



## THE MUNICIPALITY OF THE VILLAGE OF LIONS BAY

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<b>Type</b>	<b>Request for Decision Addendum</b>		
<b>Title</b>	<b>52 Brunswick - Development Variance Permit and Encroachment Application</b>		
<b>Author</b>	<b>Peter DeJong</b>	<b>Reviewed By:</b>	
<b>Date</b>	<b>January 27, 2022</b>	<b>Version</b>	
<b>Issued for</b>	<b>February 1, 2022 Regular Council Meeting (“this Staff Report”)</b>		

### **Recommendation:**

(1) THAT Council select one of the options contained on page 4 of this Report.

### **Attachments:**

1. Copy of Plan 10651 (1960)
2. Copy of Explanatory Plan 6397 (1960)
3. Copy of Plan 3149 (1909 Subdivision Plan)
4. Scenario A drawing by Martin Jones, Surveyor, Bunbury and Associates

### **Key Additional Information:**

It has come to the attention of the Municipality that the legal western boundary of the Esplanade is still the boundary as depicted on Plan 3149, the 1909 Subdivision Plan. The Deputy Surveyor General of the Province has confirmed this to be the case:

To adjust the natural boundary of a road, park, etc. vested in a municipality, title must be raised to the portion being fixed. Once title is raised, you would complete a s. 107 plan (presumably) to return the chunk to road, but it would have a s. 94(1)(d) certificate attached.

These steps were not taken in respect of the foreshore aspect of the 1960 survey work, which appended portions of the Esplanade to the west side of the adjacent lots and removed a corresponding portion from the east side of those lots to provide for road rights of way.

The effect of all this is illustrated by the Scenario A drawing provided by Mr. Jones of Bunbury and Associates. Essentially, the Municipality’s legal jurisdiction over the Esplanade in this location only extends as far as the blue line indicating “Natural Boundary Scaled from Plan 3149”. As one can readily see, this results in about half of the existing staircase as well as the landing area of any proposed aluminum rampway structure being on Crown land.



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Further, it is important to clarify that the Esplanade and Crown lands, whether “foreshore” or otherwise, are public lands upon which there is a general right of access. For the most part, such access is not restricted nor conditions put upon it other than when there are supplementary considerations, such as the placement of structures upon the land. Where a person wishes to place structures on public land, there are generally processes that are required to be followed to address the liability concerns of the property owner, whether Crown or Municipality.

With respect to the Municipality’s considerations regarding structures to be placed on its lands, such structures, if permitted under an encroachment agreement, are not the property of the Municipality and do not become its property by virtue of being placed on the land – they are still the property of the party seeking the encroachment and the Municipality’s encroachment agreement is a License of Occupation permitting the party to have its structures on Municipal land, subject to obligations with respect to maintenance and repair, waiver of liability and agreement to indemnify the Municipality against any third party claims. An encroachment agreement is not a lease granting any form of tenure in the Municipality’s lands.

Needless to say, the jurisdiction of the Municipality to grant a License of Occupation is limited to its own land or land under its control. Crown land between the legal western boundary of the Esplanade and the ocean is not land under its control. Therefore, in considering the application of the Lunds for an encroachment agreement over the Esplanade, the scope of such License is necessarily restricted to the portion of the proposed structure which trespasses over the Esplanade, either on land or over its air space. Clearly, similar considerations would apply to the existing staircase.

Section 498 of the *Local Government Act* authorizes Council to issue a DVP by resolution. There are no express statutory criteria to guide the exercise of this discretion. If the requested variance is not precluded by s. 498(2) of the LGA (not applicable here), there is no restriction on the factors Council may consider, provided the considerations are not extraneous to its statutory purposes.

The granting of an encroachment agreement, on the other hand, is an exercise of the Village’s corporate powers. The Village has the powers of a natural person, including freedom to contract. This decision is not generally an exercise of a statutory power.



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Given the foregoing, Council may consider whether approving the applications would have a negative effect on a neighbor's rights of access to the beach and whether the applicants and their neighbours can obtain appropriate Crown tenures for portions of their works that would trespass on Crown lands in a way that harmoniously provides for their respective accesses. This is not an exhaustive list, and Council may consider other relevant factors, including the precedent set by approving applications where the applicants have taken some presumptuous steps in advance of permissions.

