

# 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 #: 9.1

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### RECOMMENDATION

That Council provide direction to administration on:

1. Whether or not any amendments to the Land Use Bylaw for Bed and Breakfast Homes and Bed and Breakfast Inns are required; and
2. Whether or not any additional policy changes are needed regarding Bed and Breakfast Homes and Bed and Breakfast Inns.

### BACKGROUND

#### Reason for Report

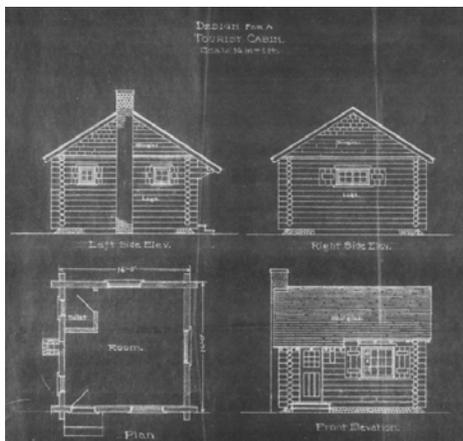
At the 2018 Service Level Review the following motion was passed by the Governance and Finance Committee:

*FIN17-111 Moved by Mayor Sorensen that the governance and finance committee direct administration to return with a report to council outlining review of bed and breakfast home quotas and associated regulations in the first half of 2018.*

*CARRIED*

#### History

Banff has a history of commercial accommodation that dates back to the first hotels that were constructed shortly after the National Park was founded in the 1880's. As Banff developed as a tourist centre, the number and style of commercial accommodations grew and included hotels, motels, bungalow courts, boarding houses and backyard cabins.



1936 - Plans for tourist cabin



1937 - Backyard tourist cabins – 347 Beaver Street

Through early zoning regulations commercial accommodations were permitted in Parks Canada's Business Zone and the Motel and Bungalow Court Zone but not contemplated in residential zones. In 1966 the concept of a Boarding House was added to the zoning regulations and was only permitted in some residential zones. A Boarding House was defined as *a building or portion thereof, other than a hotel or apartment block, where lodging or meals for four or more persons, exclusive of the proprietor and his family, are provided for gain or reward.*

Dear Council Members

I am writing pertaining to the proposed B&B bylaw discussions.

I have a few comments and thoughts regarding the review:

I am a small operator with 2 rooms 16 years in business and don't believe I should be paying the same property taxes as larger operations. Some have 10 rooms, lots have 4 rooms and I only have 2 rooms which occupies 33% of my house. I shouldn't be taxed the same as other properties that have 90% B&B occupation.

I believe property taxes should be off the table because it's just not fair to everyone.

Limiting the percentage of space for use in a B&B for rental purposes makes sense to me and also ensures that there is enough room for the owner to reside in the house.

I think licenses should be renewed yearly and automatically until there is a breach in the rules and then it gets reviewed at that time.

I don't think I should have to pay for the town to monitor the rules this is a cost of doing business for the town of Banff and should be budgeted for like all other costs of doing business. Increase application fees even more if needed.

Zoning - maybe removing the zones that are not being used and limiting B&B's would help the town manage the volume and keep the costs down. Opening up more licenses in existing zones will cause too much congestion and more money to manage.

I, along with many small operators have provided a welcoming and comfortable experience for my guests for many years and just wish to continue to do so. Most of us have great reviews happy guests and in this day and age it's easy to see whose not providing a pleasing service or more than the rooms allowed etc. For me, it's about the people and their experience in our beautiful town.

Thank you for your time.

Edwina Handley

Mountain View Bed & Breakfast



To the Mayor and Council of the Town of Banff,

The Peter and Catharine Whyte Foundation would like to give this letter of support to the proposed Bed and Breakfast Regulatory Framework, specifically Response Option #5.

Please reach out if you have any questions or require further comments of the Peter and Catharine Whyte Foundation.

Thank you.

Brett Oland

CEO Peter and Catharine Whyte Foundation

## Letter to Council

January 12, 2019

Dear Members,

As Bed and Breakfast operators in Banff for the past 15 years and concerned community members, we wish to add our comments for your consideration regarding the “response options” made to Council’s request for direction on potential amendments or additional policy changes that made be deemed necessary.

