

RECOMMENDATIONS ON BED & BREAKFAST REGULATIONS AND POLICY

REPORT TO MAYOR & COUNCIL, TOWN OF BANFF
from the BED & BREAKFAST WORKING GROUP

AS A RESULT OF MEETINGS HELD BETWEEN
JULY 24, 2019 AND JANUARY 9, 2020

Prepared by:



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1. Method

1.1 The committee

Council directed administration to seek community and stakeholder input. As one aspect of this input, administration recruited a committee of both community and stakeholders, with five members of the general public, three B&B home operators, one B&B Inn operator and one representative from the hotel sector. The committee was tasked with creating recommendations to Council, with the understanding that Council would also receive input from other sources.

Committee members were:

Bed and Breakfast Home Operators (3)
Theresa Gawron (7 meetings attended)
Edwina Handley (7 meetings attended)
April Wood (5 meetings attended)

Bed and Breakfast Inn Operator (1)
Lee O'Donnell (7 meetings attended)

Hotel Sector (1)
Sean O'Farrell (7 meetings attended)

Public Members (5)
Ross Glenfield (7 meetings attended)
Bonnie Lothrop (7 meetings attended)
Ken McMurdo (7 meetings attended)
Katie Tuff (1 meeting attended)
Mark Walker(6 meetings attended)

The committee was supported by staff members Darren Enns and Dave Michaels and by facilitator Leslie Taylor.

Over the course of seven meetings, this committee reviewed options in the various areas covered by the report to Council, proposed and discussed other areas for consideration, and edited and approved a final report.

The committee attempted to reach consensus on each recommendation. Where consensus proved impossible, the number of dissenters was recorded, along with the reason for dissent.

For all recommendations, the numbers of committee members in support and not in support is recorded. This number may not add up to ten, depending upon how many committee members were in attendance on the day that the recommendation was discussed.

1.2 This report

In this report, decisions of the committee are presented in three ways:

- **Consensus recommendation:** these are recommendations upon which all committee members in attendance agreed.

- **Non-consensus recommendation**: these are recommendations upon which the majority of the committee agreed. Dissenting numbers are recorded, along with their reason(s) for dissent.
- **Non-consensus non-recommendation**: these are items that the majority of the committee disagreed with, but the item was supported by one or more dissenter. Dissenting numbers are recorded, along with their reason(s) for dissent.

For each of the recommendations, the numbers of people for and against is recorded, as numbers varied depending on attendance at the meeting.

For each of the recommendations, or groups of recommendations, a recommendation is made by the committee regarding **Implementation**.

This report includes only the recommendations that were supported by at least one member of the committee. However, the many ideas that were reviewed but not recommended by the committee can be seen in the approved meeting notes from the committee, attached to this report as Appendix A, and in the council report cross-referencing, attached to this report as Appendix B.

1.3 The appendices

The approved meeting notes from the committee are attached to this report as Appendix A. It is important to review the meeting notes as a whole, since a decision made in one meeting may have been reversed at a later meeting. It is also important to note that some committee members changed their positions on issues at the draft report stage. These changes are reflected in the final report, but may not be clear in meeting notes. In any case of conflict, the final report takes precedence.

The original administration report to Council is attached to this report as Appendix B. Notes have been added (in parentheses and **highlighted in yellow**) to each option presented to show the reader where in this committee report, or in Appendix A, the committee's related recommendation can be found.

1.4 Bed & breakfast inns vs. bed & breakfast homes

When reading this report, it is important to remember the distinction between bed & breakfast inns and bed & breakfast homes. For legal definitions, please refer to the Land Use Bylaw.

Bed & breakfast inns are a limited group of larger bed and breakfasts that were in operation before incorporation and were grandfathered in the new Town's bylaws. There is no provision for any new bed & breakfast inns to be created.

Bed & breakfast homes are homes where the live-in owner welcomes paying guests into his/her principal residence, subject to the requirements of the Town's bylaws.

The majority of the recommendations in this report apply to bed & breakfast homes. Only sections 3, 9.1, 9.4, 9.6, 10 and 11 apply to Bed & Breakfast Inns.

2. Quota Allocation

Consensus recommendation (10 members supporting): That the overall number of potential B&B licenses for the town remain at 65.

Implementation (9 members supporting): To continue to be in effect for all B&Bs.

Consensus recommendation (9 members supporting): In consideration of the changing nature of the town since the original decisions were made, that Council review the existing allocations and consider possible transfers of quota spots to full districts, by removing spots from less popular districts. As a bylaw change, this would require public input.

Implementation (9 members supporting): That any changes be applicable to new applications as soon as those changes are enacted.

Non-consensus recommendation (6 members supporting, 3 members opposed): Reintroduce a physical separation between B&Bs (similar to the previous physical separation) in order to maintain neighbourhood character, and ask Planning to provide options for this. The point was made that two adjacent B&Bs are not a problem if they are back to back, facing different streets, so that an "as the crow flies" distance separation is too simplistic.

Implementation (6 members supporting, 3 members opposed): The committee recommends that the physical separation regulation be applied to all new applications, and that existing properties be grandfathered until they are sold, in which case the new operator would fall under the requirements. Three members opposed because of the potential effect on selling B&B properties, if this is applied to existing B&Bs when the building(s) in which they are operating are sold.

3. B&B Inn Redevelopment

The committee discussed situations in which a Bed & Breakfast Inn might be redeveloped, such as after a fire has destroyed the building, or when an owner wishes to replace the building.

Non-consensus recommendation (6 members supporting, 2 opposed): that B&B Inns be allowed to redevelop under the following conditions:

- The redeveloped Inn does not exceed the square footage of the former Inn.
- The redeveloped building(s) conforms to the requirements (setbacks, FAR, height, etc.) of the district in which it is located
- Mixed use (Inn and residential) is fine, as long as the B&B Inn portion of the development does not exceed the square footage of the former B&B Inn, and the total development meets all the requirements of the district in which it is located.

Two members opposed because they believe that a redeveloping Inn should be able to develop the Inn portion to the maximum standards allowed in the district.

Implementation (9 members supporting): That any changes be applicable to B&B Inn redevelopment applications as soon as those changes are enacted.

Non-consensus recommendation (7 members supporting, 2 opposed): On the question of whether parking requirements when B&B inns redevelop should meet the B&B home standard of one parking stall per bedroom (rather than the current B&B Inn standard of 0.5 parking stall per bedroom), the group supported one parking stall per bedroom in the case of B&B inn redevelopment, with two members opposed because of concern about the effect on the operator of such a change in his/her requirements and because the Town is lowering parking requirements for other uses in the residential areas.

Implementation (9 members supporting): That any changes be applicable to B&B Inn redevelopment applications as soon as those changes are enacted.

4. Heritage

Consensus recommendation (9 members supporting): That Council change any relevant references to recognized 'A' or 'B' ranked heritage resource to "buildings identified on the heritage inventory", as the Heritage Corporation has moved to a single list of properties that have heritage value rather than a ranking system.

Implementation (9 members supporting): That any changes be applicable as soon as those changes are enacted.

Non-consensus recommendation (6 members supporting, 2 opposed): That Council remove Clause 10.3.8 of the Land Use Bylaw (A [Development Approving Authority](#) [may](#) approve a [development permit](#) for a bed and breakfast home that does not conform to this Bylaw only if, in its opinion, a variance to this Bylaw would contribute to the preservation of a recognized 'A' or 'B' ranked heritage resource as identified in the [Town of Banff Heritage Corporation Inventory](#)), thereby allowing access to variances for all B&B applications, regardless of heritage status, with the following provisos:

- The requirement for a live-in owner may not be varied
- The allocation overall and by district may not be varied

(See also under Application Process).

Supported by the group, but not supported by two members, one of whom believes that B&B regulations should be met in their entirety, and that only heritage properties should be eligible for variance, and the other of whom believes that district allocations should be able to be varied, depending on circumstance.

Implementation (9 members supporting): That any changes be applicable to new applications as soon as those changes are enacted, and that existing B&Bs be grandfathered for variances granted in the past.

5. Accessory Use/Live-In Owner

5.1 General principles and additional guidance for development approving authorities

General discussions within the group established agreement on shared principles:

- the group fully supports the requirement for live-in owners
- the group did not remove the option of corporate ownership of B&Bs as they feel that the way it is defined in the bylaw protects the concept of live-in owners
- the group fully supports the intent of a positive visitor experience
- the group wants to avoid recommendations that are about micro-managing internal B&B operations

The group expressed interest in a "preamble" in the bylaw or in policy, for the guidance of development approving authorities, that would state the intention that B&B homes should be an accessory use, and provide examples of the sorts of indicators that would normally mark an accessory use, while pointing out that not all B&Bs would meet every indicator.

