

# Application Decision

## Taxi – Amendment

Application No.	<b>15344-22</b>
Applicant & Application Summary	<p><b>Penticton Eco Taxi Ltd.</b>  <i>Trade Name:</i> Penticton Eco Taxi</p> <p><i>Current Originating Area:</i> City of Penticton and surrounding area, Penticton Regional Airport.</p> <p><b>Amendment of Licence: PDVA (Taxi)</b></p> <ul style="list-style-type: none"> <li>• <i>Amend terms and conditions of a licence with Special Authorization:</i> Passenger Directed Vehicle Authorization (PDVA)</li> <li>• <i>Add:</i> Two accessible taxis to increase fleet maximum from seven taxis to nine.</li> </ul>
Applicant Information	<p><i>Current Passenger Transportation Licence:</i> #72416 with:</p> <ul style="list-style-type: none"> <li>• Passenger Directed Vehicle Authorization (PDVA)</li> <li>• General Authorization (GA)</li> </ul> <p><i>Principal:</i></p> <ul style="list-style-type: none"> <li>• Balraj Singh GILL</li> </ul> <p><i>Office:</i> 102 Adamson Court, Penticton BC V2A 7R8</p>
More Information	<p><i>Appendix 1:</i> Notices Respecting This Approval  <i>Appendix 2:</i> Terms &amp; Conditions of Licence  <i>Appendix 3:</i> Supplementary Terms &amp; Conditions  <i>Appendix 4:</i> Data Requirements</p>
Publication of Application	August 31, 2022
Submissions	<ul style="list-style-type: none"> <li>• Penticton Klassic Kabs Ltd.</li> <li>• Penticton Yellow Taxi Ltd.</li> </ul>
Board Decision	<p>The application is approved:</p> <ul style="list-style-type: none"> <li>• Terms and conditions are established as set by the Board</li> <li>• Two additional hybrid accessible taxis are approved</li> <li>• Rates are set by the Board</li> </ul> <p>See appendices for details.</p>
Decision Date	November 16, 2022
Panel Chair	Baljinder Kaur Narang

## **I. Introduction**

The *Passenger Transportation Act* (the Act) regulates the licensing and operation of commercial passenger transportation vehicles and services in BC. Under the Act, the Passenger Transportation Board (Board) makes licensing decisions on applications relating to taxis, limousines and other small shuttle and tour vehicles. The operation of these vehicles requires a “passenger directed vehicle authorization.” The Board has the authority to consider and approve applications for new licenses as well as applications from existing licensees to change terms and conditions of their licences (including the addition of vehicles to their fleet), change rates to be charged for a service and request Temporary Operating Permits (TOPs). Since September 2019, the Board’s mandate has included licensing decisions relating to Transportation Network Services, also known as ride-hailing services.

## **II. Jurisdiction**

This application is made under the Act. As required by section 26(1) of the Act, the Registrar of Passenger Transportation forwarded the application to the Board. Section 26(2) of the Act requires the Board to publish the fact and nature of the application, and section 27(3) requires it to consider applications and any written submissions it receives as result of publication. Section 27(5) states that people who make submissions are not entitled to disclosure of further information, unless the Board orders otherwise.

Section 28(1) governs the Board’s consideration of applications as follows:

28(1) The board may approve, in whole or in part, an application forwarded to it under section 26(1) after considering whether:

- (a) there is a public need for the service the applicant proposes to provide under any special authorization,
- (b) the applicant is a fit and proper person to provide that service and is capable of providing that service, and
- (c) the application, if granted, would promote sound economic conditions in the passenger transportation business in British Columbia.

Section 28(2) states that the Board must, if it approves an application, specify the special authorization that should be included in the licence, if issued by the Registrar.

Section 28(3) states that the Board may establish terms and conditions that apply to a special authorization included in a licence.

### III. Application

#### (1) Applicant

The applicant, Penticton Eco Taxi Ltd. (Penticton Eco Taxi), was incorporated in British Columbia on July 25, 2017, with offices located in Penticton, BC. The applicant began operations in Penticton on December 25, 2017

Penticton Eco Taxi has a Passenger Transportation Licence with Special Authorization: Passenger Directed Vehicle Authorization to operate up to seven taxis of which five may be conventional taxis and all other vehicles are accessible taxis. Penticton Eco Taxi has authority to pick up passengers in the Penticton area.