First off, we would like to express our appreciation and good fortune to have been able to contribute to the Town of Banff and community under the existing framework of the Land Use Bylaw with respect to Bed and Breakfasts, in several ways;

- 1) Serving the broad visitor experience of the Town of Banff and similarly our National Parks, providing a “hands on” showcase of our values and culture. We have had so much positive feedback from our guests,
- 2) Adding to our tax base locally and federally, through renewed permit applications, GST, AHT and TIF contributions and to municipal land taxes, along with charitable donations in the past to the Community Daycare, Library Society, Banff Community Foundation and Banff Hospital through our collective Bed and Breakfast Association,
- 3) Allowing for the possibility of developing an old and failing housing structure with a new and unique property, far from the norm of typical large multi-residential structures with ever reduced square footage, adding variety of housing inventory in Banff,
- 4) Providing us with “comfortable living” as we’ve grown with the Town thru more than 40 years of service industry work, while also allowing us to continue to contribute to the Town as concerned citizens through volunteerism and comradery.

The internet has allowed for so much improvement and ease of operation of our economic and social interests, at the same time putting strains on governance and regulation as well as having negative impacts society. Locally, we have seen these some of these outcomes.

Blame for these impacts and strains should not **only** be placed on only one segment of a long existing section of commercial operations in Banff, namely Bed and Breakfast and Bed and Breakfast Inn operations, but instead, we need to find new and imaginative solutions over a potentially broader range to mitigate these negative impacts without taking a “knee-jerk” reaction to a potentially larger problem.

Under the existing regulations, it could be argued that the percentage of accommodation provided to tourists, and thus displacing needed housing for locals is extremely minimal given the number of existing licences and outstanding, and the fact that if those units were altogether removed, the addition of units of additional housing for monthly rental would be insignificant. Example, if a homeowner was not providing tourist accommodation, this does not immediately preclude that they would give up their personal residence to be shared with a monthly tenant. Yet those homeowners would remain as, and are in fact holders of eligible residency and contributors to the community. Banff's housing shortage, in our opinion, is and will continue to be a constant issue given the demand for visitorship and premium lifestyles. The Town should not be looking at coming down hard on existing B &B licences to solve this problem but rather address the housing shortage through re-development options.

In regards to the "Response Options", it is in our view that these are valuable and very broad reaching, meticulously outlined options that have been presented to Council, and we applaud that effort. It is also in our view that some of these options may be beneficial to the existing framework and others, very detrimental, as for example, some of the proposed changes and their impact on administration and enforcement. We do not intend to give our critique or analysis on each and every point at this time as we feel there are mixed benefits and detractions to each of the options outlined.

Because this document is broad in scope and we anticipate in it's interpretation to have contentious and devastating fallout with licence holders and the community at large, that we believe it is in the best interest that Council table this document to be adopted as a viable entry point of discussion and scrutiny between community stake holders in a potential "working group" going forward to help council make the best decisions possible for everyone.

We would look forward to contributing our help and input towards an in depth review of any proposed amendments or policy changes to the existing bylaws if the opportunity for should arise from this introductory effort.

Sincerely,

Theresa Gawron

James Bannon

Buffaloberry Bed and Breakfast



To the Town of Banff Council,

As a Bed and Breakfast Home owner I am deeply concerned with the contents of the Request for Direction Report that was presented to Council this week.

It would appear that Dave Michaels, the Development Planner, is leading the town towards imposing harsher restrictions on Bed and Breakfasts in Banff at a time when the Bed and Breakfast sector is performing well and serving an important need for Banff's visitors.

As Bed and Breakfasts are strictly regulated at present, I see no need for further strict rules on the industry. Since nearly all owners appear to be in compliance with the existing laws, I find myself at a loss to understand why the report appears to be so restrictive.

At present, the number of Bed and Breakfasts is not dramatically increasing in Banff and all enforcement of existing regulations on Bed and Breakfasts has been successful, informative for other owners and positive for the town. I see no need to substantially change this.

Even though the report does open the door in some of its proposed options to loosen regulations, the majority of the proposed options to Bed and Breakfast bylaws come off as trying to make it more difficult to both obtain a Bed and Breakfast license and to operate one.