The group supports the existing definition of live-in owner and recommends that Council consider this definition to include adult members of the immediate family (parents or children) of the owner on title that are resident in the home. The group recommends a statement in a bylaw preamble or in policy that states that a live-in owner would normally be involved in a variety of aspects of services such as:

- Cleaning of the property
- Laundry
- Managing a website/online service
- Communicating with potential guests via phone/online for booking enquiries etc.
- Cooking/preparing of breakfast
- Arranging for someone to stay onsite when the owner is not at the property for any period of time
- Meeting/checking in guests
- Building/property maintenance
- Marketing
- Accounting

5.2 Ensuring live-in owner

Consensus recommendation (8 members supporting): that the regulations be clarified, specifying the number of nights that an owner can be absent and the B&B can continue to operate. The group supported this on the following conditions:

- the owner sends an email to the town stating that they are absent and who is in charge
- longer absences could be granted after notification of an emergency situation
- the number of days to be specified for such a provision, as identified by different group members, ranged from 5 to 21. No consensus was reached on number of days.
- there would need to be a maximum number of days per year for this provision - in other words, you couldn't have (for example) thirty 5-day absences just by notifying the town.

Non-consensus recommendation (7 members supporting, 1 opposed): Requiring that live-in owners keep a log of who is in residence at the property when guests are present (this is not a guest log, it is a log of the owner/operator being in residence). Supported by the group, but one member was not in support, stating that asking the owner to write his/her name every day seems silly.

Non-consensus non-recommendation (1 member supporting, 7 opposed): Requiring that at least one of the owner's bedrooms is above grade. Not supported by the group, but supported by one member who described circumstance(s) which have been seen by members of his organization which involve owners ceding the upper house to guests and sleeping in substandard accommodation below.

Non-consensus non-recommendation (2 members supporting, 6 opposed): Requiring that operators supply breakfast to guests. Not supported by the group but supported by two members who felt that this service is integral to visitor experience and interaction with host.

Implementation (9 members supporting): That any changes arising from this section 5.2 be applicable universally as soon as those changes are enacted.

5.3 Changes of use

The committee discussed circumstances wherein bed & breakfast units such as backyard cabins might be operated as accessory dwellings in less busy periods. This has been considered a potential issue because a bed & breakfast unit may not include a kitchen, but an accessory dwelling may include a kitchen.

Non-consensus recommendation (8 members supporting, 1 opposed): that Council change the regulations to allow greater flexibility to legally toggle between B&B use and accessory dwelling use. This was supported by the majority, but not supported by one member, who expressed concern that the kitchens would remain set up during the B&B periods, contrary to requirements for B&Bs.

Non-consensus non-recommendation (7 members do not support prohibition, 2 members support prohibition): The committee does not recommend prohibiting conversion of existing accessory dwellings to B&Bs. However, two members dissented, expressing concern about the loss of rental housing supply.

Implementation (9 members supporting): That any changes arising from this section 5.3 be applicable universally as soon as those changes are enacted.

6. Taxes

Non-consensus non-recommendation (1 member supporting, 7 opposed): Set a differential tax rate. This would apply a tax higher than the current residential tax rate on these properties.

Non-consensus non-recommendation (1 member supporting, 7 opposed): Proportionately assess the property as non-residential.

7. Fees

The group expressed the opinion that approaches such as cost recovery, or charging legitimate operators for enforcement against unlicensed operators, should not be applied to the B&B sector uniquely, but only when they are applied to all business sectors equally. The group also expressed the opinion that enforcement cost recovery should be through penalties on the guilty parties, not levies against legitimate operators.

Non-consensus non-recommendation (1 member supporting, 6 opposed): Increase application and renewal fees somewhat, but not to full cost recovery. This was not supported by the group, but was supported by one member, who felt that the current fees could be increased without undue hardship.

8. Application process

8.1 Application by owner only

Non-consensus recommendation (6 members supporting, 2 opposed): Limit B&B applications to existing property owners only, and not allowing applications by a potential purchaser during the sale process. Supported by the group, but not supported by two members, who prefer the status quo, do not believe that the practice of advance conditional approvals is an issue, and believe that it is important to be able to apply during the sales process to help with housing affordability.

Implementation (9 members supporting): That any changes arising from this section 8.1 be applicable universally as soon as those changes are enacted.

8.2 Statutory declarations and restrictive covenants

Consensus recommendation (8 members supporting): Continue the use of statutory declarations regarding new operators' awareness of the conditions of their development permit. (see also section 10.2)

Non-consensus recommendation (7 members supporting, 1 opposed): Discontinue the practice of registering development permit conditions against title as a restrictive covenant. The majority of the group supported discontinuing restrictive covenants, with one member dissenting, who felt that a restrictive covenant is a more useful tool for enforcement.

Implementation (9 members supporting): That any changes arising from this section 8.2 be applicable universally as soon as those changes are enacted, with existing operators signing a one-time statutory declaration upon their next renewal, and new operators signing before commencing operations.

8.3 Variances

Non-consensus recommendation (7 members supporting, 1 opposed): Remove Clause 10.3.8 of the Land Use Bylaw (A *Development Approving Authority* *may* approve a *development permit* for a bed and breakfast home that does not conform to this Bylaw only if, in its opinion, a variance to this Bylaw would contribute to the preservation of a recognized 'A' or 'B' ranked heritage resource as identified in the *Town of Banff Heritage Corporation Inventory*), thereby allowing access to variances for all B&B applications, regardless of heritage status, with the following provisos:

- The requirement for a live-in owner may not be varied
- The allocation overall and by district may not be varied

(See also under Heritage).

Supported by the group, but not supported by one member, who believes that B&B regulations should be met in their entirety, and that only heritage properties should be eligible for variance.

Implementation (9 members supporting): That any changes arising from this section 8.3 be applicable to all new applications as soon as those changes are enacted, and that existing development permit conditions for existing operations not be affected by this change.

8.4 Definition of maximum occupancy (people per room)

The group stressed that in any discussion of this area, the word "pillow" equates to "person", and the word "pillows" equates to "people". Numbers of pillows = numbers of people.

Consensus recommendation (9 members supporting): That new bed and breakfast applications should disclose the number of pillows (people) being applied for at the development permit application stage.

Non-consensus recommendation (7 members supporting, 2 members opposed): That the development permit application should also disclose the number of pillows (people) being applied for per room for each bedroom covered by the application. Supported by the group but not supported by two members, on the basis that where the pillows are distributed among the bed and breakfast rooms is immaterial.

Non-consensus recommendation (7 members supporting, 2 members opposed): That the maximum number of pillows (people) overall for any bed and breakfast application should be set at 2X the number of bedrooms being applied for plus 2 additional "flex" pillows. Supported by the group but not supported by two members, who felt that we have properties that currently exceed those numbers and that the total number should be set on a site-by-site basis, and that they don't want to discriminate against families who want to share a room, and that sites should be able to take advantage of their different room types.

Implementation (9 members supporting): That any changes arising from this section 8.4 be applicable to new B&B home applications as soon as those changes are enacted. The pillow number designated at development permit would then carry through to business license billing, creating consistency.

9. Renewal process

9.1 Renewals for compliant properties

Compliant properties are those which have a consistent history of operating without problems being identified by the Town, their guests, or the public.

Consensus recommendation (8 members supporting): The group recommends that compliant properties be allowed to renew every three years instead of annually, and that the renewal fee should be the same as three times the current annual fee, and that it should be billed annually.

Non-consensus recommendation (varied inputs): On how to become identified as a "compliant property", there was a split, with some members feeling that everyone should start as compliant until a problem arises, and others suggesting that a period of time (varied inputs from two years to five years) without enforcement action constitutes compliance.

Non-consensus non-recommendation (4 members supporting, 5 opposed): On the question of whether a physical inspection should automatically be required upon renewal in the case of renewals after more than one year has passed, there was a 4/5 split. Those who did not support this stated that physical inspections are rarely carried out now and that having them only when identified as a need by the Town would be sufficient.

Implementation (9 members supporting): That any changes arising from this section 9.1 be applicable universally as soon as those changes are enacted.

9.2 Statutory declarations

Consensus recommendation (8 members supporting): that the statutory declaration, indicating the operator's awareness of the development permit conditions that apply to his/her permit, be included as a one-time requirement for all operators (presently, it is used only on new applications, the suggestion is that current operators be included on renewal). (see also section 8.2).

Implementation (9 members supporting): That any changes arising from this section 9.2 be applicable universally as soon as those changes are enacted, with existing operators signing a one-time statutory declaration upon their next renewal, and new operators signing before commencing operations.

9.3 "Sitting on" licenses

Non-consensus recommendation (6 members supporting, 3 opposed): The group discussed whether B&B operators who operate only seasonally or not at all should be required to operate a minimum number of days per year to avoid the practice of "sitting on" licenses. The group recommends that no action be taken on this at this time, as the majority of the group does not perceive this as a widespread problem. Three committee members dissented, recommending a provision that requires operators to declare that they are active.

Consensus recommendation (9 members supporting): In order to determine whether "sitting on" licenses is a problem, that Council direct administration to identify the number of inactive licenses, specifying how many are in "full" zones.

