



The Corporation of the City of Courtenay

Staff Report

To: Council

File No.: 0400-70

From: Director of Operational Services

Date: February 25, 2026

Subject: Provincial Archaeological Permitting and Indigenous Engagement

PURPOSE: The purpose of this report is to seek Council direction to advance provincial archaeological permitting requirements while authorizing parallel government-to-government engagement with K'ómoks First Nation to co-develop an Emergency Infrastructure and Cultural Heritage Response Protocol that reduces risk and enables timely response during emergency infrastructure events.

EXECUTIVE SUMMARY:

Emergency infrastructure works are, by their nature, undertaken under significant time pressure and often under circumstances where delay is not an option. When critical systems fail, the City has a responsibility to act decisively to protect public health, safety, and the environment. At the same time, the City recognizes that these works frequently intersect with provincial archaeological requirements and Indigenous rights and interests, and that those processes carry their own responsibilities, expectations, and legal obligations.

Over the past several years, the City has worked diligently to strengthen its approach to cultural heritage protection and Indigenous engagement, including the advancement of Multi Area Permit (MAP) applications and the use of Cultural Heritage Permits to support early, respectful engagement with K'ómoks First Nation. These efforts reflect a commitment to reconciliation, transparency, and collaboration, and have contributed to the development of positive and productive working relationships.

Recent direction from the Provincial Archaeology Branch has clarified that municipal MAPs cannot include pre-authorization for emergency or emergent infrastructure works, and that such situations must instead be addressed through expedited amendments or post-event permitting on a site-specific basis. The City fully accepts and will continue to operate within this provincial regulatory framework. However, this direction also brings into sharper focus a challenge shared by municipalities across British Columbia: provincial archaeological permitting and consultation processes were not designed to align seamlessly with the urgent timelines associated with emergency response.

In circumstances where immediate action is required to prevent harm, reliance on post-event permitting alone can expose the City to increased legal, operational, and reputational risk, even where actions are taken in good faith. This tension highlights the need for additional structure, clarity, and shared understanding before emergencies occur.

To respond thoughtfully and responsibly, staff are recommending a deliberate dual-track approach. The first track continues to advance all formal work through provincial archaeological permitting processes, including revised MAPs, Site Alteration Permits, and post-event authorizations as required. In parallel, the second track would authorize staff to engage with K'ómoks First Nation on a government-to-government basis to collaboratively develop an **Emergency Infrastructure and Cultural Heritage Response Protocol**. This protocol is intended to complement — not replace — provincial regulation by establishing shared expectations in advance regarding communication, coordination of cultural heritage permitting, Guardian involvement where practicable, and post-event review during emergency situations.

Together, these two tracks represent a balanced, transparent, and relationship-based approach that strengthens governance, reduces risk, and better aligns emergency response realities with the City's legal and reconciliation commitments. Council support is requested to proceed with this work.

BACKGROUND:

The City has been advancing emergency infrastructure works that require coordination across multiple regulatory areas and jurisdictions. Through this work, staff have gained practical experience navigating the intersection of emergency response, archaeological governance, and Indigenous engagement. This experience has highlighted both the strengths of existing processes and the limitations that arise when urgent action is required.

As part of its ongoing commitment to respectful engagement, the City's Operational Services Department has utilized the Cultural Heritage Permit process as a key mechanism to engage with K'ómoks First Nation on infrastructure and capital works projects. This approach has supported early communication, information sharing, and collaborative problem-solving, and has contributed to the development of a positive and constructive working relationship. Staff experience has demonstrated that clear expectations, relationship-based engagement, and government-to-government dialogue improve coordination and lead to better outcomes for all parties.

At the same time, the City has been advancing applications for a Section 12.2 Multi Area Inspection Permitⁱⁱ, together with a concurrent Section 12.4 Site Alteration Permitⁱⁱⁱ, to support routine operations, capital projects, and maintenance activities across municipal lands. These applications were originally submitted in May 2025 and were developed in alignment with approaches pursued by other local governments in the region, including the Town of Comox, the Comox Valley Regional District, and the City of Campbell River. Since submission, the City and its archaeological consultant have worked collaboratively with the Province through multiple rounds of review, updated applications to reflect new permit templates, and maintained their original file numbers and queue position while responding to technical comments.