With the type of visitors coming to Banff changing, the town should instead be adopting regulations that welcome positive change and encourage more people to visit the Park. Traditional hotels cannot fulfill this demand alone, and Bed and Breakfasts should be allowed to continue to operate unimpeded to cater to Banff's visitors.

While limiting housing supply in the town is a concern, it should not be the responsibility of Bed and Breakfast owners to attempt to address this issue. The town has granted all Bed and Breakfast owners their licenses over the years knowing that Banff has perpetually faced a housing crisis and the town alone is responsible for addressing this crisis.

Instead of limiting the number of Bed and Breakfasts, denying guests access to kitchens, reducing the number of guests or rooms, forcing owners to be the complete and sole operators of all aspects of their properties or trying to bury our heads in the sand and turn back time by viewing modern web-booking platforms as a scourge for the accommodation sector and the town, Banff should try to work with Bed and Breakfasts in a positive way to help create the best possible experiences for Banff's visitors in a productive and collaborative manner.

In this regard, a comprehensive discussion should be had with all Bed and Breakfast owners with the town and the planning department to work together to make Banff better.

Thank you for your consideration,

Adam White  
Banff Mountain Home B&B  
129 Muskrat St.

**From:** Banff Bear B&B [<mailto:info@banffbear.ca>]

**Sent:** January 10, 2019 10:06 AM

**To:** Michaels, Dave <[Dave.Michaels@banff.ca](mailto:Dave.Michaels@banff.ca)>; Sorensen, Karen <[karen.sorensen@banff.ca](mailto:karen.sorensen@banff.ca)>; Canning, Grant <[Grant.Canning@banff.ca](mailto:Grant.Canning@banff.ca)>; Christensen, Ted <[Ted.Christensen@banff.ca](mailto:Ted.Christensen@banff.ca)>; Christensen, Ted <[Ted.Christensen@banff.ca](mailto:Ted.Christensen@banff.ca)>; Christensen, Ted <[Ted.Christensen@banff.ca](mailto:Ted.Christensen@banff.ca)>; Olver, Chip <[chip.olver@banff.ca](mailto:chip.olver@banff.ca)>; Standish, Brian <[Brian.Standish@banff.ca](mailto:Brian.Standish@banff.ca)>

**Subject:** Re: Draft Council Report regarding Bed and Breakfasts

Dear Mayor and Council

Having read the Request For Direction draft, relating to Bed & Breakfasts, kindly provided by Dave Michaels. I do have comments to make.

The Request is concise in its observations and well written. For the majority I have no issues. I have a few observations on the Considerations:

Considerations

3) v) Some booking companies such as booking.com do not allow input on the text – it may be difficult to ensure that an operator complies with the requirement to include their Development Permit number/business Licence Number in any/all advertising

4) e) 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. This might prove difficult for example in the event of a marriage breakdown where one owner, who does not operate the business, vacates the property.

f) 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) is a reasonable option but unforeseen circumstances are just that. And while one may plan to be closed for one's own vacations etc. deaths and illness must be attended to immediately. However, perhaps the onus should be on the operator to advise the Development Compliance Officer of a temporary breach (this is not seeking permission but an advisement).

9) i) Limiting applications to existing owners only would be difficult in that, while one does not want to see AirBnB type purchases, a couple buying in Banff may only be able to purchase with the assurance of a stated secondary income. That sort of oversight, to ascertain the bona fide nature of the business, might be best left to MPC or a similar body.

My main concern is with the financial aspects, commencing at section 7, which taken together make up what might be viewed as a cash grab.

The aspect of a property tax differential, for homes with a B&B element, assumes that the Bed and Breakfast (B&B) is geared toward a year round operation on which there should be a year round levy. However many B&Bs, such as our own, are run on a seasonal basis. In addition, as the B&B in a home does not provide a need to reside, then it's nature is of a business more likely run by a retiree, or a part time operator.

We run a small B&B from a fairly large, newish, house. If such a tax differential were to be considered then the size in terms of the percentage of square footage of the operation within the dwelling should be a consideration, as would the percentage of the taxable year that the B&B operates – perhaps through retrospective taxation following reporting of days occupied.

The additional fees for services such as water and waste are again considered inequitable for a small B&B operation such as our own, and the supposition of greater burden on those services is somewhat disingenuous. Given the days of occupation through a year there is in fact less use of services, sewer, water etc than if the two rooms were occupied full time (however if our guests did prove wasteful and use excess water etc then that is already accounted for in our metered billing).