Based upon the foregoing analysis, and all things considered, it is staff's recommendation to approve the Lunds' applications subject to the following conditions:

A. **Development Variance Permit (DVP)** for a variance of the front/rear yard (ocean facing) setback, at 52 Brunswick Beach Road, from 4.5 metres to 0 metres for the top of an aluminum rampway structure and its supporting elements on or over the applicants' lands subject to:

1. Stamped, certified schedules from qualified professional engineers, or other approvals in writing satisfactory to the Municipality, in accordance with the staff notes in the Information and Processes Required for Applications document, attachment 4 to the Staff Report dated for the January 11, 2022 Special Council Meeting, prior to any site work taking place.

For clarity, the DVP does not include any deck extension – this would require a separate DVP application if such an extension were to be requested in the future.

B. **An Encroachment** of an aluminum rampway structure over the Municipality's Esplanade lands to facilitate access to the foreshore from the Lunds property at 52 Brunswick Beach Road subject to:

1. Approval by the Province of the Lunds' application to Front Counter BC for a foreshore lease or license for any portions of the structure on or over Crown land, provided that such application enable shared access with the owner of 51 Brunswick to the foreshore via the concrete landing, stairs and ramp located on Crown land, a consideration which the Municipality will support in writing to Front Counter BC.



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2. An irrevocable letter of credit or other credit facility acceptable to the Municipality in the amount of \$10,000 to secure the obligations of the applicants as set out in sections A.1 and B.1 above and an included requirement to remove the rampway structure if the Province does not grant the applicants a foreshore lease or license in the terms required under section B.1 above.
3. An executed encroachment agreement with section 218 statutory right of way and section 219 covenant substantially in accordance with the new template of agreement shown in attachment 13 to the January 11, 2022 report, including the foregoing conditions in sections A.1, B.1 and B.2 above, along with the balance of fees payable in respect of the registration of the covenant in the Land Title Office.
4. Such further and other requirements as may be recommended by the Municipality's legal counsel.

It is recommended that the Municipality support an application to Front Counter BC by the owner of 51 Brunswick in terms similar to those noted above for the Lunds. It is recommended that the Municipality not submit its own application to Front Counter BC.

It is further recommended that the Municipality not request an updated natural boundary survey to update the western boundary of the Esplanade in this area at this time.

### **Options:**

- (1) Reject the DVP and Encroachment applications and require the concrete footings poured within the setback area on the Lunds' property to be removed.
- (2) Approve the staff recommendations in the form laid out above or amend them prior to approval. Amendment may include consideration of forcing the angle of the rampway structure to be adjusted such that the terminus is located further north than the spot currently proposed in order to mitigate the potential for future conflict in the limited space of the landing area of the existing staircase and proposed rampway.
- (3) Dispose of the applications in some other manner and instruct staff accordingly.



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**Financial and Legal Considerations:** All financial and legal obligations must be addressed by the applicants prior to the commencement of any work regarding the matters covered in this report.

**Follow Up Action and Communication Plan:** Per Council direction.

# WELLOW

PLAN 10651

PLAN OF SUBDIVISION OF LOTS 20, 21, 23, AND 24 (EXCEPT PORTIONS INCLUDED IN REFERENCE PLAN 4313) AND LOT 22, BLOCK 9;  
 LOTS 1, 2, 3, 4, 5, 8, 9, 10, AND 11, (EXCEPT PORTIONS INCLUDED IN REFERENCE PLAN 4313) AND LOTS 6, 7, AND 12, BLOCK 10;  
 LOT 10 (EXCEPT PORTION INCLUDED IN REFERENCE PLAN 4313) LOT 9, AMENDED LOTS 7 AND 8, AND PORTIONS OF LOTS 11 AND 12, BLOCK 18;  
 AND THOSE PARCELS OF LAND FORMERLY PORTIONS OF ROAD (ESPLANADE) DEDICATED BY THE DEPOSIT OF PLAN 3149,  
 AND LETTERED "A" TO "U" ON EXPLANATORY PLAN 6397,  
 DISTRICT LOT 1815, GROUP 1, NEW WESTMINSTER DISTRICT  
 (PLAN 3149)