Over the last five years, Penticton Eco Taxi made the following applications to the Board:

- Application No. 1750-18 TOP – Refused
- Application No. AV3314-18 TM – one additional conventional taxi was approved under the Taxi Modernization process.
- Application No. 6836-19 – Approved in part for Service 2 to provide transportation service for WestJet Crew
- Application No. 6278-19 TOP – Approved
- Application No. 15480-22 TOP – Approved

#### (2) Applicant's Request & Explanation

The applicant seeks to add two Wheelchair Accessible Taxis (WATs) to the fleet. The vehicles will be modified wheelchair accessible hybrid vans.

The applicant provided the following public explanation that was published in the Application Summary:

*"Penticton Eco Taxi is applying to add two wheelchair accessible taxis, both of which will be hybrid vehicles. We serve wheelchair clients through the South Okanagan, including Penticton, Kaledan, Okanagan Falls, Oliver, Osoyoos, Keremeos, Princeton, Summerland, and Naramata, as well as 5 local hospitals. The feedback we have received indicates that more wheelchair accessible taxis are needed in this community, and many customers we have consulted with have said they find vans to be more comfortable than sedan vehicles."*

### **(3) Overview of Applicant Materials**

The applicant submitted application forms and other materials that meet Board application requirements. The applicant's materials include the following:

- Business plan
- Financial statements with details about the planned operation; and
- 27 letters of support.

### **(4) Submissions**

A total of two submissions were received from Penticton Klassic Kabs Ltd. and Penticton Yellow Taxi Ltd. who made a joint submission.

Both submitters oppose the application. The submitters presented their concerns in the following themes:

1. There is no public demand for additional plates in Penticton. They state that there were 3-4 applications for WAT taxis made in the last few years which were denied because public demand was not established.
2. There is no public need for additional vehicles and identify the problem as underutilization of WAT cabs that are available.
3. There has been a 25% increase in the number of taxis in the city since Penticton Eco Taxis started service and the implementation of the Taxi Modernization Process.
4. Currently, Penticton is served by three taxi companies with a total of 39 vehicles including seven WAT cabs.
5. According to the 2016 census, Penticton's population has increased by 2.7% between 2011-2016.
6. The taxi industry in Penticton is described as seasonal with 80-85% usage in the summer months. Otherwise, regular usage is 50-60% and increases to 70-75% over the weekends. They state that the industry is still trying to recover from the downturn related to Covid-19.
7. The submitters further claim that the applicant is not fit and proper, and that he has mismanaged previous taxi operations in the Okanagan and Kelowna.
8. The submitters state that the applicant has stated that the new vehicles will be hybrid in an attempt to improve approval chances but fear that this is an attempt to sell the new licences for a higher price.
9. The submitters raise concerns about economic viability of another licence, and reduced revenue, which would halt their own future development plans to transition to the full hybrid fleet.

### *Applicant Reply:*

The applicant's response was submitted by their legal counsel stating the following:

1. That public need is based on loyalty of their customers. The applicant claims that they provide a courteous and reliable service that is appreciated by their customers, based on their letters of support included with the application. The applicant claims that they are not aware of the three or four WAT applications being denied, and because the submitters have not provided specific decisions in support of their statement, the applicant does not consider this a relevant objection.
2. Both the applicant and submitters agree that there are problems providing WAT services. However, while the submitters see it as underutilization of available vehicles, the applicant argues that, on the contrary, they fully utilize their fleet of WATs and seek approval for their application to expand their WAT vehicles.
3. The applicant states that their overall trip volumes have recovered to pre-pandemic levels and are increasing. The applicant argues that in order to ensure his company continues to meet the needs of all their users – current and future – they must add WATs that can service all trip types while prioritizing those that require wheelchair accessibility.
4. The applicant states that in general, the submitters do not see a need for additional vehicles because they are not operating at full fleet utilization. They appear to be operating at reduced fleet levels in order to increase their profit margins.
5. While the submitters state that the 2016 census showing population growth in Penticton at 2.7%, the applicant states that the 2021 census puts population growth in the region to 9% (36,885). Also, basing it on the submitter's accepted ratio of taxis to population of 1 per 865, Penticton can support at least three additional vehicles.
6. While the submitters focus on the seasonal and regular usage of taxis services in Penticton, the applicant is looking ahead to the possible introduction of TNS companies in the Okanagan region. The applicant believes that the best way to compete with TNS companies is to provide a superior level of service with comparable response times and predictable prices.
7. The applicant is dismissive of objections related to being fit and proper, stating that they are largely irrelevant as they relate to the applicant's previous work, and investment history prior to starting the current company.
8. The applicant states that the submitters have made several false statements including accusing him of being an absentee owner, and applying for additional plates in order to sell them. The applicant states that the company has not sold any shares in respect to its licence, and has no plans to do so.