The one area in which the document is not clear is section 8 where it refers to certain parts to new permit / new application when referring to existing license renewals. For clarity if this would then be an event that attracted an Application Fee of the proposed \$8,700 then I would be steadfastly opposed to such an approach. Greater clarity is required.

In summary I am for greater compliance and do not have objection to the increased renewal fee structure. I am against a property tax levy as it unfairly penalises without taking into account the size or scale of the B&B within the property. In fact increasing the tax burden arbitrarily, as the option does, encourages people to maximise bedrooms, at the expense of the residential feel, which is contrary to the stated intent. (Notwithstanding my objection, any tax amendment would have to include associated guarantees from the Town that their enforcement would see that legal operators were assured that there would be no illegal B&Bs operating which circumvented the tax levy, and that level of enforcement should precede any such introduction)

Finally as most people will have taken the majority of the bookings already with rates based on projected costs etc then any financial alterations etc should come in to effect in 2020, or beyond.

Yours sincerely

Richard Norton-Hall

From incorporation of the Town of Banff in 1990, requirements have been included in the Land Use Bylaw to regulate commercial accommodation within residential properties. This type of accommodation was seen as an alternative accommodation option to hotels/motels for the traveling public as it included more interaction with the owner and often included meals and was referred to as Bed and Breakfast Homes.

The first Land Use Bylaw (Bylaw 31) included a clause that stated that *Bed and Breakfast Homes should not be approved where, in the opinion of the Municipal Planning Commission, they would displace needed boarding and staff housing.* Later amendments to the Land Use Bylaw removed this clause in favour of more objective clauses surrounding Bed and Breakfast Homes that focused on ensuring they were accessory to the principal use as a residence and that clustering of this type of use didn't occur. A separate Bed and Breakfast Inn definition was added to allow the continuation of the larger commercial accommodation residential properties. In 1998, Bylaw 31-3 introduced a cap to the total number of Bed and Breakfasts allowed in each residential Land Use District. This was set out in Schedule 'D' of the Land Use Bylaw which has remained unchanged. The most recent Land Use Bylaw amendments related to Bed and Breakfast requirements were in late 2012.

Through the popularity of websites that allow individual users to advertise and promote the rental of their property, cities and towns all over the world have been challenged to control the number of short term rental accommodations being offered. These changes of use for residential properties has impacted housing availability as well as housing prices in many cities.

In 2014, the Town of Banff was proactive in addressing the changing market and on August 18, 2014, Council made the following motion:

*COU14-249 Moved by Councillor Karlos that council direct administration to proactively enforce the provisions of the Land Use Bylaw pertaining to the use and occupation of residential properties as commercial accommodation units, including vacation rentals by owner, unauthorized Bed and Breakfast operations and holiday home exchange/home swap service.*

CARRIED

With this direction, Banff has been very successful in ensuring that the only accommodation that is available in residential properties is through approved Bed and Breakfast Homes and Inns and that enforcement action is taken against those who do not comply with the Land Use Bylaw. Through ongoing monitoring, administration noted that a few operators of approved Bed and Breakfast Homes were operating outside of their approved conditions. This has resulted in enforcement action on some operators and the refusal of renewal by the Municipal Planning Commission (MPC). Both Council and MPC have also observed that some of the more recent Bed and Breakfast Home applications that have met the specific requirements of the Land Use Bylaw, might be operating in manner that is inconsistent with the intent that a Bed and Breakfast is accessory to the primary residential use.

Additionally a number of other motions were made by Council and the MPC relating to the Bed and Breakfast regulations and enforcement:

*COU17-161 Moved by Councillor Karlos that council direct administration to return at service review with options for further enforcement procedures for unauthorized commercial accommodation units including, but not limited to, VRBO and Air B&B.*

CARRIED

*MPC17-34 Moved by Horyn that Municipal Planning Commission recommend that Council direct administration to review the Bed and Breakfast Home regulations at the appropriate time, including the requirement to restrict kitchens within communal accommodation units.*

CARRIED

*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

### Current Status

The number of Bed and Breakfast Homes and Inns allowed in Banff is limited through Schedule 'D' of the Land Use Bylaw. Current Bed and Breakfast Development Permits are as follows:

Land Use District	Maximum Allowed	Permits Issued	Approved Pending Conditions	Application Pending	Allocation Available
RBA	8	1			7
RCA	3	1			2
RCM	6	6			0
RCR	6	3			3
RMR	3	3			0
RNC	9	8		1	0
RRA	2	2			0
RRF	3	1	2		0
RSA	8	8			0
RSC	7	5			2
RTM	10	5	1		4
<b>Total</b>	<b>65</b>	<b>43</b>	<b>3</b>	<b>1</b>	<b>18</b>

The allocation for Bed and Breakfasts includes both Homes and Inns. These numbers were arrived at through community discussion in 1998 based on analysis of the number of existing Bed and Breakfast Homes and Inns in each residential land use district, a spatial separation of approximately 75 metres and what seemed appropriate for each Land Use District. Some of the Land Use Districts that are at the maximum number allowed have received multiple enquires as to additional allocation in those districts, or reallocation of available allocation from other Land Use Districts.

The breakdown of the number approved, including the total number of approved guest bedrooms within the Bed and Breakfasts is as follows:

	Number Approved	Number of Approved Guest Bedrooms
Bed and Breakfast Homes	38	88
Bed and Breakfast Inns	8	62
<b>Total</b>	<b>46</b>	<b>150</b>

As Bed and Breakfast Inns are capped at their current number, but are allowed up to a maximum of 10 bedrooms, the total potential for bedrooms at Inns could be 80. The theoretical maximum number of guest bedrooms for Bed and Breakfast Homes is 228 as every Bed and Breakfast Home is permitted up to a maximum of 4 bedrooms assuming parking requirements are met, and there is at least one bedroom for the dedicated use of the Live-in Owner.

Under the Land Use Bylaw, Bed and Breakfast Homes are only permitted when located within a Single Detached Home or accessory structure associated with a Single Detached Home. Single Detached Homes are the second most common dwelling type in Banff (13.5% of the total residential dwellings). Within residential Land Use Districts that allow Bed and Breakfast Homes, almost 1 in 10 (9.5%) Single Detached Homes are currently approved as Bed and Breakfast Homes. Should the current maximum number of Bed and Breakfasts be approved (65), then approximately 14% of Single Detached Homes in those Land Use Districts would contain Bed and Breakfasts.

Backyard cabins were often used as summer accommodation for visitors in Banff pre-incorporation, and the Land Use Bylaw allows Bed and Breakfast Homes in accessory structures. Approximately 11 of the 38 approved Bed and Breakfast Homes contain guest rooms that are either in stand-alone accessory structures or accessory units within the main building. Of those, at least 8 were used as dwellings prior to approval as Bed and Breakfast Homes.