In late 2025, following review of similar municipal applications, the Provincial Archaeology Branch advised that it would no longer process MAP applications that include pre-authorized provisions for emergency or emergent works. This change reflects evolving legal interpretation and policy direction related to the Province's duty to consult Indigenous Nations and the requirement for site-specific information to support consultation and decision-making. The revised direction emphasizes that archaeological sites must be identified and understood before alterations can be authorized and that emergency works should be addressed through permit amendments or standalone permits rather than advance authorization.

While this approach reinforces Indigenous consultation and regulatory oversight, it also confirms that municipalities remain exposed to uncertainty during emergency response situations, as formal permitting pathways are inherently reactive and may only be engaged after work has occurred. This challenge is not unique to Courtenay. Across British Columbia, local governments and Crown agencies have encountered similar tensions between emergency response timelines and archaeological governance and have sought additional tools to bridge this gap responsibly.

DISCUSSION:

Staff recognize and respect that provincial archaeological permitting processes are designed to prioritize Indigenous consultation and cultural heritage protection, and the City remains committed to following due process as defined by the Province. Advancing the City's MAP applications under the current framework remains necessary to maintain compliance with the Heritage Conservation Act and to provide a clear

regulatory foundation for planned and routine municipal works. Staff are not recommending that the City challenge or dispute provincial processes, but rather that it continue to work within them while acknowledging their limitations in emergency contexts.

Emergency infrastructure failures may arise without warning and require immediate physical intervention to protect public health, safety, or the environment. In these situations, consultation or authorization timelines cannot always be completed in advance of work. When emergency actions proceed in good faith and are later addressed through post-event permitting, the absence of a pre-established engagement framework can increase uncertainty and risk for all parties.

To address this reality, staff are recommending a dual-track approach that combines statutory compliance with proactive relationship-based planning. Under this approach, the City would continue to advance its MAP applications while also engaging with K'ómoks First Nation, under their guidance and requirements, to explore the co-development of an Emergency Infrastructure and Cultural Heritage Response Protocol. The intent of this work is not to bypass regulation, but to establish shared expectations and agreed-upon procedures that can be relied upon when urgent repairs are required.

The proposed protocol would establish clarity in advance regarding notification, coordination of cultural heritage permitting, involvement of K'ómoks First Nation Guardians where safe and practicable, and post-event review following emergency works. It would not create exemptions from law, confer veto authority, or delay emergency response. Rather, it would provide transparency, accountability, and mutual understanding in circumstances where prior engagement is not feasible due to urgency.

The scope of the protocol would be intentionally limited to bona fide emergency situations and could not be used to accelerate routine operations, maintenance, or planned capital works. Activation would require senior operational confirmation and documentation, ensuring disciplined and appropriate use.

Similar approaches have been successfully implemented by other local governments in British Columbia. For example, Metro Vancouver has established emergency and chance-find protocols in collaboration with affected First Nations that operate alongside provincial permitting. These frameworks have improved confidence, reduced conflict, and strengthened relationships while maintaining regulatory compliance. From a risk management perspective, staff assess that an unmanaged emergency response presents greater exposure than a structured framework that integrates Indigenous engagement alongside statutory compliance. Guardian involvement, where practicable, supports cultural awareness, real-time communication, and trust-building while ensuring that safety and immediacy remain paramount.

Together, the two tracks outlined in this report are intended to operate concurrently and reinforce one another. Provincial permitting provides statutory authority and formal oversight, while a parallel City–K'ómoks First Nation protocol addresses relational, cultural, and operational considerations that regulation alone does not fully resolve. This approach reflects the City's commitment to learning from experience, strengthening relationships, and continuing to improve how emergency infrastructure needs are met in a respectful, transparent, and responsible manner.