Implementation (9 members supporting): That any changes arising from this section 9.3 be applicable universally as soon as those changes are enacted

9.4 Timing of renewal process in calendar year

Consensus recommendation (8 members supporting): The group supports a rescheduling of renewals, so that they are complete before the new year begins. At present, because the renewal process begins so late in the year, operators are technically without licenses for the first couple of months of the calendar year.

Implementation (9 members supporting): That any changes arising from this section 9.4 be applicable universally as soon as those changes are enacted.

9.5 Notification of community when allocation becomes available

Consensus recommendation (8 members supporting): In a previously full district, when an allocation or allocations become available, the existence of this/these available allocation(s) should be advertized through normal channels for two weeks, with a reasonable deadline set for applications. If more applications than allocation are received, the lottery should be triggered. Only complete applications are included in the lottery.

Non-consensus non-recommendation (2 members supporting, 7 opposed): That the lottery be replaced by a points-based merit system, in other words, a competitive process based on the quality of the application and the abilities of the applicants.

Implementation (9 members supporting): That any changes arising from this section 9.5 be applicable universally as soon as those changes are enacted.

9.6 Notification of neighbours when renewal is pending

Notification of neighbours was briefly discussed, but was removed from the agenda as this has recently been dealt with by council. It is the group's understanding that renewals will not trigger any notification, and new applications will result in notification by postcard to all properties within 45 metres.

10. Enforcement Options

Consensus recommendation (9 members supporting): That higher penalties for unlicensed operation of B&Bs are warranted, and that a deterrent is needed. The group recommends the same penalties as Canmore (\$2500 first offence, \$5000 second offence). The group suggests that the regulations be reworded as needed to clarify that advertizing the service is sufficient to show that unauthorized use is taking place.

Consensus recommendation (9 members supporting): That people who have operated illegal (unlicensed) accommodations should be prohibited from applying for a B&B license for two years after the offence.

Consensus recommendation (9 members supporting): That operating unlicensed (additional) bedrooms in a licensed B&B is a more serious class of offence than an administrative oversight such as failing to keep license-plate logs. The group agreed to recommend to council that operating unlicensed (additional) bedrooms should attract a higher penalty, (such as the penalty for operating unlicensed accommodations), and that purely administrative offences can remain at their current level of penalties.

Consensus recommendation (9 members supporting): The group agreed that notice of inspection should be left as is.

Implementation (9 members supporting): That any changes arising from this section 10 be applicable universally as soon as those changes are enacted.

11. Implementation of regulation changes

In the case of each recommendation (or group of recommendations) above, the committee has included its recommendation for the implementation of regulation changes.

When regulation changes are contemplated or implemented:

Consensus recommendation (9 members supporting): that Council direct administration to keep stakeholders informed and engaged as the process continues.

Consensus recommendation (9 members supporting): that Council direct administration to individually inform existing B&B operators of any regulation changes that affect them.

Appendix A

This Appendix includes all of the approved meeting notes from the committee. It is important to review the meeting notes as a whole, since a decision made in one meeting may have been reversed at a later meeting. It is also important to note that some committee members changed their positions on issues at the draft report stage. These changes are reflected in the final report, but may not be clear in meeting notes. In any case of conflict, the final report takes precedence.

Meeting notes
B&B Working Group
July 24, 2019, 9 a.m. - noon
Town Hall - Council Chambers

Attendees:

Bed and Breakfast Home Operators (3)

Theresa Gawron
Edwina Handley
April Wood

Bed and Breakfast Inn Operator (1)

Lee O'Donnell

Hotel Sector (1)

Sean O'Farrell

Public Members (5)

Ross Glenfield
Bonnie Lothrop
Ken McMurdo
Kathleen Tuff
Mark Walker

Staff and facilitator (3)

Darren Enns
Dave Michaels
Leslie Taylor

Future meeting dates and times:

The group agreed on September 13 and October 4. Dave Michaels will poll the group for a further two dates.

The group agreed on meetings from 11 am to 2 pm, as this time is more convenient for the B&B operators. (NOTE: snacks will be provided, but not lunch).

Committee chair:

The group agreed to elect a committee chair at their final meeting, as the main duty of the chair will be to present the committee's report to Council.

Ground rules:

The group agreed to the following ground rules, which will be on the table at each meeting:

- Come prepared - read packages, give thought to the questions
- We're all here for all Banffites - bring your own experience, but decide for the best of all
- Be completely present - use devices only for meeting purposes

- Disagreement is helpful - as long as it's policy-based, not personal, it can help find solutions
- Solo is okay - just because you are the only person expressing a particular opinion doesn't mean that it's wrong
- Listen to understand - not just to formulate your response
- Yes and how... - rather than "Yes, but ..." helps build solutions
- Share the air - state your opinions succinctly, give others their turn
- Silence is agreement - speak up if you disagree with a direction, in the meeting, not in the hall afterwards
- No decision is final until the final report. Every proposed recommendation is open to be revisited in light of a change in input, evidence, or interaction with other recommendations.

Consensus and majority/minority reporting:

The group agreed with the presented definition of consensus ("It may or may not be perfect, but I can live with it, and I will support it, both in this room and outside this room").

If consensus cannot be reached, the group agreed that a majority and a minority opinion will be reported, with numbers and reasons for each.

Working with the public gallery:

The group agreed that the following will be announced at the beginning of each meeting:

"Members of the public are very welcome to listen to the discussion. If a gallery member wants to have input ... There are sheets of paper and pens at the front of the gallery. If you have a thought that you want in the discussion and you're not hearing anyone say it, write it down and pass it to someone on the committee that you know or who is representative of your part of the community, so they have the opportunity to bring it up."

If committee members occasionally need a time out to check something with someone in the gallery, the group agreed that they will let the facilitator know and we'll try to take a short break to accommodate that.

Getting the word out to interested parties:

Dave Michaels will post a newspaper ad once all the meeting dates have been confirmed.

Recording of notes:

The group agreed that the facilitator will provide a record of decisions made after each meeting.

Maximum number of B&Bs:

The group agreed that the overall number should remain at 65.

The group agreed that there should not be a part of that number designated specifically for designated heritage properties, because it appears that the disadvantages of designation make it unlikely that that part of the quota would ever be completely filled.

On how the 65 spots should be allocated among districts, the following points (from the group discussion) remain for examination at the next meeting:

- reallocate some or all of the vacant allocation into popular districts or not?
- count licensed rooms or licensed operators within the districts?

Enforcement options:

Move to the next meeting.

Parking lot:

The group indicated interest in involving someone from the Banff Heritage Corporation at the meeting where heritage is specifically discussed.

Meeting notes
B&B Working Group
September 12, 2019, 11 a.m. - 2 pm
Town Hall - Council Chambers

Attendees:

Bed and Breakfast Home Operators (3)

Theresa Gawron

Edwina Handley

Bed and Breakfast Inn Operator (1)

Lee O'Donnell

Hotel Sector (1)

Sean O'Farrell

Public Members (5)

Ross Glenfield

Bonnie Lothrop

Ken McMurdo

Mark Walker

Staff and facilitator (3)

Darren Enns

Dave Michaels

Leslie Taylor

Notes from the last meeting:

The group agreed that the notes from the last meeting were accurate.

Reminder: committee purpose, intended outcome and ground rules

The facilitator reviewed the purpose, outcome and ground rules for the committee, including how the committee works with the public gallery.

Quota allocation:

The group agreed NOT to recommend a change to allocating licensed rooms as well as licensed operators.

The group agreed to recommend reintroducing a physical separation among B&Bs (similar to the previous 75 metres) in order to maintain neighbourhood character, and to recommend to Council that they ask Planning to provide options for this. The point was made that two adjacent B&Bs are not a problem if they are back to back, facing different streets, so that an "as the crow flies" distance separation is too simplistic.

The group discussed recommending that some of the unused quota in the RBA be reassigned to the RMR. This resulted in a split decision, as follows:

Four attendees felt comfortable supporting this recommendation. Their reasons were:

- The RBA properties generate a better return on investment for owners as high-density housing than as B&Bs
- The RBA properties are important to the town's housing stock as high-density housing
- this transfer would take allocation from a low-demand B&B district to a high-demand B&B district
- This would provide an immediate opportunity to some homeowners to apply for a license
- the present RMR allocation (4% of the available single-family housing stock) is unusually low when compared to other districts.

Four attendees did not support this recommendation. Their reasons were:

- Right now is a snapshot in time. Conditions may be different in the future.
- We would need input from people who live in the RMR.
- Quotas work just fine as they are.
- There are very few single family homes in the RBA. Should B&Bs be allowed in other types?

B&B Inns redevelopment:

The group agreed to recommend to Council that B&B Inns be allowed to redevelop under the following conditions:

- The redeveloped Inn does not exceed the square footage of the former Inn
- The redeveloped building(s) conforms to the requirements (setbacks, FAR, height, etc.) of the district in which it is located
- Mixed use (Inn and residential) is fine, as long as the B&B Inn portion of the development is at or under the square footage of the previous B&B Inn, and the total development meets all the requirements of the district in which it is located.

