

**Cape Breton Regional Municipality**

**Council Meeting**

**ADDENDUM**

**TUESDAY, FEBRUARY 19, 2019**

**6:00 P.M.**

Council Chambers  
2<sup>nd</sup> Floor, City Hall  
320 Esplanade, Sydney, NS

# Cape Breton Regional Municipal Council

Tuesday, February 19, 2019

6:00 p.m.

## ADDENDUM

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### 6. PLANNING ISSUES:

#### 6.1 FINAL APPROVAL – PUBLIC HEARING:

- a) Request by New Dawn Enterprises Ltd. To amend the North End Sydney Secondary Planning Strategy and Land Use Bylaw:

Public Hearing to consider amending the North End Sydney Secondary Planning Strategy and Land Use Bylaw to allow for the development of a “microbrewer cidery” and “cidery tasting room” at 52 Nepean Street, Sydney. Rick McCreedy, Senior Planner / Heritage Officer (See page 3)

**Request by New Dawn Enterprises Ltd. to amend the North End Sydney Secondary Planning Strategy and Land Use Bylaw**

**Motion:**

Moved by Councillor Eldon MacDonald, seconded by Councillor McDougall, approval to advertise notice of a Public Hearing to be held during a future meeting of Council to consider the possibility of amending the North End Sydney Secondary Planning Strategy and Land Use Bylaw to allow for the development of a “microbrewery cidery” and “cidery tasting room” at 52 Nepean Street, Sydney as outlined in the staff Issue Paper dated November 7, 2018.

**Motion Carried.**

November 7, 2018

**ISSUE PAPER**

**TO: Council**

**FROM: Rick McCready, MCIP, Senior Planner**

**RE: Request by New Dawn Enterprises Ltd. to amend the North End Sydney Secondary Planning Strategy and Land Use Bylaw to allow the conversion of St. George's Church Hall, 52 Nepean Street, Sydney into a "microbrewery cidery" and cidery tasting room: Report on Public Participation Program**

**Background Information**

A request has been received from New Dawn Enterprises to amend the North End Sydney Secondary Planning Strategy and Land Use Bylaw to permit a "microbrewery cidery" and cidery tasting room in St. George's Church Hall at 52 Nepean Street. The plan is for New Dawn to purchase the hall from the owners of St. George's Church, and then lease the property to the operator of the cidery.

As the hall is currently located on the same lot as the Church, a subdivision will be necessary to create a separate lot for the hall which will be conveyed to New Dawn. The church and cemetery, which are registered municipal and provincial heritage properties, will be unaffected by the subdivision. The owners of the Church (the Wardens of the Parish of the Resurrection) have indicated that they are aware that New Dawn has applied for the amendments described above. (copy attached)

A description of the proposed operation is included in the attached letter from New Dawn. The letter also explains the efforts that have been made to find a suitable location for the cidery in the downtown core, which unfortunately have proven to be fruitless.

The site is currently located in the North End Residential (NER) Zone. This zone does not allow for the proposed use. The site is immediately adjacent to the North End Downtown Fringe (NEDF) Zone which does allow a variety of commercial development but excludes certain types of businesses that are primarily involved with the serving of

alcohol. The rationale for the exclusion of these uses is found in wording of Policy 10 in the Planning Strategy:

***Policy 10***

***It shall be the policy of Council to designate the area between the CBD and the North End residential areas as shown on the Future Land Use Map as the “North End Downtown Fringe”. This area shall be zoned “North End Downtown Fringe” (NEDF) and in the NEDF Zone the Land Use Bylaw shall permit office uses and a variety of commercial uses but shall exclude a number of commercial uses which may have inappropriate visual impacts on nearby residential or heritage areas (such as automotive repair outlets and automobile sales establishments) or which are likely to generate traffic and noise at nighttime (such as cabarets or lounges). All new commercial buildings shall be subject to site plan approval so as to ensure that landscaping and parking issues are adequately addressed, unless a development agreement is required pursuant to Policy 12.***

At the time the Strategy was written, residents were very concerned about businesses such as cabarets and lounges being established in the “fringe area” between the downtown core and the North End residential area, so “alcohol beverage service establishments” are not permitted in the NEDF Zone. As a result, simply rezoning the property at 52 Nepean Street from NER to NEDF would not allow the proposed cidery to proceed. A Planning Strategy amendment is required, and as a result a public participation program was required to be held.