POLICY ANALYSIS:

The proposed approach to emergency infrastructure works is consistent with existing City bylaws and administrative authority that allow for expedited action where immediate risks to public safety, essential services, or the environment are present. The framework does not introduce new regulatory requirements

but clarifies how emergency works may proceed across multiple permitting areas when standard processes are not practical due to urgency.

The City's Official Community Plan identifies reconciliation as a core direction and confirms Council's adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as the City's framework for reconciliation. The proposed approach aligns with this direction by recognizing the importance of communication and collaboration with the K'ómoks First Nation, even in emergency circumstances, while acknowledging that the nature of emergency work may limit the timing and scope of engagement.

Canadian case law establishes that the constitutional duty to consult rests with the Crown; however, municipal decisions can affect Indigenous interests and are increasingly expected to reflect reconciliation principles through policy and practice. The proposed framework balances the need for timely emergency response with Council's stated commitments under the OCP and UNDRIP, and provides a clear, transparent basis for decision-making during emergency conditions.

FINANCIAL IMPLICATIONS:

There are no immediate financial implications associated with the adoption of the proposed policy framework.

The proposed framework aims to establish a new policy to guide the planning and delivery of emergency infrastructure works across multiple permitting areas, including a structured collaborative protocol with the K'ómoks First Nation. Implementation of the policy may result in incremental administrative and staff resource requirements related to coordination, engagement, and documentation; however, these impacts are expected to be manageable within existing departmental resources in the near term.

Emergency infrastructure works undertaken pursuant to the framework would continue to be funded through approved capital budgets, emergency response allocations, reserves, or other funding sources, subject to Council approval where required. Should implementation of the framework result in material and ongoing resource demands beyond existing capacity, staff would report back to Council with identified costs and funding options.

While the framework may introduce modest upfront administrative costs, the cost of maintaining the status quo may be significantly higher. Delayed or fragmented emergency response, increased infrastructure damage, and strained government-to-government relationships can result in greater long-term financial exposure, higher repair and replacement costs, and increased risk to the City. The proposed framework is intended to mitigate these risks by improving coordination, reducing delays, and strengthening collaborative relationships in emergency situations.

ADMINISTRATIVE IMPLICATIONS:

Implementation will require the development and maintenance of internal procedures to support multi-area permitting coordination, documentation, and engagement activities during emergency infrastructure works.

The framework will require staff to apply a consistent approach to early notification, information sharing, and coordination with the K'ómoks First Nation and applicable regulatory agencies when emergency works are initiated. This may result in changes to existing workflows and increased cross-departmental coordination during emergency events, but it is intended to improve clarity, consistency, and accountability in decision-making.

No new governance bodies or standing committees are proposed at this time. Ongoing administration of the framework will be integrated into existing emergency response and infrastructure management processes. Should operational experience identify the need for adjustments to procedures, resourcing, or roles, staff would report back to Council as appropriate.

STRATEGIC PRIORITIES REFERENCE:

The proposed emergency infrastructure works framework supports Council's Strategic Plan by strengthening governance practices, improving operational readiness, and advancing reconciliation through practical, action-oriented policy. By establishing a clear approach to emergency response across multiple permitting areas, the framework supports effective and timely service delivery in situations that directly affect community well-being and public safety.

The framework aligns with Council's strategic commitment to reconciliation and respectful government-to-government relationships by formalizing a collaborative approach with the K'ómoks First Nation. This reflects Council's direction to move beyond ad hoc engagement and embed reconciliation principles into City operations and decision-making processes.

In addition, the proposed approach supports sound asset management and infrastructure stewardship by reducing the risk of delayed response and escalating damage during emergency events. Overall, the framework advances Council's strategic objectives by improving clarity, coordination, and accountability in how the City responds to emergency infrastructure needs.