The group agreed NOT to recommend a formal letter from the Town to Parks seeking clarification on the commercial floor area cap implications of B&B Inns.

Heritage options

The group agreed to recommend to Council that Clause 10.3.8 of the Land Use Bylaw (A [*Development*](#) Approving Authority [*may*](#) approve a [*development permit*](#) for a bed and breakfast home that does not conform to this Bylaw only if, in its opinion, a variance to this

Bylaw would contribute to the preservation of a recognized 'A' or 'B' ranked heritage resource as identified in the [Town of Banff Heritage Corporation Inventory](#)) should remain in the Bylaw, as long as the following conditions are met:

- The requirement for a live-in owner may not be varied
- The allocation overall and by district may not be varied

Parking Lot:

Items that we want to be sure we get to before the end of the last meeting:

- restrictive covenant
- statutory declaration
- licenses only used seasonally, or not used
- parking requirements when B&B Inns redevelop, should they then match B&Bs?

Next meeting:

Friday, September 13 at 11 a.m.

Meeting notes
B&B Working Group
September 13, 2019, 11 a.m. - 2 p.m.
Town Hall - Council Chambers

Attendees:

Bed and Breakfast Home Operators (3)

Theresa Gawron
Edwina Handley
April Wood

Public Members (5)

Ross Glenfield
Bonnie Lothrop
Ken McMurdo
Mark Walker

Bed and Breakfast Inn Operator (1)

Lee O'Donnell

Staff and facilitator (3)

Darren Enns
Dave Michaels
Leslie Taylor

Hotel Sector (1)

Sean O'Farrell

Notes from the last meeting:

The group agreed that, with the changes proposed, the notes from the last meeting were accurate.

Reminder: committee purpose, intended outcome and ground rules

The facilitator reviewed the purpose, outcome and ground rules for the committee, including how the committee works with the public gallery.

Enforcement options

The group agreed to recommend to Council that higher penalties for unlicensed operation of B&Bs are warranted, and that a deterrent is needed. The group recommends the same penalties as Canmore (\$2500 first offence, \$5000 second offence). The group suggests that the regulations be reworded as needed to clarify that advertizing the service is sufficient to show that unauthorized use is taking place.

The group agreed to recommend to council that people who have operated unlicensed accommodations should be prohibited from applying for a B&B license for two years after the offence.

The group agreed that operating unlicensed (additional) bedrooms in a licensed B&B is a more serious class of offence than an administrative oversight such as failing to keep license plate logs. The group agreed to recommend to council that operating unlicensed bedrooms should attract a higher penalty, (such as the penalty for operating unlicensed accommodations), and that purely administrative offences can remain at their current level of penalties.

The group agreed that notice of inspection should be left as is.

Accessory use

General discussions within the group established agreement on shared principles:

- the group fully supports the requirement for live-in owners
- the group fully supports the intent of a positive visitor experience
- the group is concerned about micro-managing internal B&B operations

The following options were not supported by the group:

- i. Prohibit B&B within any accessory structure
- iv. reduce number of bedrooms to three
- v. introduce a bedroom quota
- restrict to 50% or less of the number of bedrooms at the property
- vi. restrict %age of floor area
- vii. require owner's bedroom to be largest bedroom at property

The following options were split decisions:

- ii. prohibit conversion of existing accessory dwellings - not supported by the majority, but supported by two members, who expressed concern about the loss of rental housing supply.
- iii. Allow greater flexibility to legally toggle between B&B and accessory dwelling use - supported by the majority, but not supported by one member, who expressed concern that the kitchens would remain set up during the B&B periods, contrary to requirements for B&Bs.

Parking Lot:

Items that we want to be sure we get to before the end of the last meeting:

- restrictive covenant

- statutory declaration
- licenses only used seasonally, or not used
- parking requirements when B&B Inns redevelop, should they then match B&Bs?
- items around renewals: can we have a longer period between renewals for compliant properties (and should physical inspections then be required at renewal), should we notify more than the directly adjacent neighbours when renewals come up for consideration, should we always have public notification when allocation becomes available in a previously full district.

6. Summarize, confirm date for next meeting, and adjourn

Our next meeting will be October 4th, in Council Chambers, 11 am to 2 pm.

Dave Michaels will contact everyone by email to establish dates for two more meetings after the 4th.

Meeting notes
B&B Working Group
October 4, 2019, 11 a.m. - 2 p.m.
Town Hall - Council Chambers

Attendees:

Bed and Breakfast Home Operators (3)

Theresa Gawron
Edwina Handley
April Wood

Public Members (5)

Ross Glenfield
Bonnie Lothrop
Ken McMurdo

Bed and Breakfast Inn Operator (1)

Lee O'Donnell

Staff and facilitator (3)

Dave Michaels
Leslie Taylor

Hotel Sector (1)

Sean O'Farrell (up to end of Accessory Use)

Notes from the last meeting:

The group agreed that, with the changes proposed, the notes from September 13 were accurate.

Reminder: committee purpose, intended outcome and ground rules

The group did a round-table check-in re sectors and reasons for being on the committee. The facilitator reviewed the ground rules for the committee.

Accessory use

The group expresses interest in a "preamble" in the bylaw or in policy, for the guidance of development approving authorities, that would state the intention that B&B homes should be an accessory use, and provide examples of the sorts of indicators that would normally mark an accessory use, while pointing out that not all B&Bs would meet every indicator.

The following options were supported by the group:

- xiii. Specifying the number of nights that an owner can be absent and the B&B can continue to operate. The group supported this on the following conditions:

- the owner sends an email to the town stating that they are absent and who is in charge
- longer absences could be granted after notification of an emergency situation
- the number of days to be specified, as identified by group members, ranged from 5 to 21
- there would need to be a maximum number of days per year for this provision - in other words, you couldn't have (for example) thirty 5-day absences just by notifying the town.

The following options were not supported by the group:

- x. requiring that a bed & breakfast be operated for a minimum number of nights per year. The group felt that this was not a support of "accessory use", and that a measure to support "accessory use" would be a maximum number of nights, not a minimum. The aspect of "sitting on an unused license" was moved to the parking lot.
- xi. Removing corporate ownership for B&B homes.
- xii. Restricting the number of owners (joint tenants or tenants in common) and requiring that all of them reside at the property as their primary residence.

The following options were split decisions:

- viii. Requiring that at least one of the owner's bedrooms is above grade. Not supported by the group, but supported by one member who described circumstance(s) he has seen which involve owners ceding the upper house to guests and sleeping in substandard accommodation below.
- ix. Requiring that operators supply breakfast to guests. Not supported by the group but supported by one member who felt that this service is integral to visitor experience and interaction with host.
- xiv. Requiring that live-in owners keep a log of who is in residence at the property when guests are present. Supported by the group, but one member was not in support, stating that asking the owner to write his/her name every day seems silly.

Taxes

The following options were not supported by the group:

- A differential tax rate, higher than the current residential tax rate, on the whole of B&B properties.
- Assessing the portion of the property used as B&B at a non-residential rate.

Fees

The group expressed the opinion that approaches such as cost recovery, or charging legitimate operators for enforcement against unlicensed operators, should not be applied to the B&B

sector uniquely. The group also expressed the opinion that enforcement cost recovery should be through penalties on the guilty parties, not levies against legitimate operators.

The following options were not supported by the group:

- i. Increasing application fees to \$8,700
- ii. Increasing renewal fees to \$530
- iii. Add \$150 annually to partially offset enforcement costs
- iv. Reduce current fees

The following option resulted in a split decision:

- Increase application and renewal fees somewhat, but not to full cost recovery. This was not supported by the group, but was supported by one member, who felt that the current fees could be increased without undue hardship.

Parking Lot:

Items that we want to be sure we get to before the end of the last meeting:

- restrictive covenant
- statutory declaration
- licenses only used seasonally, or not used - should a B&B be required to operate a minimum number of days per year, to prevent sitting on unused licenses?
- parking requirements when B&B Inns redevelop, should they then match B&Bs?
- items around renewals: can we have a longer period between renewals for compliant properties (and should physical inspections then be required at renewal), should we notify more than the directly adjacent neighbours when renewals come up for consideration, should we always have public notification when allocation becomes available in a previously full district. Time renewals earlier in the calendar year, so that stretches of time without licenses are avoided.
- add additional clarity regarding the exclusive management and operation of Bed and Breakfasts
- Revisit earlier decision on allocation redistribution.

6. Summarize, confirm date for next meeting, and adjourn

Our next meeting will be October 11th, in Council Chambers, 11 am to 2 pm.

Dave Michaels will contact everyone by email to establish dates for a final meeting in late November (week of November 25th).