**On September 18, 2018, Council approved a resolution to conduct a public participation program to gather public input into the possibility of amending the North End Sydney Secondary Planning Strategy and Land Use Bylaw to allow for the development of a “microbrewery cidery” and “cidery tasting room” at 52 Nepean Street in Sydney. Staff recommended that a public participation program be held, and noted in in report dated September 10, 2018 that “An argument can be made that the negative impacts that might be associated with other facilities serving alcohol will be very minimal with this operation. For this reason, staff feel that it may be possible to make some carefully worded adjustments to the Planning Strategy and Land Use Bylaw to allow the proposed cidery to proceed on this site while leaving the restrictions on ‘alcohol beverage service establishments’ in place.”**

**Results of Public Participation Program**

An informal public meeting was held in St. George’s Hall on the evening of October 11, 2018, to gather input into the proposed amendments. At the meeting CBRM Staff reviewed the current bylaw requirements and explained the rationale for the restrictions on “alcohol beverage service establishments” that have been in effect since the North End Sydney Secondary Planning Strategy was adopted by Council in 2006. The proponent

for the cidery (Jill McPherson) gave a powerpoint presentation outlining her plans for the facility.

The meeting was well attended with 55 persons (excluding CBRM staff and councillors) signing in at the door. 29% of those in attendance were residents of the North End Planning Area, 67% were from somewhere else in CBRM, and 4% did not provide an address or gave one that was illegible.

Many of those in attendance spoke in support of the proposed cidery, citing the need to encourage new business ventures in general and the potential benefits of the cidery to the tourism industry. Several persons did express concerns, although no one clearly indicated they opposed the cidery as described by Ms. McPherson in her presentation. The concerns can be summarized as follows:

- The cidery might expand beyond the scope described in the presentation, and as a result might generate traffic and/or noise that would negatively impact nearby residential areas in the evening
- The cidery may require more parking than what is available now on the St. George's Hall property
- The possibility that the cidery could exacerbate problems associated with speeding vehicles on the narrow, one-way section of Nepean Street located just west of St. George's Hall
- The possibility that by approving amendments to allow this development that Council may be setting a precedent, meaning that more amendments might be likely in the future which may negatively impact the quiet residential character the neighbourhood.

## **Discussion**

Although the feedback at the public meeting was generally very positive, it is important that the concerns that were raised (as noted above) be addressed, as these concerns were raised by people who do live in relatively close proximity to the proposed development.

With respect to the possibility that the cidery might expand in scope beyond what is currently being proposed by Ms. McPherson, it is possible to place conditions on the development as part of the amendment process to ensure that does not happen.

Although concerns over parking have existed in the North End for some time, those concerns largely relate to the fact that many of those employed in the downtown core park on the area's residential streets on a regular basis. The St. George's Hall property has sufficient on-site parking to meet the requirements that are now in place in the Land Use Bylaw for the proposed use as described by Ms. McPherson. As the hall has been used for various events in the past that have attracted relatively large numbers of people, it is difficult to argue that the cidery will have a greater negative impact on the parking situation than the operation of the Hall has in the past. It should also be noted that Ms. McPherson is anticipating that many of her customers will be cruise ship passengers who

will simply walk to the cidery from the nearby cruise ship pavilion. It is important, however, that the type of operation be limited so as to ensure that it does not evolve into the type of facility that would attract large numbers of customers who would travel to the site by motor vehicle.

As for the issue of vehicles speeding on the narrow section of Nepean Street, it is staff's view that it is unlikely that the cidery will result in a significant increase in vehicular traffic or speeds in this area, given the fact the existing hall already attracts vehicular traffic to the area. However, the absence of a sidewalk on that section of Nepean does create a situation where pedestrians and vehicles mix. For that reason, I have discussed the possibility of putting in place some traffic calming measures in this area with CBRPS Traffic Sargent Dave MacGillivray. We will be following up on this with CBRM Engineering Services regardless of whether or not the proposed cidery goes ahead.