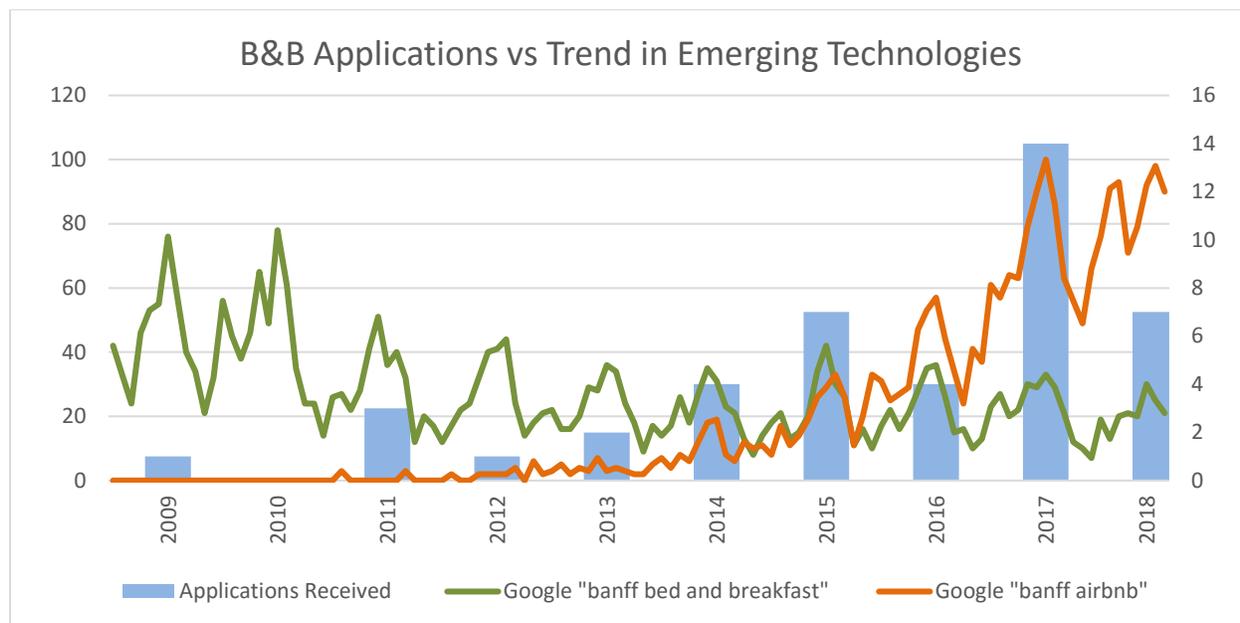
In 2017 the average hotel occupancy in Banff was 72.4%, with over 90% occupancy in July, August and September. The average daily rate for 2017 was \$250 with a maximum average of \$363 in July and August. These figures include Bed and Breakfast Inns, but not Homes. The high occupancy rates and daily averages has also translated to Bed and Breakfast Homes where administration have seen a number of rooms in Bed and Breakfasts advertised for over \$300 a night, as well as all approved guest rooms in an approved Bed and Breakfast Home offered for one rate up to \$1,990 per night with a 5 night minimum stay. These rates may offer operators a greater incentive to offer short term commercial accommodation rather than long term rental. In addition, an operator may have a similar revenue per bedroom as a hotel/motel without the additional costs of commercial tax.

The current approved Bed and Breakfasts operate in a variety of manners. These range from the more traditional Bed and Breakfast model with a lot of interaction between owners and guests both through booking and at the time of check-in as well as providing breakfast, to a more hands-off approach where booking and pre-trip communication is done online and guests are given a door code to gain entry to the property and there is little, to no, physical interaction between owners and guests over the duration of a stay.

The more hands-off operation has become more prevalent since the rise in popularity of online services such as Airbnb and VRBO. The ease of use of these services has not only changed the way visitors search for and book accommodation, but has also increased the ease in which property owners can reach a large market.

A review of Google search terms shows that the comparison of people searching for “Banff bed and breakfast” has seen a steady decline compared to “Banff Airbnb” which has seen a rapid increase since 2014. In 2018, approximately four times the amount of people searched for “Banff Airbnb” compared to “Banff bed and breakfast”. The number of Google searches for “Banff vrbo” have been comparable to searches for “Banff bed and breakfast” since 2014.

The following graph shows the comparison of Google searches for “Banff bed and breakfast” compared to “Banff Airbnb” over the last 10 years as well as the number of Bed and Breakfast Home applications that have been received:



In 2017, fourteen applications for Bed and Breakfasts were received which was the highest number received since incorporation, and double the previous highest amount. The 2017 Bed and Breakfast applications accounted for 13% of all development permit applications. Of these 14, 6 were for new applications, 5 were due to new ownership of previously approved bed and breakfasts and 3 were the addition of new guest rooms at existing Bed and Breakfasts. Of the 5 applications due to new ownership, 3 were withdrawn at various stages due to issues with the purchase of the properties.

Bed and Breakfast Homes are issued a Development Permit that expires in line with the Business Licence. This means that a new Development Permit is required every year which gives the community the opportunity to review all applications on a regular basis.

### Considerations

Two of the five purposes and objectives for Banff as set out in the Incorporation Agreement are:

1. To serve, as its primary function, as a centre for visitors to the Park and to provide such visitors with accommodation and other goods and services; and,
2. To provide a comfortable living community for those persons who need to reside in the townsite in order to achieve its primary function.

Bed and Breakfasts have a different impact on both of these purposes and objectives.

In order to meet the primary function as a centre for visitors, Bed and Breakfasts in residential properties have offered an alternative accommodation option and experience for visitors to Banff since pre-incorporation. The more intimate, personal experience offered by Bed and Breakfast operators has typically been seen as a complementary option to the more hands-off accommodation services offered by hotels in Banff.