9. The applicant notes that the submitters are running a centralized dispatch system and have a common ownership structure, effectively operating as one entity with a monopoly over Penticton Eco Taxi. The submitters fear that their plans to upgrade their own fleet could be in jeopardy if this application is approved. However, the applicant states that the submitters have made their management choices and continue to operate a fleet of older and less fuel-efficient vehicles instead of investing in new technologies.

#### **(5) Procedural Matters**

Section 17 of the Act allows the Board to conduct written, electronic or oral hearings, or any combination as the Board, in its sole discretion, considers appropriate. This application is being conducted by way of a written hearing.

### **IV. Analysis and Findings**

Section 28(1) of the Act sets out the three factors which the Board must consider on this Application. The Act does not require the Board to make a positive finding on each of the three factors set out in section 28. The Board is only statutorily obligated to consider the factors in arriving at its determination. This was confirmed by the BC Supreme Court in *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2021 BCSC 86 where the Court wrote:

[37] The petitioners argue that the factors that must be considered under [s. 28](#) must not only be “considered” but also must be “determined” in the affirmative before a license can be granted. However, the Board found that all of the factors were met in the Applications, so that interpretation of the requirements of [s. 28](#) is not squarely an issue. Although, I agree with the decision of this Court on the petitioners’ application for a stay that a plain reading of [s. 28\(1\)](#) supports the Board’s submission that the Board is only statutorily required to “consider” the factors, and may issue a license even where those factors are not found to exist: *Yellow Cab Company Ltd. v. Passenger Transportation Board*, [2020 BCSC 162](#) at para. 47. The wording used in [s. 28\(1\)](#) is “after considering whether”, not “if the board considers that” or “after finding that”.

- (1) Is the applicant a fit and proper person to provide its proposed service, and is the applicant capable of providing the service?**

The Board looks at this question in two parts:

- (a) is the applicant a *fit and proper person* to provide the proposed service; and,

(b) is the applicant *capable* of providing the service?

First, with *fit and proper*, the *Oxford English Dictionary* defines *fit* as including “well adapted or suited to the conditions or circumstances of the case, answering the purpose, proper or appropriate ... possessing the necessary qualifications, properly qualified, competent, deserving.” Also, the dictionary defines *proper* as including “suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard or type; apt, fitting; correct, right.” When looking at whether an applicant is fit and proper, the Board does so in the context of the passenger transportation industry in British Columbia. This includes the regulatory system that grants businesses a licence which confers on them both the authorization they need to provide their service and an ongoing obligation to operate in accordance with proper standards of conduct.

Second, capability is generally understood to mean that an applicant has the ability or qualities necessary to skillfully and effectively meet its obligations and achieve the results it says it will achieve. When looking at capability, the Board reflects on whether the applicant has demonstrated that it has the knowledge and understanding of relevant regulatory requirements and policies that govern passenger transportation providers, and whether it is able to comply with those requirements. It also looks at whether the applicant has the background, skills and knowledge to manage its proposed service, and the financing to operate it. The Board expects an applicant to demonstrate its competence and ability by providing sound and realistic information in its business plan and financial statements that is consistent and compatible with the transportation service it proposes.

Penticton Eco Taxi is an incorporated company since 2017 with Balraj Singh Gill as its Sole Director. Mr. Gill has 14 years of experience working in the taxi industry including as a driver.

The company has a National Safety Code rating of Satisfactory-Unaudited which is acceptable to the Board.

According to information from the Passenger Transportation Branch, one service issue complaint was registered on February 19, 2021. It was substantiated and closed on March 23, 2021. No administrative penalties are recorded against the company.

Disclosure of Unlawful Activity and Bankruptcy forms were completed to the satisfaction of the Board. Declarations forms are duly completed and are satisfactory as well.

An updated Business Plan (June 2022) is submitted that includes a description of its target market, demonstrates knowledge of the taxi industry and the competition. Company procedures that are included relate to priority dispatch protocols for accessible taxis.

Financial information includes a three-year cash flow chart, balance sheets for 2019 and 2020, and an income statement for 2020. Financial plan includes cost projections for the purchase of two hybrid vans and the cost associated for converting these vans for wheelchair accessibility.

