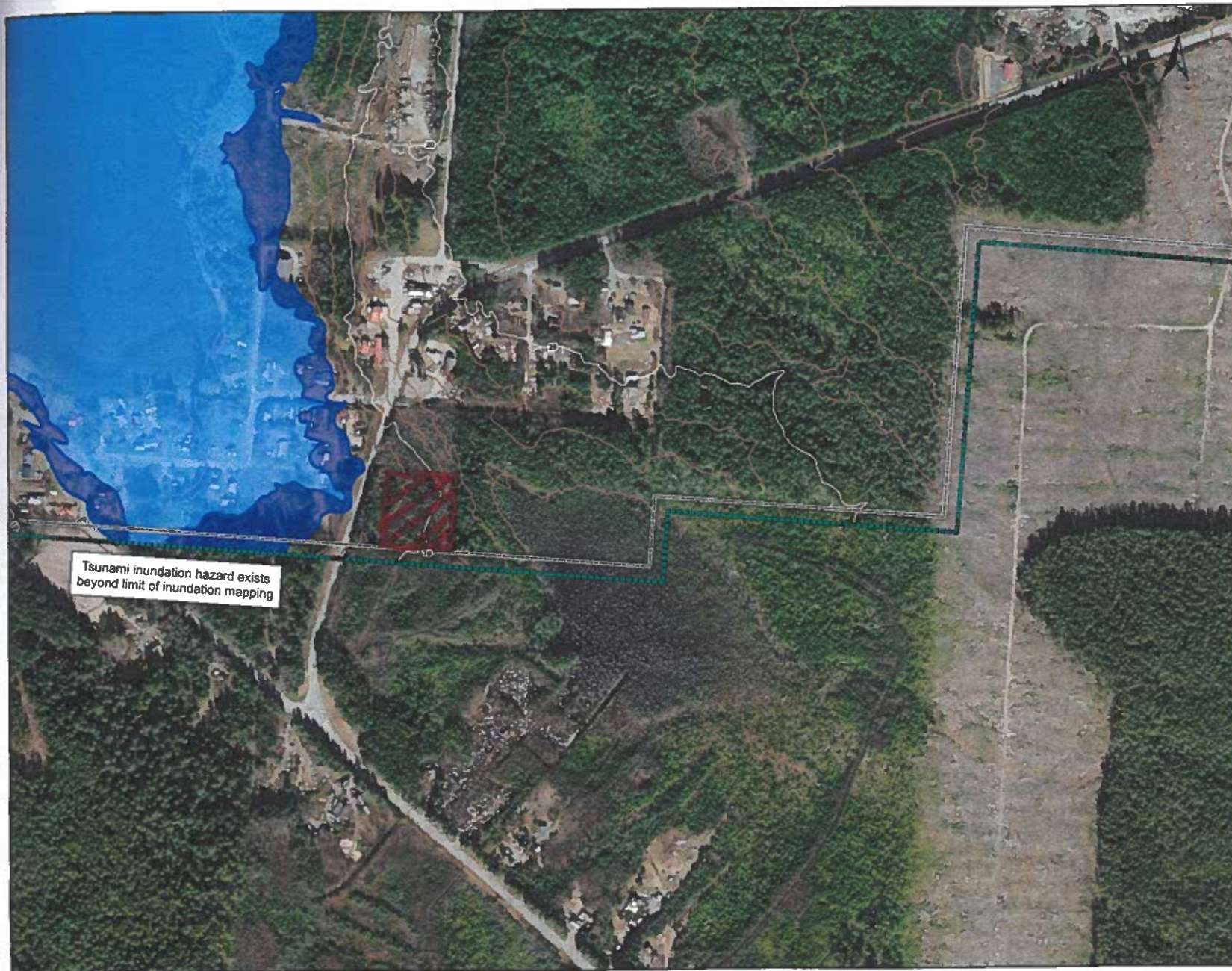
20 Cruise
St.
Approx location






Flooding w/ 2m sea level rise.

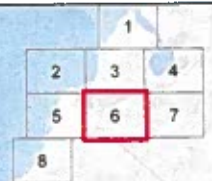
#20 Crowsst
Approx. location

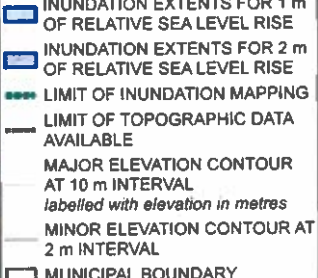
Tsunami inundation
w/ 1m + 2m sea level rise.



 Village of Port Clements





INUNDATION EXTENTS FOR 1 m OF RELATIVE SEA LEVEL RISE
INUNDATION EXTENTS FOR 2 m OF RELATIVE SEA LEVEL RISE
LIMIT OF INUNDATION MAPPING
LIMIT OF TOPOGRAPHIC DATA AVAILABLE
MAJOR ELEVATION CONTOUR AT 10 m INTERVAL
labelled with elevation in metres
MINOR ELEVATION CONTOUR AT 2 m INTERVAL
MUNICIPAL BOUNDARY

REFER TO INDEX MAP FOR COMPLETE NOTES.
HAZARDS SUCH AS STRONG CURRENT VELOCITY NOT SHOWN ON THE INUNDATION MAPS.

SCALE - 1:5,000
0 50 100 150 200 m

Coord Sys: NAD 1983 CSRS BC ENVIRONMENT
ALBERS Units: METRES Vertical Datum: CGVD2013

Engineer	PSG	GIS	SWMM/MSN	Reviewer	GFL
Job Number	3006196	Date	11-JAN-2023		

HAIDA GWAIH COASTAL FLOOD AND EROSION HAZARD STUDY
VILLAGE OF PORT CLEMENTS
TSUNAMI INUNDATION LEVEL FOR 1 m AND 2 m SEA LEVEL RISE

SHEET 6 OF 12