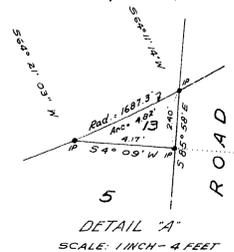
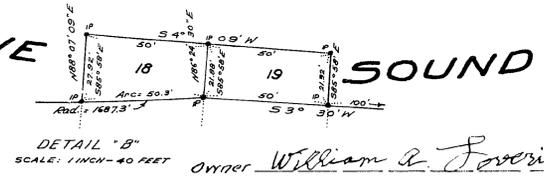
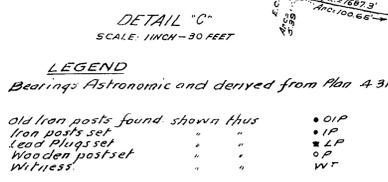
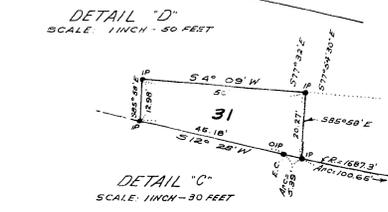
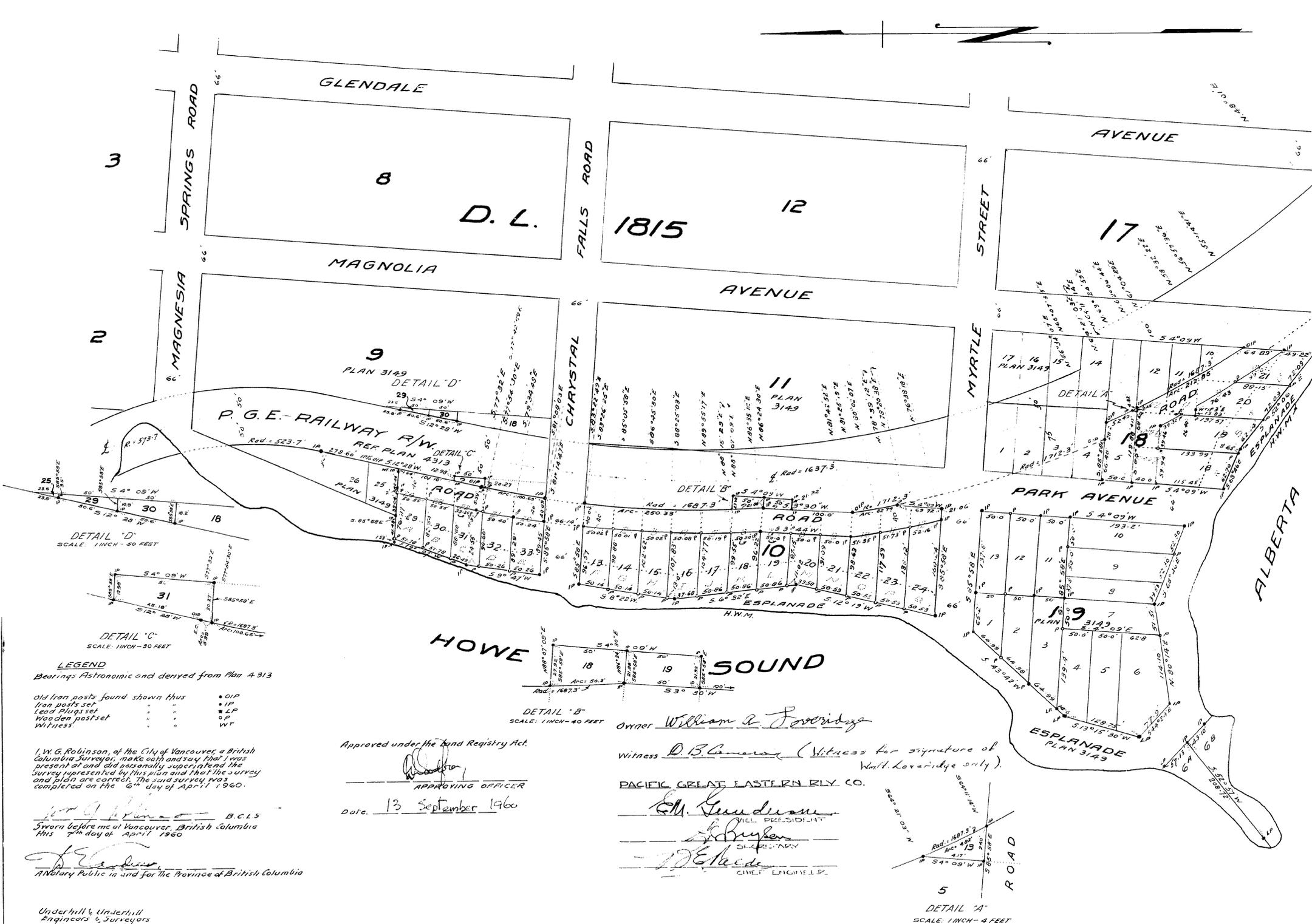
Deposited in the Land Registry Office  
 of Vancouver B.C. this 23rd  
 day of SEPTEMBER 1960.