Meeting notes
B&B Working Group
October 11, 2019, 11 a.m. - 2:30 p.m.
Town Hall - Council Chambers

Attendees:

Bed and Breakfast Home Operators (3)

Theresa Gawron
Edwina Handley

Bed and Breakfast Inn Operator (1)

Lee O'Donnell

Hotel Sector (1):

Sean O'Farrell

Public Members (5)

Ross Glenfield
Bonnie Lothrop
Ken McMurdo (until 1:15 pm)
Mark Walker

Staff and facilitator (3)

Dave Michaels
Darren Enns
Leslie Taylor

Notes from the last meeting:

The group agreed that, with the changes proposed to the "emergency absence" section, the notes from October 4 were accurate.

Reminder: committee purpose, intended outcome and ground rules

The facilitator reviewed the ground rules for the committee, and introduced a new method of indicating a wish to speak.

"Other" items:

In the original report to Council, a range was provided of other possible amendments to regulations.

- The following options were supported by the group:
 - ii. Changing any relevant references to recognized 'A' or 'B' ranked heritage resource to buildings identified on the heritage inventory, as the Heritage Corporation has

moved to a single list of properties that have heritage value rather than a ranking system;

- The following options were split decisions:
 - Limiting B&B applications to existing property owners only, and not allowing applications by a potential purchaser during the sale process. Supported by the group, but not supported by one person, who prefers the status quo and does not believe that the practice of advance conditional approvals is an issue.
 - iv. Remove the limit to variances associated with Bed and Breakfast Homes, and have variances treated the same, whether they are for heritage or non-heritage properties. Supported by the group, but not supported by one member, who believes that B&B regulations should be met in their entirety, and only heritage properties should be eligible for variance.
- The following option was moved to the discussion (below) of renewal issues.
 - iii. Amend the notification requirements for renewal of previously approved Bed and Breakfasts to remove the requirement to provide written notification to adjacent property owners. Written notification to adjacent property owners is required when an application is first approved and at annual renewal. Written notification annually is administratively time consuming and concern has been raised by a number of property owners that they only wish to be notified when there has been a change in the operation only rather than the continuation of approved operation.

Parking Lot

In the course of our discussions, several items have been proposed for examination, and these were discussed at the October 11 meeting.

- Restrictive covenant and statutory declaration: The group discussed the current practices of having owners sign statutory declarations regarding their awareness of the conditions of their development permit, and of having development permit conditions registered against title as a restrictive covenant. The group supported the continuation of statutory declarations. The group recommended that the statutory declaration be included as a one-time requirement for all operators (presently, it is used only on new applications, the suggestion is that current operators be included on renewal). The majority of the group supported discontinuing restrictive covenants, with one member dissenting, who felt that he had not been convinced that they are not useful.
- "Sitting on" licenses: The group discussed whether B&B operators who operate only seasonally or not at all should be required to operate a minimum number of days per year to avoid the practice of "sitting on" licenses. The group recommends that no action be taken on this at this time.
- Parking requirements when B&B inns redevelop - should they then be required to meet the B&B home standard of one parking stall per bedroom? The group supported one

parking stall per bedroom in the case of redevelopment, with one member opposed because of concern about the effect on the operator of a change in his/her requirements.

- Items around renewals:
 - can we have a longer period between renewals for compliant properties (and should physical inspections then be required at renewal)? The group supported a longer period between renewals for compliant properties. There was a split on what constitutes a compliant property - some members felt that everyone should start as compliant until a problem arises, others suggested that a period of time (varied inputs from two years to five years) without enforcement action constitutes compliance. The group recommends that compliant properties be allowed to renew every three years instead of annually, and that the renewal fee should be the same as three times the current annual fee. There was a 4/4 split on the question of whether physical inspections should be required at the renewal point. Those who did not support this stated that physical inspections are rarely carried out now and that keeping them on complaint or when identified as a need by the Town would be sufficient.
 - Notification of neighbours was briefly discussed, but was removed as this has recently been dealt with by council. Renewals will not trigger any notification, and new applications will result in notification by postcard to all properties within 45 metres.
 - Notification of availability in a previously full district. The group agreed on the following recommendation: In a previously full district, when an allocation or allocations become available, the existence of this/these available allocation(s) should be advertized through normal channels for two weeks, with a reasonable deadline set for applications. If more applications than allocation are received, the lottery is triggered. Only complete applications are included in the lottery.
 - Time renewals earlier in the calendar year, so that stretches of time without licenses are avoided? The group supports a rescheduling of renewals, so that they are complete before the new year begins.
- Add clarity regarding the exclusive management and operation of Bed and Breakfasts, considering the types of services offered: The group supports the existing definition of live-in owner. The group recommends a statement in a bylaw preamble or in policy that states that a live-in owner would normally be directly involved in the provision of services such as:
 - Cleaning of the property
 - Laundry
 - Managing a website/online service
 - Communicating with potential guests via phone/online for booking enquiries etc.
 - Cooking/preparing of breakfast
 - Arranging for someone to stay onsite when the owner is not at the property for any period of time
 - Meeting/checking in guests
 - Building/property maintenance

- Marketing
- Accounting
- Revisiting earlier decision on reallocation of quota among districts: The group continues to recommend that the overall quota remain at 65. The group recommends, in consideration of the changing nature of the town since the original decisions were made, that Council review the existing allocations and consider possible transfers of one quota spot to full districts, by removing spots from less popular districts. As a bylaw change, this would require public input.

Implementation of any regulation changes, and new parking lot item

An item was added to the parking lot: should there be a maximum number of licensed pillows per room?

The group is also tasked with considering the following question:

How should changes to regulations apply to existing B&B's? e.g. grandfathered? required to comply on renewal? given time frame to comply?

These two items were not completed in the meeting. Leslie was asked to start an email circulation on these, so that they could be discussed by the group by email before the meeting at the end of November.

Summarize, confirm date for next meeting, and adjourn

Our next meeting will be in the last week of November, **10 am to 2 pm.**, exact date and location TBA. Agenda items will be: pillows/room, implementation of regulation changes, any changes anyone wishes to suggest after seeing the entire draft report, review/approval of draft report, election of committee chair to take report to Council.

Dave Michaels will contact everyone by email to establish date and location for the meeting in late November (week of November 25th).

In the meantime, Leslie will prepare the draft report, and provide it to everyone by October 31. And everyone will participate in the email rounds concerning pillows/room and implementation of regulation changes.

Meeting notes
B&B Working Group
November 29, 2019, 10 a.m. - 2:00 p.m.
Town Hall - Council Chambers

Attendees:

Bed and Breakfast Home Operators (3)

Theresa Gawron
Edwina Handley
April Wood

Public Members (5)

Ross Glenfield
Bonnie Lothrop
Ken McMurdo
Mark Walker

Bed and Breakfast Inn Operator (1)

Lee O'Donnell

Staff and facilitator (3)

Dave Michaels
Darren Enns
Leslie Taylor

Hotel Sector (1):

Sean O'Farrell

Notes from the last meeting:

The group agreed that the notes from October 11 were accurate.

Reminder: committee purpose, intended outcome and ground rules

The facilitator reviewed the committee mandate and ground rules for the committee and public gallery.

Availability of housing and fire staff to answer questions

Silvio Adamo (fire) and Sharon Oakley (housing) attended the meeting at 10:30 to answer various questions regarding fire code and the town's housing policy and practices.

"Other" items:

The committee considered the following question:

Should there be a maximum number of licensed pillows per room?

They noted that the development permit references the number of rooms that may be let, but the business license references numbers of pillows.

The following was supported by the group as a consensus recommendation:

- That new bed and breakfast applications should disclose the number of pillows being applied for at the development permit application stage.

The following recommendations were split decisions:

- That the development permit application should also disclose the number of pillows being applied for per room for each bedroom covered by the application. Supported by the group but not supported by two members, on the basis that where the pillows are within the bed and breakfast rooms is immaterial.
- That the maximum number of pillows overall for any bed and breakfast applications should be set at 2X the number of bedrooms being applied for plus 2 additional "flex" pillows. Supported by the group but not supported by two members, who felt that we have properties that currently exceed those numbers and that the total number should be set on a site by site basis, and that they don't want to discriminate against families who want to share a room, and that sites should be able to take advantage of their different room types.

Implementation:

The committee agreed that the above recommendations, if implemented, should apply to new bed and breakfast home applications.

Implementation of any regulation changes:

The committee considered the following question:

How should changes to regulations apply to existing B&B's? e.g. grandfathered? required to comply on renewal? given time frame to comply?

The committee agreed that this issue varies, depending on the nature of the regulation change, and agreed to craft an implementation recommendation for each area as they go through the draft report.

Draft report - review and edit

The committee went through the draft report section by section, giving members a chance to propose any changes they would like to see to the draft report, for the committee to consider.

The draft report V2 is attached. The sections that have not yet been reviewed are highlighted in yellow, for review at our next meeting.

Summarize, confirm date for next meeting, and adjourn

Our next meeting will be in January, 11 am to 2 pm., exact date and location TBA. Agenda items will be: section-by-section review of draft report, decision on whether unsupported recommendations should be listed in each section of the report, approval of draft report, election of committee chair to take report to Council.