Conversely, the undersupply of both affordable rental housing and affordable homes to purchase in Banff is a challenge to providing a comfortable living community. The conversion of residential bedrooms into guest rooms for Bed and Breakfasts can have a negative impact on housing due to the loss of those rooms for residents. Additionally, the potential for higher revenue from Bed and Breakfast Homes may be a disincentive for developers to add additional dwellings to Single Detached Homes or to rent the property/rooms to Eligible Residents.

One of the intents of the Land Use Bylaw requirements for Bed and Breakfasts is to balance these purposes and objectives by allowing a limited number of Bed and Breakfasts as an alternative accommodation option for visitors while ensuring that Bed and Breakfasts are accessory to the principal use of the property as a Single Detached Home of a Live-in Owner.

### **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;
- 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;
- 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;
- 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'; 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.

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:

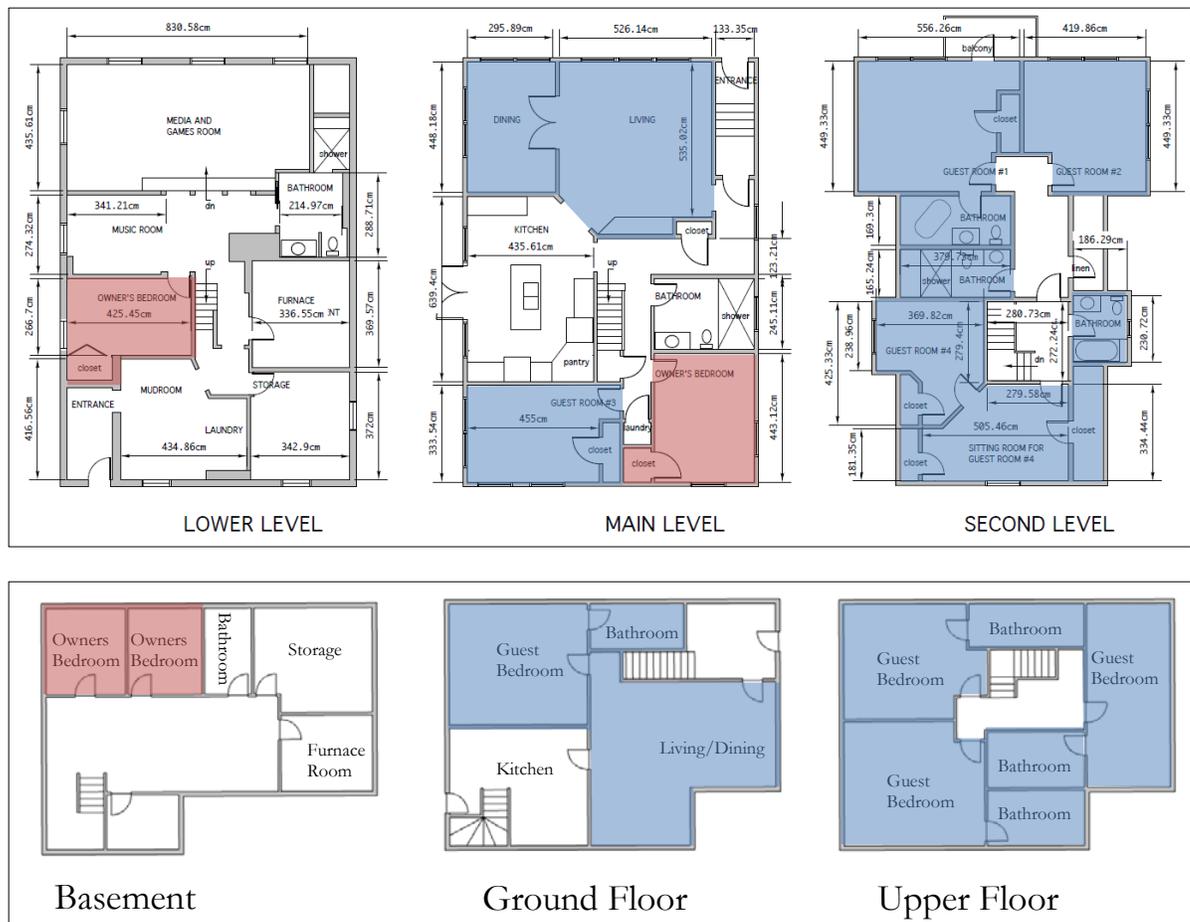
- i. Higher penalties specific to unauthorized Commercial Accommodation. Penalties in excesses of the rental rate for unapproved accommodation may offer a higher disincentive to offer unapproved commercial accommodation as well as offset some of the costs associated with continued enforcement. Currently Canmore issue fines of \$2,500 for the first offence and \$5,000 for subsequent offences;
  - 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;
  - 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; and/or,
  - v. Requiring approved accommodation to include their Development Permit number/business Licence Number in any/all advertising to ease in enforcement investigation.
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;
  - 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; 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.