I found the submission relating to the applicant's fitness and past management issues as unsubstantiated claims and assigned the information no weight.

Based on the information and evidence above, I find that Penticton Eco Taxi Ltd. is a fit and proper entity to provide the proposed service, and I find that it has demonstrated it is capable of providing the service.

**(2) Is there is a public need for the service the applicant proposes to provide?**

An applicant is required to demonstrate public need by showing that there are people who would use the proposed service. Applicants should provide clear information about the service it proposes, and they should provide supporting evidence that is factual and objective. They should not rely on general claims and their own opinion. The Board reviews applications and considers the extent and type of need that has been demonstrated for the proposed service.

The applicant seeks to operate two additional wheelchair accessible hybrid taxis in the City of Penticton. The target market includes the general public, tourists, the elderly, people with disabilities and people with no vehicles who require transportation for a variety of reasons.

The applicant states that the population of Penticton has grown from approximately 34,000 in 2016 to approximately 37,000 in 2021 according to the latest 2021 census report from Statistics Canada. Also, the population of Penticton comprises of older residents at 52 in 2021, as compared to the national median (41.6) and the provincial median (42.8)

The applicant states that Penticton Eco Taxi is experiencing an increase in demand for additional wheelchair accessible taxi service. The company's operational data provided covers the period of 2020 (Jan-Dec), 2021 (Jan-Dec) and 2022 (Jan-May) and supports the trend of increased demand. For example, the following table highlights fleet usage of five conventional and two WAT vehicles on average:



	2020	2021	2022 (5 months)
Use of Conventional Taxis	69%	78%	89%
Use of WATs	79%	90%	91%

While this increase in demand is likely to be related to post COVID-19 pandemic recovery, the data demonstrates full usage of fleet to near capacity. I find this information supports the applicant's claim of increased public demand.

The application includes two testimonials that speak to the challenges of accessing WATs and support the Penticton Eco Taxi application for more WATs.

The application also includes letters of support from:

- Two long-term care facilities, the Good Samaritan Village by the Station, and the Hamlets at Penticton.
- Three letters from home support workers
- One letter from Berry & Smith Trucking Ltd who manage a transit contract with Penticton HandyDART program and work closely with WATs
- One letter from the owner of Eckhardt Senior Services who commits to working with Penticton Eco Taxi
- A strong letter of support from a quadriplegic person who uses a power wheelchair and relies on taxis to get to medical appointments, shopping and generally getting about, especially at weekends.

I find the above eight letters of support represent different aspects of WAT services that help identify public need. There are 19 more letters with a pre-determined script that pledges regular use of Penticton Eco Taxi, duly signed by individuals. I place less weight on these pledge letters.

The applicant has included a Municipal Notice to the City of Penticton. I have noted concerns expressed by the submitters related to public need. I have also considered the applicant's response to the objections. On examining information provided in support of the application, including the company's operational data, and letters of support, I accept that there is public need for additional WATs in Penticton.

Based on the analysis above, I find that there is a public need for two additional wheelchair accessible hybrid taxis to serve the residents of Penticton.

**(3) Would approving the application support sound economic conditions in the passenger transportation business in British Columbia?**

In considering sound economic conditions, the Board strives to balance public need for available, accessible and reliable commercial passenger transportation services with overall industry viability and competitiveness. The Board considers the issue from a wide-ranging perspective, which includes a consideration of harm to other industry participants. Generally speaking, it is the Board's view that the overall economic interests of the transportation business weigh more heavily than the economic and financial interests of any particular applicant or submitter.

The evidence indicates that there is an increase in demand for WATs in the community and balanced that need with concerns of other industry participants, I find that the transportation market in Penticton can absorb two additional WAT services for passengers that require assistance in maintaining independence in the community.

I find that approving the application would promote sound economic conditions in the passenger transportation industry in BC.

## **V. Conclusion**

For the reasons above, this application is approved, and I establish the requirements that follow in appendices to this decision:

- Appendix 1: Notices Respecting this Approval
- Appendix 2: Terms and Conditions of Licence
- Appendix 3: Supplementary Terms and Conditions Respecting PDVA Apps
- Appendix 4: Data Requirements