Dave Michaels will contact everyone by email to establish date and location for the meeting.

Appendix B

This Appendix includes the response option pages from the report to Council of January 14, 2019. After each response option, a notation, highlighted in yellow, shows how/where the working group dealt with this option. This has been provided in order to help the reader track the relationship between the January 14 report and the report of the working group, and to help assure the reader that all options were discussed.

REQUEST FOR DIRECTION

Subject: Bed and Breakfast Homes & Bed and Breakfast Inns Regulatory Framework



Presented to: Council

Date: January 14, 2019

Submitted by:
Dave Michaels, Development Planner

Agenda #: X.X

Response Options

1. Receive this report as information and take no further action regarding the existing Land Use Bylaw requirements for Bed and Breakfasts Homes and Inns at this time.
2. Should Council desire to mitigate the impact that Bed and Breakfasts can have on the housing supply, then Council could direct administration to seek stakeholder and community input regarding the maximum number of Bed and Breakfasts allowed through Schedule 'D' of the Land Use Bylaw.

Schedule 'D' currently allows for a maximum of 65 Bed and Breakfasts in Banff. There are currently 46 approved and 1 application pending, with some Land Use Districts at their maximum allocation. Options could include:

- i. Increasing the number of Bed and Breakfasts allowed under Schedule 'D' to meet visitor demand; (reference working group report section 2).
- ii. Reducing the total number of Bed and Breakfasts to the current number of approved Bed and Breakfasts (46), or less, therefore not allowing any more applications until an allocation became available; (reference working group report section 2).
- iii. Reducing the number of available allocations in those Land Use Districts that are not at the maximum allocation to allow one more in each district. This would reduce the total number of potential Bed and Breakfasts to 52 with 5 remaining allocations. It is worth noting that for some of the Land Use Districts that have allocations available, administration have not received any enquiries regarding potential for Bed and Breakfasts in recent years where as other districts that are full have received a number of enquiries; (reference working group report section 2).
- iv. Reducing the total number of Bed and Breakfast Homes allowed (e.g. 50), but remove the limits per Land Use District and have a Banff wide allocation. It is worth noting that, with the exception of the RMS I: Middle Springs I District, Bed and Breakfast Homes are Discretionary Uses only in those Land Use Districts listed in Schedule 'D'; (reference working group report section 2).or
- v. Keep the maximum number of Bed and Breakfasts at 65, but reallocate the number of Bed and Breakfasts permitted in each Land Use District to allow new allocations in the districts that are currently at their maximum. (reference working group report section 2).

3. Should Council desire to strengthen the existing regulatory framework to improve compliance for commercial accommodation in residential properties, then Council could direct administration to seek stakeholder and community input regarding additional enforcement options within the Land Use Bylaw.

Currently the enforcement options available to administration for unauthorized commercial accommodation are limited to a Stop Order issued under the authority of the Municipal Government Act, or an Offence Ticket issued under either the Land Use Bylaw or Business Licence Bylaw with varying penalties of \$50 and up. Enforcement can also be a lengthy time consuming process and requires constant monitoring. Options could include:

- i. Higher penalties specific to unauthorized Commercial Accommodation. Penalties in excesses of the rental rate for unapproved accommodation may offer a higher disincentive to offer unapproved commercial accommodation as well as offset some of the costs associated with continued enforcement. Currently Canmore issue fines of \$2,500 for the first offence and \$5,000 for subsequent offences; (reference working group report section 10).
 - ii. Other penalties on advice from legal counsel;
 - iii. Prohibiting application for a Bed and Breakfast for an extended period (eg. two years) after either a Bed and Breakfast Permit has been revoked for non-compliance or successful enforcement action has been undertaken against a property for unauthorized commercial accommodation; (reference working group report section 10).
 - iv. Change the notification required for the Town to inspect an approved Bed and Breakfast. Currently a minimum of 24 hours notice must be provided in writing. Notification via email, or telephone and/or a shorter notice period would allow easier inspection of existing Bed and Breakfasts to ensure compliance; (reference working group report section 10).and/or,
 - v. Requiring approved accommodation to include their Development Permit number/business Licence Number in any/all advertising to ease in enforcement investigation. (discussed by the working group at the September 13 meeting, not recommended).
4. Should Council affirm that Bed and Breakfasts should continue to be an Accessory Use and incidental to the principal use of the site as a Single Detached dwelling, then Council could direct administration to seek stakeholder and community input on additional regulations in an effort to strengthen the intent that Bed and Breakfast Homes remain an accessory use and do not negatively impact housing.

There are a number of requirements for Bed and Breakfast Homes where potential amendments could strengthen the intended accessory nature of Bed and Breakfast Homes and limit potential negative impacts on housing availability:

- a) Bed and Breakfast rooms within Accessory Structures

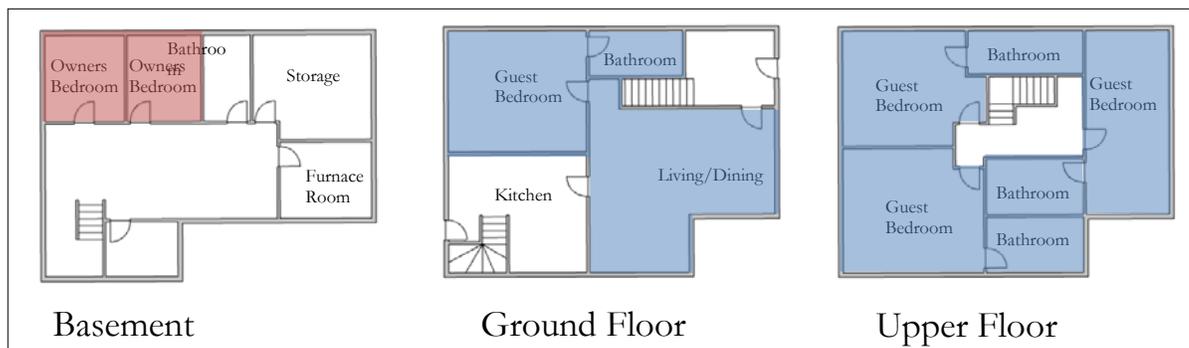
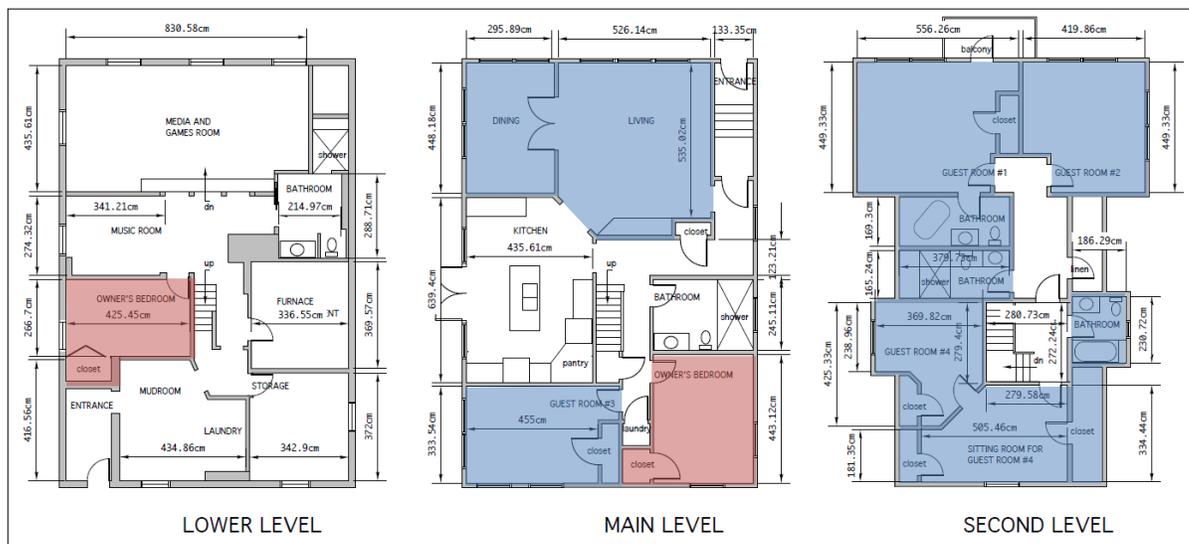
Bed and Breakfast Homes are currently permitted in Accessory Structures provided they do not contain a kitchen. In a number of development applications, Accessory Dwellings have been converted in to rooms for Bed and Breakfast Homes which has reduced the number of dwellings in Banff. Options could include:

 - i. Prohibit Bed and Breakfasts within any Accessory Structure. This would ensure that Bed and Breakfasts would be contained within the same structure as the principal dwelling on site and would remove the option of back yard cabin style accommodation or stand-alone guest units at residential properties in Banff. This would reduce the development options for accessory structures which could lead to repurposing of some existing structures to dwellings however may mean that other accessory structures become unused and sit vacant; (discussed by the working group at the September 13 meeting, not recommended).