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;
- ii. Introduce a bedroom quota that limits the total number of guest bedrooms associated with Bed and Breakfasts in Banff;
- iii. Restricting the maximum number of bedrooms to 50% (or less) of the total number of bedrooms at the property;

- 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;
  - v. Requiring that one of the owners bedrooms is the largest bedroom at the property; and/or,
  - vi. Requiring that at least one of the owners bedrooms is above grade.
- 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.
- 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.
- 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; 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.
- 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;
  - 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; and/or,
  - iii. Add additional clarity regarding the exclusive management and operation of Bed and Breakfasts.
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;
- 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; 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.

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;
  - 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;
  - 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; 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.
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; 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.

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;
- 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;

- 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; and/or,
- iv. Reduce current fees associated with Bed and Breakfasts.

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.

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.

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;
- 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;

- 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; 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.

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.

## **IMPLICATIONS OF DECISION**

### **Budget**

There are no direct budget implications on drafting amendments to the Land Use Bylaw however any amendments that could impact the number of Bed and Breakfast applications received and/or the renewal frequency could have budget implications. Additionally, any change in application or renewal fees would have budget implications.

### **Internal Resources**

With a high number of inquiries regarding Bed and Breakfasts, applications, annual renewal and the 2014 direction from council to proactively enforce on unapproved commercial accommodation, a disproportionate amount of internal resources are dedicated to Bed and Breakfasts. This is predominantly comprised of staff time.

### **Communication**

Existing Bed and Breakfast operators have been notified via email about this report. In addition, a number of people who expressed an interest in this report to Planning and Development have also been notified via email.

All Land Use Bylaw amendments are advertised on Banff.ca, and require a Public Hearing which is advertised in local media.

### **Banff Community Plan**

#### Fostering a healthy community: our social and cultural goals

The housing goals of the Banff Community Plan include:

- To supply a mix of affordable housing options to ensure those working in Banff live in Banff.
- Respect neighbourhood character that personifies and reinforces Banff's sense of place.

The character and heritage objectives of the Banff Community Plan include:

- Protect, preserve and commemorate historic resources as defined in the Heritage Resource Policy.
- Cooperate with senior government, community partners, property owners and individuals to preserve historic sites in Banff.
- Increase support for not-for-profit agencies and other interests in acquiring and preserving heritage properties.
- Encourage the retention, restoration, rehabilitation and re-use of existing heritage buildings.

Local economy: our economic goals

The visitor experience goals of the Banff Community Plan are:

- Create memorable national park experiences.
- Showcase Banff as a leader in environmental practices and hospitality.

The commercial development goals of the Banff Community Plan include:

- Provide an appropriate mix of commercial services that meet the long-term needs of visitors and residents.
- Ensure commercial development reflects and respects the Town's role as a visitor centre as well as the values of the national park.
- Commercial development will occur within the legislated commercial growth cap.

**Council Strategic Priorities**

Review of the Bed and Breakfast regulations is a 2018 Service Review Priority.

**Legislation/Policy**

The purposes of the Town of Banff are set out in section 4.3 of the Incorporation Agreement as:

- a) to maintain the townsite as part of a World Heritage Site;
- b) to serve, as its primary function, as a centre for visitors to the Park and to provide such visitors with accommodation and other goods and services;
- c) to provide the widest possible range of interpretive and orientation services to Park visitors;
- d) to maintain a community character which is consistent with and reflects the surrounding environment; and
- e) to provide a comfortable living community for those persons who need to reside in the townsite in order to achieve its primary function.

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Submitted By: On original  
Dave Michaels, Development Planner

Reviewed By: On original  
Robert Earl, Town Manager