The final concern raised at the public meeting was related to "setting a precedent", the idea that if this project is approved that further amendments to allow this type of development in residential areas would likely also be approved. With respect to this, I would suggest that the amendment to permit the cidery be written in such a manner that it is clear that the extension of the boundary of the "North End Downtown Fringe" be limited to the St. George's Hall property only. Any future extension of the boundary would require another amendment to be approved by Council.

### **Recommendation**

It is my recommendation that the North End Sydney Secondary Planning Strategy and Land Use Bylaw be amended by:

- 1. Moving the boundary of the North End Downtown Fringe area and zone northwards to include the property occupied by St. George's Hall at 52 Nepean Street**
- 2. Amending the policies for the North End Downtown Fringe area to permit facilities that allow for the serving of alcohol, but only if the alcohol being served is manufactured on-site, and only by means of a development agreement that would regulate the size, nature and hours of operation of the facility with the intent of minimizing the impact of the facility on any nearby residential uses.**

It is also my recommendation that if Council is agreeable to the amendments as outlined above, that Council enter into a development agreement with the owner of 52 Nepean Street which would allow the development to proceed, based on the plans submitted by Ms. McPherson ( a microbrewery cidery and a tasting room), with the hours of operation of the tasting room being restricted to no later than 10 pm except on Friday and Saturday nights when the tasting room would close at 11 pm.

Copies of the actual amendments and the draft development agreement are attached for Council's consideration. If Council wishes to proceed with these recommendations, a motion for approval to advertise should take place at the January 15, 2019 meeting.

Yours very truly,

Rick McCready, MCIP  
Senior Planner

**By-law**  
of the Cape Breton Regional Municipality  
amending the

**North End Sydney Secondary Planning Strategy**

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Pursuant to Section 205 of the Municipal Government Act of Nova Scotia, the Council of the Cape Breton Regional Municipality hereby amends the text of the North End Sydney Secondary Planning Strategy in the following manner:

**THAT:** Council amends the text of the Secondary Planning Strategy by adding the following new subsection to Section 4, "North End Downtown Fringe":

As discussed earlier, it is the intent of this Planning Strategy to ensure that new developments in the North End Downtown Fringe area are reasonably compatible with nearby residential and heritage areas. For that reason new alcohol beverage service establishments such as cabarets or lounges are not permitted. However, in 2018 a proposal was received by the CBRM to convert a former church hall located at 52 Nepean Street immediately adjacent to the North End Downtown Fringe into a cider microbrewery with a "tasting room" or "hospitality room" as an companion use. After a review of the proposal and consultation with the neighbourhood through a well attended public participation program, it was felt that this activity could be an appropriate addition to the area, providing that measures were put in place to ensure that the scale of the project is limited to ensure that it will be reasonably compatible with nearby residential areas, that consumption of alcohol will be limited to products produced on-site and that the hours of operation will be regulated so as to ensure that late night activities are prohibited.

**Policy 13.2**

It is Council's intention to permit an alcohol processing facility (such as a microbrewery) within the North End Downtown Fringe, providing that the Owner of the facility enters into a development agreement with Council which limits the scale of the facility so as to ensure that it is reasonably compatible with nearby residential areas, and in particular to ensure the serving of alcoholic beverages at the facility be (1) limited to products produced on-site, (2) not take place late at night and (3) not take place in a club, lounge, beverage room or cabaret as defined by the Province.

**AND THAT:** Council amends the North End Sydney Secondary Planning Strategy Future Land Use Map by changing the designation of the property at 52 Nepean Street (as shown on the attached map) from the "North End Residential" designation to the "North End Downtown Fringe" designation.

**AND THAT:** Council amends the text of the North End Sydney Secondary Planning Strategy by adding the words "or Policy 13.2" to the end of Policy 10.

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**PASSED AND ADOPTED:** by a majority of the whole Council at a duly called meeting of the Cape Breton Regional Municipal Council held on \_\_\_\_\_.