- ii. Prohibit the conversion of existing Accessory Dwellings or Duplex's into Bed and Breakfast Homes. This would ensure that no separate dwellings that have previously been approved would be lost to Bed and Breakfasts; (reference working group report section 5.3).and/or,
- iii. Allow greater flexibility for an Accessory Structure to be used as both an Accessory Dwelling and a Bed and Breakfast with, or without, a limit the number of days/seasons the structure can be used as a Bed and Breakfast. This would allow more flexibility for operators to adapt to seasonal changes. (reference working group report section 5.3).

b) Maximum number of bedrooms for guests and location of owners bedroom

Currently all Bed and Breakfast Homes are permitted up to a maximum of four guest rooms provided that there is at least one bedroom dedicated for the Live-in Owner and required parking can be provided on site. There are minimum dimensions for guest bedrooms, but no requirements relating to the size or location of the owners bedroom(s). Depending on the layout of the property, there are instances where the number, location and size of guest bedrooms compared to the Live-in Owners bedroom(s) gives the appearance that the primary use of the property is as commercial accommodation rather than a residential dwelling of the owner/operator. The following images shows some examples of currently approved 4 bedroom Bed and Breakfasts with the areas dedicated for guests (guest bedrooms and required indoor guest amenity area) shown in blue and the owner's bedroom(s) shown in red:



Options could include:

- i. Reduce the maximum number of guest bedrooms permitted at a Bed and Breakfast Home to three; (discussed by the working group at the September 13 meeting, not recommended).
- ii. Introduce a bedroom quota that limits the total number of guest bedrooms associated with Bed and Breakfasts in Banff; (discussed by the working group at the September 13 meeting, not recommended).
- iii. Restricting the maximum number of bedrooms to 50% (or less) of the total number of bedrooms at the property; (discussed by the working group at the September 13 meeting, not recommended).
- iv. Restricting the maximum floor area of a property associated with a Bed and Breakfast (bedrooms, dedicated amenity areas etc.) to 40% (or less) of the total Gross Floor Area of the property; (discussed by the working group at the September 13 meeting, not recommended).
- v. Requiring that one of the owners bedrooms is the largest bedroom at the property; (discussed by the working group at the September 13 meeting, not recommended).and/or,
- vi. Requiring that at least one of the owners bedrooms is above grade. (reference working group report section 5.2)

c) Requirements on the type of service that is provided

While commercial accommodation in residential properties is referred to as Bed and Breakfast, there is currently no requirement that breakfast be provided to guests. Requiring that breakfast be provided to guests could differentiate accommodation at residential properties to suites at hotels. This could also help strengthen the requirement that operators are at the property in order to provide this level of service. It is worth noting that under the Alberta Health Food Regulations, a Bed and Breakfast operator is only allowed to provide breakfast for up to 8 guests. An option could include:

- i. Requiring that Bed and Breakfast operators provide breakfast to guests. (reference working group report section 5.2)

d) Operation of Bed and Breakfast

There is no requirement that a Bed and Breakfast, once approved, is actually operated. This means that an approved Bed and Breakfast can maintain their Development Permit and Business Licence and never offer accommodation but still hold an allocation under Schedule 'D'. An option could include:

- i. Requiring that a Bed and Breakfast is operated for a minimum number of nights per year. (reference working group report section 9.3)

e) Ownership Structure

The Land Use Bylaw requires that Bed and Breakfast Homes are operated by the live-in owner(s) who may be a sole owner, joint tenants or tenants in common, or a corporation of not more than two shareholders who reside at the property as their principal residence. Unlike shareholders of a corporation, there may be two or more joint tenants or tenants in common and only one of the owners is required to reside at the property. A limited number of applications have raised questions about corporate ownership of Bed and Breakfasts and multiple owners who do not reside at the property. Options could include:

- i. Removing corporate ownership for Bed and Breakfast Homes; (reference working group report section 5.1) and/or,

- ii. Restricting the number of owners (joint tenants or tenants in common) and requiring that all owners reside at the property as their primary residence. (reference working group report section 5.1)

f) Management of the Bed and Breakfast by the Live-in Owner

The Land Use Bylaw requires that the live-in owner *resides therein as his/her principal residence*. A Live-in Owner is defined as *a natural person who is an owner or shareholder of a corporation which is an owner of a property permitted to be operated as a bed and breakfast home and who:*

- a. *Lives in the bed and breakfast home; and*
- b. *Manages the bed and breakfast home while maintaining eligible residency status.*

Section 10.3.2(e) also states that *a bed and breakfast home shall be operated exclusively by a live-in owner as an accessory use and shall not change the principal residential character, use or external appearance of the dwelling*. Confirming that the property is the owners primary residence is currently done through a Statutory Declaration signed by the owner that states that the property is their primary residence. In addition, recent Bed and Breakfast applications have required that a Restrictive Covenant be registered against the title for the property which was drafted and approved by legal counsel. The Restrictive Covenant limits the operation of the guest rooms to when the owner is *in actual residence*. Some existing Bed and Breakfast operators have expressed concern that should they be unable to be in residence at the property due to unforeseen circumstances, or should they wish to take vacation, that they would have to cancel bookings or risk being in violation of their Development Permit and potentially being subject to enforcement action. The requirement for a Live-in Owner ties back to the Eligible Residency requirements of residential leases with Parks Canada that requires that the property is occupied by Eligible Residents.

In addition, some operators have requested clarity regarding the requirement that a Bed and Breakfast is managed and operated exclusively by the Live-in Owner. A number of Bed and Breakfast operators utilize a third party for some aspects of their operation such as: a laundry service; additional help preparing breakfasts; cleaning of the property; managing online bookings and online communications; managing websites and/or social media etc. Options could include:

- i. Requiring that a Bed and Breakfast shall not be operated when the Live-in Owner is absent for more than a certain number of consecutive nights (eg. five consecutive nights). This would allow greater clarity for operators; (reference working group report section 5.2)
- ii. Requiring that Live-in Owners keep a log of who is in residence at the property when guests are present. This could allow for greater compliance monitoring; (reference working group report section 5.2) and/or,
- iii. Add additional clarity regarding the exclusive management and operation of Bed and Breakfasts. (reference working group report section 5.1)

5. Should Council desire to use Bed and Breakfast approvals to help preserve and protect heritage properties, then Council could direct administration to seek stakeholder and community input on amendments to the current regulations regarding new Bed and Breakfast Home applications for heritage properties.

At the September 20, 2018, the Banff Heritage Corporation passed the following motion:

HER18-82 Moved by Hempstead that heritage corporation recommend council consider regulations and policies which support bed and breakfast home applications which conserve buildings identified on the heritage inventory.

CARRIED

Currently 13 of the 46 approved Bed and Breakfasts are located at buildings identified on the heritage inventory, only one of which is a designated heritage resource. Without designation, there is no legislated protection for the recognized buildings. Within the Land Use Districts that permit Bed and Breakfast Homes, there are a total of 110 buildings identified on the heritage inventory that are not designated. Options could include:

- i. Only permitting new Bed and Breakfast Homes in Designated Heritage properties. This could add an incentive for people to invest in heritage properties and would benefit Banff by increasing the number of protected heritage resources; (discussed by the working group at the July 24 meeting, not recommended)
 - ii. Only permitting new Bed and Breakfast Homes in buildings identified on the heritage inventory. This could add an incentive for people to invest in heritage properties however without designation, it would not offer long term protection of those properties; (discussed by the working group at the July 24 meeting, not recommended) and/or
 - iii. Permitting a Bed and Breakfast Home to be owned and operated by a not-for-profit organization without a requirement for a live-in owner at a Designated Heritage property. This could offer an incentive for larger not-for-profit organizations to acquire and preserve heritage resources. (reference working group report section 4)
6. Should Council wish to improve the regulatory language as it relates to the redevelopment of existing Bed and Breakfast Inns, then Council could direct administration to seek stakeholder and community input on amendments to the regulations regarding Bed and Breakfast Inns.

At the December 14, 2017, MPC meeting, the following motion was passed:

MPC17-90 Moved by Olver that the Municipal Planning Commission recommend Council give consideration to the review of Bed and Breakfast Inns when reviewing Bed and Breakfast Homes.