*Albert Smith*  
 REGISTRAR

*B Frank Gates*  
 WITNESSES TO THE SIGNATURE OF THE GRANTEE  
 HEREUNDER:

- |                        |                     |
|------------------------|---------------------|
| IRVING M. GIBSON       | MIRIAM N. COOPER    |
| ROBERT J. GIBSON       | MARGARET JENNISON   |
| W. ERIC G. THOMSON     | AUDIE I. THOMSON    |
| EDWARD R. WILSON       | EDITH WILSON        |
| WILLIAM J. ROPER       | ISABELLA J. ROPER   |
| WILLIAM G. GRANT       | CLARA G. GRANT      |
| STANLEY S. COOP        | ROBERT N. COOP      |
| EDWARD W. BRANT        | EDITH BRANT         |
| WILLIAM C. FEARN       | PHILIP G. FEARN     |
| PHILIP G. KENDERICK    | TIMELA M. KENDERICK |
| MIRIAM MARILLA EDWARDS |                     |
| DONALD O. STANLEY      |                     |
| ISABEL M. STANLEY      |                     |
| ISABELE C. LOUTH       |                     |

- Roger M. Landrum Miriam N. Cooper*  
*Arthur K. Jennison Margaret Jennison*  
*Annie S. Thomson*  
*Ronald K. Wilson Edith Wilson*  
*Bruce Watson*  
*Blanche Watson*  
*Phyllis M. Rimer*  
*William J. Roper (of J. Roper) Isabella J. Roper*  
*Rudolf A. Larson Paul A. Larson*  
*Minnie Smith*  
*Raymond Bradford Grant Gladys Grant*  
*Stanley S. Coop John M. Coop*  
*Deane Grant Cecie Dorothy Irving Currie*  
*Robert S. Elliott*  
*Malcolm S. Fearn*  
*Philip G. Kendrick Paula L. Kendrick*  
*Charles E. Bennett*  
*Maria Marilla Edwards*  
*Donald O. Stanley*  
*Isabel M. Stanley*  
*Blanche C. Louth*



**LEGEND**  
 Bearings Astronomic and derived from Plan 4313

Old iron posts found shown thus	• OIP
Iron posts set	• IP
Lead plug set	• LP
Wooden post set	• OP
Witness	WT

I, W. G. Robinson, of the City of Vancouver, a British Columbia Surveyor, make oath and say that I was present at and did personally superintend the survey represented by this plan and that the survey and plan are correct. The said survey was completed on the 6th day of April, 1960.

*W. G. Robinson* B.C.L.S.  
 Sworn before me at Vancouver, British Columbia this 7th day of April, 1960.

*J. E. Underhill*  
 Notary Public in and for the Province of British Columbia

Approved under the Land Registry Act.  
*[Signature]*  
 APPROVING OFFICER  
 Date: 13 September 1960

Owner *William A. Foxbridge*  
 Witness *D. B. Cameron* (Witness for signature of *Will. Foxbridge* only).  
 PACIFIC GREAT EASTERN RLY. CO.  
*E. M. Gaudreau* VICE PRESIDENT  
*J. Schryer* SECRETARY  
*D. E. Leckie* CHIEF ENGINEER