**MAYOR**

**CLERK**

***THIS IS TO CERTIFY*** that the attached is a true and correct copy of the Secondary Planning Strategy Amendment amending By-law of the Cape Breton Regional Municipality adopted by Regional Council during a meeting held on \_\_\_\_\_ to amend the North End Sydney Secondary Planning Strategy.

\_\_\_\_\_  
Deborah Campbell Ryan, CLERK

# North End Sydney Secondary Planning Strategy - PROPOSED AMENDMENT - (Case #1051)

George Street

Nepean Street



Area proposed to be changed from:  
"North End Residential"  
to  
"North End Downtown Fringe"



**By-law**  
of the Cape Breton Regional Municipality

amending the

**Cape Breton Regional Municipality's  
North End Sydney Secondary  
Land Use Bylaw**

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Pursuant to Section 210 of the Municipal Government Act of Nova Scotia, the Council of the Cape Breton Regional Municipality hereby amends the Cape Breton Regional Municipality's North End Sydney Secondary Land Use By-law in the following manner:

- THAT:** Council amends the CBRM's North End Sydney Secondary Land Use Bylaw map by rezoning the area on the attached map from NER (North End Residential) to NEDF (North End Downtown Fringe)
- THAT:** Council amends the CBRM's North End Sydney Secondary Land Use Bylaw by deleting the words "alcohol processing" in Section 1 of Part 3
- THAT:** Council amends the CBRM's North End Sydney Secondary Land Use Bylaw map by deleting the existing wording of Section 2 of Part 3 and replacing it with the following:

**"Uses Permitted by Development Agreement**

1. The uses listed in Section 1 shall be permitted only by development agreement if the height of any proposed building exceeds 35 ft., subject to Policy of the North End Sydney Secondary Planning Strategy.
2. An alcohol processing facility, including an alcohol beverage service establishment, subject to Policy 13.2 of the North End Sydney Secondary Planning Strategy"

**THAT:** Council amends the CBRM's North End Sydney Secondary Land Use Bylaw by adding the following words to Part 10: "An alcohol processing facility, including an alcohol beverage service establishment, subject to Policy 13.2 of the North End Sydney Secondary Planning Strategy"

**PASSED AND ADOPTED:** by a majority of the whole Council at a duly called meeting of the Cape Breton Regional Municipal Council held on \_\_\_\_\_.

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CLERK**

***THIS IS TO CERTIFY*** that the attached is a true and correct copy of the Land Use Bylaw amendment Amending By-law of the Cape Breton Regional Municipality adopted by Regional Council during a meeting held on \_\_\_\_\_ to amend the Cape Breton Regional Municipality's North End Sydney Secondary Land Use By-law.

\_\_\_\_\_  
Deborah Campbell Ryan, CLERK

# North End Sydney Secondary Land Use By-law - PROPOSED AMENDMENT - (Case #1051)

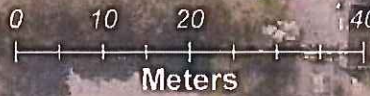
George Street

Nepean Street



Area proposed to be rezoned from:

"North End Residential"  
to  
"North End Downtown Fringe"



THIS INDENTURE made and entered into this \_\_\_\_ day of \_\_\_\_\_ A.D., 2019.  
BETWEEN: New Dawn Enterprises of Sydney, Province of Nova Scotia

hereinafter referred to as the "Owner(s)"

Of The One Part

AND

THE CAPE BRETON REGIONAL MUNICIPALITY, a body corporate and politic, in the County of Cape Breton, Province of Nova Scotia;

hereinafter called the "Municipality"

Of The Other Part

WHEREAS the North End Sydney Secondary Planning Strategy provides for Development Agreements under Part VIII of the Municipal Government Act of Nova Scotia pursuant to the policies of the North End Sydney Secondary Planning Strategy.

AND WHEREAS the Municipality by this agreement, permits the Owner(s), or a tenant of the Owner(s) to convert an existing structure at 52 Nepean Street, Sydney into a microbrewery cidery and a cidery tasting room, also identified as PID#\_\_\_\_\_, which lands are shown on Schedule "A", attached, subject to the terms and conditions herein contained.