CARRIED

Questions had been raised by the MPC about redevelopment of Bed and Breakfast Inns as the definition in the Land Use Bylaw refers to 'existing' Bed and Breakfasts but the specific use regulations contemplate increases to the number of permitted commercial accommodation units up to a maximum of 10 rooms. In addition, an application for an accessory dwelling on the same property as a Bed and Breakfast Inn was refused by the MPC as it was determined that the principal use of the site was as a Bed and Breakfast Inn and therefore the accessory dwelling was not permitted. Further clarity regarding redevelopment of Bed and Breakfast Inns would benefit Bed and Breakfast Inn operators who may wish to redevelop their site. Options could include:

- i. Prohibiting existing Bed and Breakfast Inns from adding additional guest rooms above the existing (approved) number of rooms. This would prevent the development of any additional guest rooms associated with Bed and Breakfast Inns; (reference working group report section 3)
- ii. Limiting redevelopment of Bed and Breakfast Inns to the existing Gross Floor Area on site. This would allow operators to reconfigure their existing area (e.g. splitting one large room into two smaller rooms) but would prevent the addition on new floor area; (reference working group report section 3)
- iii. Prohibiting the construction of new structures for the purposes of Bed and Breakfast Inns. This would prohibit the expansion of Bed and Breakfast Inns outside of their existing structures; (reference working group report section 3) and/or,
- iv. Prohibiting multiple uses on a site that contains a Bed and Breakfast Inn. This would add further clarity to the Land Use Bylaw and would limit the intensification of these sites which are located in residential Land Use Districts. (reference working group report section 3)

7. Should Council wish to explore a differential tax rate associated with Bed and Breakfasts, then Council could direct Administration to seek stakeholder and community input on amendments to the relevant bylaws with regards to property tax and/or fees relating to Bed and Breakfasts.

a) Property tax for Bed and Breakfast Homes

At the April 30, 2018, Special Town of Banff Council meeting, the following motion was passed:

COU18-122 Moved by Mayor Sorensen that council direct administration to return to council with a report outlining options for differential tax rates for bed and breakfast and home occupation properties for further consideration.

CARRIED

Currently Bed and Breakfast Homes and home occupations are taxed as residential properties and at the same tax rate as all other residential properties. Council could direct administration to treat these properties differently and recommend that amendments come back with the tax rate bylaw. Options could include:

- i. Set a differential tax rate. This would apply a tax rate higher than the current residential tax rate on these properties. With a differential rate, the rate would be applied to the full assessed value of the property. This option is the easiest to administer however it does not reflect the percentage of the property that is related to the operation of the Bed and Breakfast or home occupation. An example of this would be a large newer home that had one bedroom used as a guest room could pay more in tax than a similar older Bed and Breakfast home that was licensed to operate 4 guest rooms; (reference working group report section 6) or,
- ii. Proportionately assess the property as non-residential. This would look at taxing the portion of use related to non-residential activity and tax that use at the non-residential tax rate. This would be difficult to administer and validate for home occupations. Bed and Breakfasts would be easier although some operators that operate seasonally may question the fairness of the taxation. (reference working group report section 6)

Bed and Breakfast Homes and Home Occupations do not have to be treated the same, any of the options could be selected for either Bed and Breakfast Homes or Home Occupations.

b) Bed and Breakfast Application and Renewal Fees

Schedule 'G' of the Land Use Bylaw contains the fees associated with new Bed and Breakfast applications and Bed and Breakfast renewals. Schedule 'G' was amended in 2018 to increase the fees for new applications to \$1,500 + \$100 per guest room. Renewal fees were also increased to \$300 + \$50 per guest room. In 2018 the revenue from Bed and Breakfast renewals was \$17,400 and the revenue from new applications was \$9,300.

Administration estimates that an average Bed and Breakfast application requires approximately 70-100 hours of staff time to process. This would include pre-consultation meetings and working with the applicant to prepare their application, site visits/inspections by planners and the Fire Department, reviewing and processing the application, preparing MPC reports and meetings, notification and informing adjacent property owners and follow up with applicants on conditions of approval.

In 2018, a supplementary review and analysis was conducted for every Bed and Breakfast renewal application. This included confirmation of Eligible Residency status, review of individual property ownership and comparison of advertising of a Bed and Breakfast to the original approved permit. Administration estimates that renewals in 2018 required 250 hours of staff time for 41 renewals (approximately 6.1 hours per renewal).

Council motion COU14-249 directed administration to proactively enforce on unauthorized commercial accommodation. Administration estimates that it spends 150 hours a year on proactive enforcement. A large number of this is now done by the new Development Compliance Officer position.

Under the Land Use Bylaw, the fees for dedicated staff time are listed at \$90/hr for a Planner and \$60/hr for an Administrative Assistant. Options could include:

- i. Increasing Bed and Breakfast Application fees to \$8,700 (90 hours of Planner time at \$90/hr and 10 hours of Administrative Assistant time at \$60/hr) to cover the full cost of staff time required for applications; (reference working group report section 7)
- ii. Increasing Bed and Breakfast renewal fees to \$530 (5.5 hours of Planner time at \$90/hr and 0.6 hours of Administrative Assistant time at \$60/hr) to cover the full cost of staff time required for renewals; (reference working group report section 7)
- iii. Add an additional annual fee of \$150 for Bed and Breakfasts to partly offset the costs of ongoing monitoring and enforcement of unapproved commercial accommodations. Ongoing monitoring and enforcement ensures that residential bedrooms are not lost to unapproved commercial accommodation which can also be beneficial to Bed and Breakfast operators as it ensures that there is limited competition; (reference working group report section 7) and/or,
- iv. Reduce current fees associated with Bed and Breakfasts. (reference working group report section 7)

c) Additional fees for Bed and Breakfasts

Due to the potential for intensification of properties that are approved as Bed and Breakfasts, additional fees could be introduced to offset additional costs associated with increased service requirements. This could be used to offset additional costs for waste, water, sanitary etc. associated with intensification of use at a residential property. An option could include:

- i. Investigation of additional fees in order to offset potential costs associated with intensification of residential properties. (reference working group report section 7)

8. Should Council desire to limit the impact of any Land Use Bylaw amendments on existing Bed and Breakfast operators, then Council could direct Administration to seek stakeholder and community input regarding existing Bed and Breakfasts. (The issue of implementation impact was discussed by the working group for each recommendation. In the report, implementation recommendations, highlighted in blue, can be found with each recommendation or group of recommendation. Further notes on implementation can be found in report section 11).

Development Permits for Bed and Breakfast Homes currently expire every year in conjunction with the Business Licence. The Land Use Bylaw specifies that in order to continue the operation of a Bed and Breakfast, the request to continue operation should be treated as a new application. As such, any existing Bed and Breakfast's would be required to comply with any Land Use Bylaw amendments on the expiry of their Development Permit. Depending on the extent of Land Use Bylaw Amendments, this could mean that some current Bed and Breakfast operations would not be allowed to continue as previously approved without changes to their application to come into compliance. Options could include:

- i. Allowing any Bed and Breakfast that was approved prior to Land Use Bylaw amendments to continue operation until a time when a Development Permit is cancelled or revoked;

- ii. Allowing any Bed and Breakfast that was approved prior to Land Use Bylaw amendments to continue operation for a specific time period (e.g. 5 years) after which time the permit will expire and a new permit would be required in accordance with the Land Use Bylaw of the day; or,
- iii. Require all Bed and Breakfast applications to comply with any Land Use Bylaw amendments at the time of yearly expiry. This could result in some current operators being unable to operate past the January after Land Use Bylaw amendments.

9. Should Council wish to explore other items relating to the regulation of Bed and Breakfast Homes and Inns, then Council could direct Administration to seek stakeholder and community input regarding other amendments to the Land Use Bylaw related to Bed and Breakfasts.

In addition to the areas discussed above, other items relating to Bed and Breakfast's could include:

- i. Limiting applications to existing owners only. A number of applications received in the past two years have been by applicants prior to purchase of a property. In some instances the sale of the property has not completed which has led to the application being withdrawn after the application has been reviewed by MPC and notification has been done; (reference working group report section 8.1)
- ii. Changing any relevant references to *recognized 'A' or 'B' ranked heritage resource* to *buildings identified on the heritage inventory*, as the Heritage Corporation has moved to a single list of properties that have heritage value rather than a ranking system; (reference working group report section 4)
- iii. Amend the notification requirements for renewal of previously approved Bed and Breakfast's to remove the requirement to provide written notification to adjacent property owners. Written notification to adjacent property owners is required when an application is first approved and at annual renewal. Written notification annually is administratively time consuming and concern has been raised by a number of property owners that they only wish to be notified when there has been a change in the operation only rather than the continuation of approved operation; (reference working group report section 9.6) and,
- iv. Remove the limit to variances associated with Bed and Breakfast Homes. Currently the Land Use Bylaw allows for variances for Bed and Breakfast Homes only when *a variance to this Bylaw would contribute to the preservation of a recognized 'A' or 'B' ranked heritage resource as identified in the Town of Banff Heritage Corporation Inventory*. Administration believes the original intent of this was to allow greater flexibility for heritage resources applying for a Bed and Breakfast for requirements such as bedroom size, amenity area etc. A recent legal opinion suggested that the current wording is much more restrictive than intended however an applicant would be able to apply for a variance when not connected to a Bed and Breakfast, and if granted, could then separately apply for a Bed and Breakfast thus negating this clause. It's administrations opinion that the options under section 5 above would offer a better approach to the preservation of Heritage Resources. (reference working group report section 8.3)

Should Council direct Administration to seek stakeholder and community input on any of the items listed above, this would be done by utilizing in-person and online tactics suitable to the topics in question.