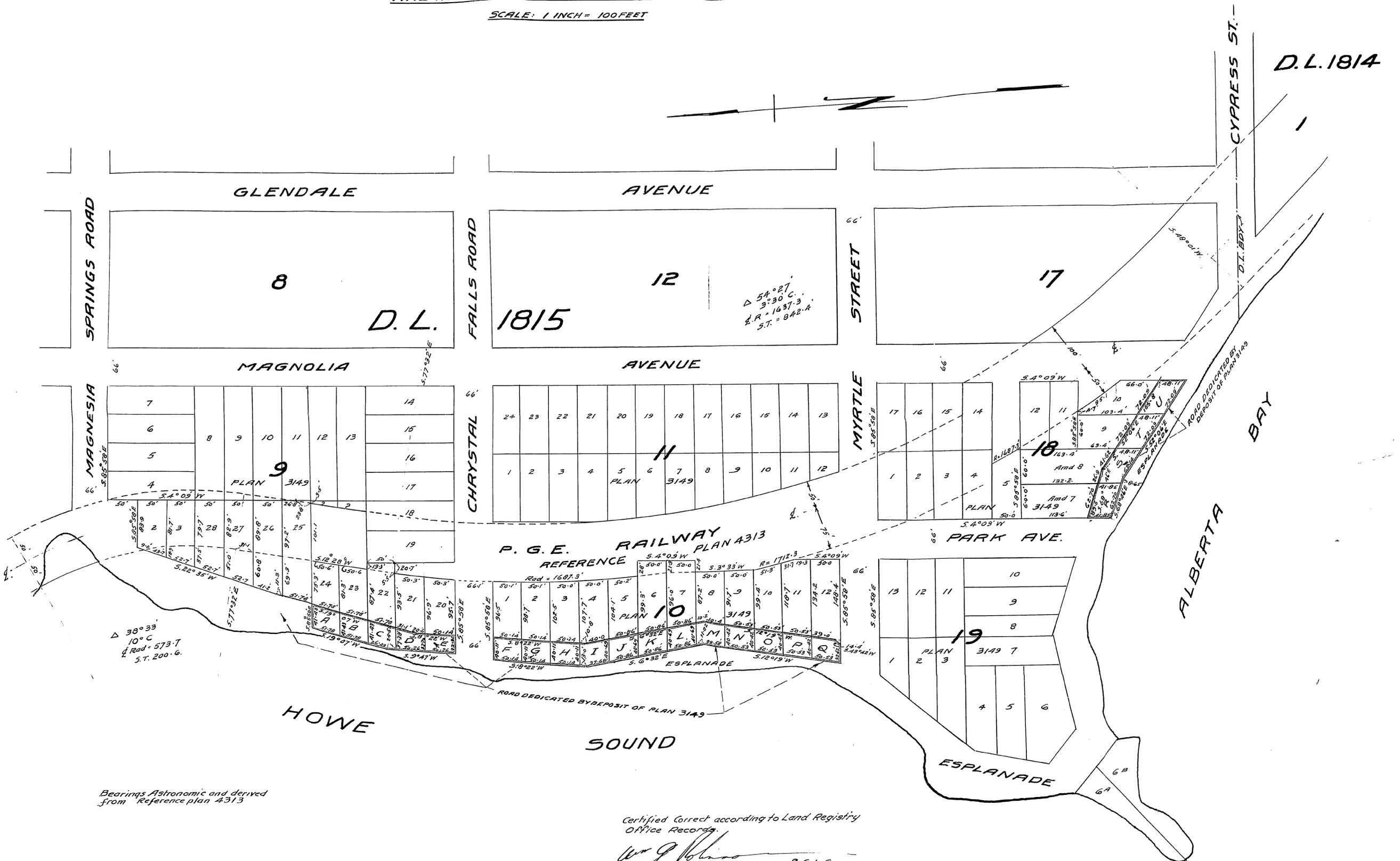
Underhill & Underhill  
 Engineers & Surveyors  
 Vancouver B.C.

PLAN TO ACCOMPANY ORDER UNDER THE "PLANS CANCELLATION ACT"  
 SHOWING PARCELS FORMERLY  
 PORTIONS OF ROAD (ESPLANADE) DEDICATED BY THE DEPOSIT OF PLAN 3149; ADJACENT  
 TO LOTS 20, 21, 23, AND 24 (EXCEPT PORTIONS INCLUDED IN REFERENCE PLAN 4313) AND LOT 22, BLOCK 9;  
 LOTS 1, 2, 3, 4, 5, 8, 9, 10, AND 11 (EXCEPT PORTIONS INCLUDED IN REFERENCE PLAN 4313) AND LOTS 6, 7, AND 12, BLOCK 10;  
 AND LOT 10 (EXCEPT PORTION INCLUDED IN REFERENCE PLAN 4313), LOT 9 AND AMENDED LOTS 7 AND 8, BLOCK 18,  
 ALL OF DISTRICT LOT 1815, GROUP 1, NEW WESTMINSTER DISTRICT (PLAN 3149);  
 WHICH SAID PARCELS ARE LETTERED 'A' TO 'U' INCLUSIVE AND  
 ARE INCLUDED WITHIN THE RED OUTLINES HEREON

Deposited in the Land Registry Office  
 of Vancouver B.C. this  
 day of \_\_\_\_\_ 1960

SCALE: 1 INCH = 100 FEET

REGISTRAR



Bearings Astronomic and derived  
 from Reference plan 4313

Certified Correct according to Land Registry  
 Office Records.

*W. J. Underhill*  
 B.C.L.S.  
 March 18 1960