AND WHEREAS the Owner covenants that it is the Registered Owner of the lands and premises outlined in Schedule "A", attached hereto and more particularly described in a deed to the owners dated the \_\_\_\_ day of \_\_\_\_\_ A.D., \_\_\_\_, and registered in the Registry of Deeds Office at Sydney, Nova Scotia, on the \_\_\_\_ day of \_\_\_\_\_ A.D., \_\_\_\_, on Book \_\_\_\_\_ at Page \_\_\_\_\_ et sequel.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of ONE DOLLAR (\$1.00) paid by the Owner(s) to the Municipality, receipt of which is hereby acknowledged, the Owner(s) for and on behalf of themselves, their heirs, executors, administrators, successors, and assigns covenant and agree with the Municipality as follows:

1. To maintain the property identified in the attached Schedule "A", hereinafter described as "the lands and premises" in accordance with the provisions of this Agreement;
2. To develop the property as a microbrewery cidery and a cidery tasting room, to be housed within the existing structure as shown on the attached plan, as identified on Schedule B, attached hereto, except under the circumstances described in Clause 10;

3. To provide on-site parking, in accordance with the requirements of the NEDF Zone;
4. To limit the cidery and tasting room to the existing structure, with no additions to allow for an expanded floor area, except that an outdoor patio area not exceeding 800 square feet may be developed at the rear (western) side of the structure for use during the period between May 1 and October 15 each year;
5. To ensure that the alcoholic beverages sold in the cidery tasting room are limited to those produced on-site. Alcohol sales may be for on-site consumption or for taking off site;
6. To ensure that the operation of the tasting room is limited to the hours of 11 am to 10 pm, Sunday to Thursday and to 11 am to 11 pm on Friday and Saturday. Sales of food for on-site consumption will be limited to the same hours, and all food served must be consumed on site. No take-out or delivery service is permitted for food sales;
7. Except as provided for in Clause 8, below, any areas within the building not included in the cidery microbrewery or cidery tasting room must be utilized for uses accessory to the cidery operations, such as storage, washrooms, office space, kitchen facilities or a gift shop selling merchandise related to the cidery such as souvenir mugs, t-shirts, ball caps, sweaters, and similar items. No other business activity is permitted on the site;
8. The following exceptions to Clause 7 are permitted: (a) the use of the existing kitchen within the structure by the Owner as a secondary location for the preparation of food for the Meals On Wheels service provided by the Owner, on the understanding that the primary location of the Meals on Wheels operation will be elsewhere, and (b) the use of a maximum of 700 square feet of space within the existing structure as office space, providing that the number of parking spaces required by the office space and the cidery operation combined as specified in the Land Use Bylaw for the NEDF Zone do not exceed the number of spaces provided on the property;
9. All activities on the property relating to the serving of alcohol or food shall be subject to any applicable regulations of the Province of Nova Scotia. Activities on this property involving the serving of liquor shall be limited to a "tasting room" and under no circumstances shall a club liquor license or a license for a beverage room, lounge, or cabaret be granted for this property;
10. In the event that the cidery ceases operation for any reason, the use of the property shall be governed by the requirements of the North End Downtown Fringe (NEDF) Zone, or in the event that the Land Use Bylaw is amended so as to eliminate the NEDF Zone, by the requirements of the zone for the property lying immediately to the west of the subject property;
11. Upon the breach by the Owner(s) of any of the terms or conditions of this Agreement, the Municipality shall be entitled to specific performance by way of remedial Court Order or after fifteen (15) days notice in writing to the Owner(s), at its option enter

on the lands and premises, and perform any and all covenants or conditions herein contained. Should the Municipality not choose to exercise its option to remedy, this Agreement may be terminated by the Municipality upon written notice to the Owner(s) or their successors-in-title, at which time all licenses or permissions hereby granted by the Municipality to the Owner(s) shall absolutely cease to exist. The costs of all and/or necessary legal action, of whatsoever nature incurred by the Municipality in enforcing compliance of this Agreement shall be the sole responsibility of the Owner(s);

12. That all reasonable expenses incurred by the Municipality or its successors, or agents, or employees, whether arising out of the entry of the said lands and premises or from the performance of the covenants may be recovered from the Owner(s), his/her successors, or agents, or employees by direct suit and shall become a charge upon the land;
13. That this Agreement shall be registered in the Registry of Deeds Office in the County of Cape Breton and shall form a charge or encumbrance upon the said property as outlined in Schedule "A";
14. If any provisions of this Agreement shall be found to be or deemed illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected thereby.