This initiative addresses the following strategic priorities:

- Good Governance - Develop a Reconciliation Framework
- Public Safety - Build capacity for emergency planning and local response

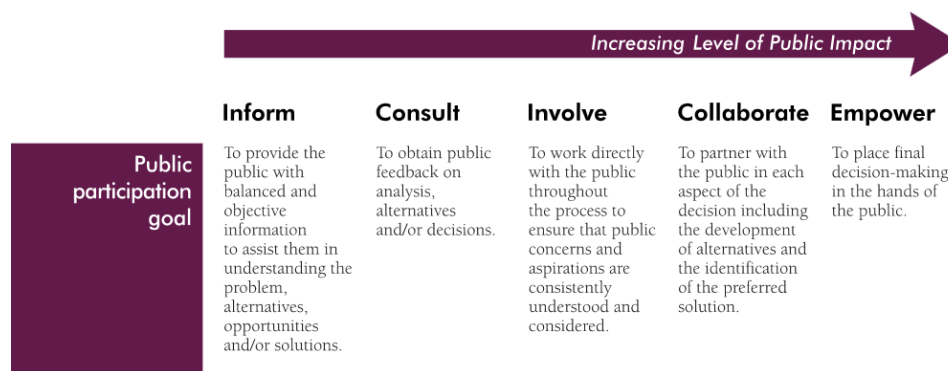
PUBLIC ENGAGEMENT:

Engagement with the K'ómoks First Nation will be undertaken on a government-to-government basis, consistent with Council's reconciliation commitments, the Official Community Plan, and the City's adoption of UNDRIP as a guiding framework. The engagement approach is intended to be respectful, relationship-based, and responsive to K'ómoks First Nation preferences, rather than driven solely by City timelines or operational urgency.

The City will engage with the K'ómoks First Nation at a pace determined in collaboration with the Nation, recognizing the importance of allowing sufficient time for review, discussion, and internal processes. Information sharing related to proposed infrastructure works will be guided by K'ómoks First Nation direction regarding timing, format, and level of detail, with flexibility to adjust engagement approaches as relationships and expectations evolve.

This approach is intended to support meaningful and sustained government-to-government engagement, reduce the risk of conflict or misunderstanding, and strengthen long-term working relationships. By prioritizing engagement that proceeds at the pace of the K'ómoks First Nation, the City supports reconciliation objectives while establishing a foundation for more effective collaboration on infrastructure planning and delivery over the long term.

Staff would inform the public based on the IAP2 Spectrum of Public Participation:



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OPTIONS:

1. THAT Council endorse a dual-track approach to managing emergent municipal infrastructure works that may engage archaeological and cultural heritage considerations, as outlined in the report;

AND THAT Council direct staff to continue advancing all required provincial archaeological permitting processes, including Multi-Area Permits, Site Alteration Permits, and post-event authorizations, as the formal and controlling regulatory pathway;

AND THAT Council authorize staff to engage with K'ómoks First Nation on a government-to-government basis to collaboratively explore and, if appropriate, co-develop an **Emergency Infrastructure and Cultural Heritage Response Protocol** to support timely communication, coordination, and cultural heritage stewardship during bona fide emergency situations;

AND THAT any such protocol be developed to complement, and not replace or supersede, provincial regulatory requirements, and be limited in scope to emergency circumstances where immediate action is required to protect public health, safety, or the environment.

2. THAT Council provide alternative direction to staff.

ATTACHMENTS:

1. HCA Permit Application – Technical Memo

Prepared by: Kyle Shaw, Director of Operational Services
Reviewed by: Mike Kearns, Manager of Operational Logistics
Adriana Proton, Manager of Legislative Services
Concurrence: Geoff Garbutt, M.PI., MCIP, RPP, City Manager (CAO)

ⁱ Multi-Area Permit (MAP) refers to a provincial permit under the *Heritage Conservation Act* that allows multiple archaeological impact assessments to be undertaken within a defined area under a single permit, subject to First Nations consultation.

ⁱⁱ Section 12.2 Multi-Area Inspection Permit refers to a Heritage Inspection Permit under the *Heritage Conservation Act* that allows multiple archaeological impact assessments to be carried out within a defined area under one permit, subject to First Nations consultation.

ⁱⁱⁱ Section 12.4 Site Alteration Permit refers to a permit under the *Heritage Conservation Act* that authorizes approved alterations to an archaeological site, subject to conditions and First Nations consultation.