The covenants, agreement, conditions and understandings herein contained on the part of the Owner(s) shall run with the land and shall be binding upon them, their heirs, executors, administrators, successors, assigns, mortgagees, lessees, and occupiers of the said land from time to time and shall be and form a charge and/or restrictive covenant upon the said land.

THIS AGREEMENT and everything contained herein shall endure to the benefit and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns. The parties hereto declare that the term "owner(s)" used in this agreement shall be construed to include the plural as well as the singular and the masculine feminine or neuter genders where the context so requires.

IN WITNESS WHEREOF the parties hereto have caused this Indenture to be duly executed the day and year first above written.

|                              |   |       |
|------------------------------|---|-------|
| SIGNED, SEALED and DELIVERED | ) |       |
| IN THE PRESENCE OF:          | ) | OWNER |
|                              | ) |       |
|                              | ) |       |
| WITNESS TO OWNER             | ) | OWNER |

\_\_\_\_\_  
 WITNESS TO MUNICIPALITY

) CAPE BRETON REGIONAL  
 ) MUNICIPALITY  
 )  
 )  
 ) per \_\_\_\_\_  
 ) MAYOR  
 )  
 )  
 ) per \_\_\_\_\_  
 MUNICIPAL CLERK

AFFIDAVIT

Province of Nova Scotia  
 County of Cape Breton  
 Cape Breton Regional Municipality

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 199 \_\_\_\_, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing Witness to the foregoing Indenture, and after having been duly sworn by me, made oath and said that \_\_\_\_\_ signed and sealed the foregoing Indenture in his/her presence on the day and the year first above written.

\_\_\_\_\_  
 Commissioner of the Supreme  
 Court of Nova Scotia

AFFIDAVIT

Province of Nova Scotia  
 County of Cape Breton  
 Cape Breton Regional Municipality

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 199 \_\_\_\_, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing Witness to the foregoing Indenture, who having been duly sworn, made oath and said that he/she was present and did see the Corporate Seal of the Cape Breton Regional Municipality duly affixed thereto by the hand of Bernard White, Municipal Clerk of the Cape Breton Regional Municipality and that the said Indenture was duly signed and authenticated in his/her presence for and on behalf of the

Cape Breton Regional Municipality by David Muise and Bernard White, Mayor and Clerk respectively of said Municipality and the same was also duly delivered in his/her presence.

\_\_\_\_\_  
Commissioner of the Supreme  
Court of Nova Scotia

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AFFIDAVIT

Province of Nova Scotia  
County of Cape Breton  
Cape Breton Regional Municipality

On this \_\_\_ day of \_\_\_\_\_, A.D. 1996, before me, the subscriber, personally came and appeared \_\_\_\_\_, a subscribing Witness to the foregoing Indenture, who having been duly sworn, made oath and said that \_\_\_\_\_, one of the parties thereto, duly executed and affixed its corporate seal by its and, its duly authorized and proper signing officers, in his/her presence.

\_\_\_\_\_  
Commissioner of the Supreme  
Court of Nova Scotia

August 22, 2018

Cape Breton Regional Municipality

To Whom It May Concern,

The wardens of Parish of The Resurrection (owners of St. George's Hall) are aware of New Dawn Enterprises' intentions to begin a zoning amendment process with the CBRM for the purpose of determining whether a cidery and tasting room are permitted to operate from the Hall in the future.

Thank you,

Barb Miller – [barbmiller@eastlink.ca](mailto:barbmiller@eastlink.ca) 902-577-4217

John Bond - [johnbond@eastlink.ca](mailto:johnbond@eastlink.ca) 902-565-1969

Margaret Fraser – [m\\_fraser65@yahoo.ca](mailto:m_fraser65@yahoo.ca)