**Penticton Eco Taxi Ltd.**  
Penticton Eco Taxi

**Appendix 1:** Notices Respecting This Approval

Notice to Applicant	<p><b><i>Licence Required To Operate:</i></b></p> <ol style="list-style-type: none"><li>1. The Registrar of Passenger Transportation must issue the applicant an amended licence before the applicant can implement amendments approved in this decision.</li></ol> <p><b><i>Approval of Application May Expire:</i></b></p> <ol style="list-style-type: none"><li>2. The applicant must activate <b>at least one wheelchair accessible hybrid vehicle</b> within <b>6 months</b> of the date of this decision.</li><li>3. If the applicant does not meet the requirements set out in 1 above, this Special Authorization expires.</li><li>4. The Passenger Transportation Board may vary the requirements set out in 1 above, if circumstances warrant it.</li><li>5. If an applicant needs more time to activate its vehicles, then the applicant must make a request to the Board before the end of the 6-month activation period.</li></ol>
Notice to Registrar	<p>The Registrar must not, without direction from the Board, issue the applicant a licence or any Special Authorization Vehicle Identifiers if the applicant has not activated <b>one wheelchair accessible hybrid vehicle</b> within 6 months of the date of this decision.</p>
Definition	<p><i>Activate</i> means that the applicant has submitted to the Registrar of Passenger Transportation documents that are required to obtain a Special Authorization Vehicle Identifier.</p>

## Penticton Eco Taxi Ltd.

### Penticton Eco Taxi

#### Appendix 2: Terms & Conditions of Licence

*The applicant will be subject to terms and conditions that include terms and conditions set out below in “A. Legislative Requirements,” “B. Passenger Transportation Vehicles,” “C. Originating Areas & Services,” and “D. Other Requirements.”*

<b>Special Authorization Passenger Directed Vehicles Authorization Terms &amp; Conditions</b>	
Definitions	“Board” means the Passenger Transportation Board “Registrar” means the Registrar, Passenger Transportation
<b>A. Legislative Requirements</b>	
Vehicle Identifiers	Each motor vehicle operated under this authorization must display, at the times and in the form and manner required by the Registrar, a vehicle identifier that is: (a) issued to the licensee by the Registrar; or (b) authorized by the Registrar to be issued by the licensee.
Data Requirements	The licensee must provide to the Registrar any information, including personal information, and data that the Registrar or Board may require, and as may be set in any applicable supplemental terms and conditions and orders of the Registrar or Board, within time periods that the Registrar or Board may require, which may include, without limitation, information and data set out in section 28(5)(a) to (c) of the <i>Passenger Transportation Act</i> .
<b>B. Passenger Transportation Vehicles</b>	
Maximum Fleet Size	9 vehicles of which a maximum of 5 may be conventional taxis. All other vehicles are accessible passenger directed vehicles.
Vehicle Capacity (Taxi)	A driver and not less than 2 and not more than 7 passengers.
Accessible Vehicles	An accessible passenger directed vehicle must be operated in accordance with the <i>Motor Vehicle Act Regulations</i> including Division 10 ( <i>Commercial Passenger Vehicles</i> ) and Division 44

	( <i>Mobility Aid Accessible Taxi Standards</i> ), as amended from time to time, and in accordance with any other applicable equipment regulations and standards
Flip Seat Authorization	An accessible passenger directed vehicle may be equipped with flips seats that are installed in accordance with Division 10.07(5) of the <i>Motor Vehicle Act Regulations</i>
<b>C. Originating Areas &amp; Services</b>	
<b>Service 1</b>	<i>The following terms and conditions apply to Service 1:</i>
Originating Area	Transportation of passengers may only originate from points in the City of Penticton and: <ul style="list-style-type: none"> <li>• South of Hwy 97 to Okanagan Falls</li> <li>• South on Eastside Road to Okanagan Falls</li> <li>• North on Hwy 97 to Summerland</li> <li>• North on Naramata Road to Naramata</li> </ul>
Destination Area	Transportation of passengers may terminate at any point in British Columbia
Reverse Trips	Transportation of passengers may only originate in the <i>destination area</i> if the transportation terminates in the <i>originating area</i> .
<b>Service 2</b>	<i>The following terms and conditions apply to Service 2:</i>
Originating Area	Transportation of passengers may only originate at the Penticton Regional Airport.
Destination Area	Transportation of passengers may terminate at the Penticton Lakeside Resort.
Service Limitation	Service may only be provided to persons employed or engaged by WestJet Encore and only when the licensee has a written transportation agreement with WestJet or WestJet Encore or its broker or agent to provide ongoing crew transportation.
Reverse Trips	Transportation of passengers may only originate in the <i>destination area</i> if the transportation terminates in the <i>originating area</i> .

Return Trips	The same passengers may only be returned from where their trip terminates in the <i>destination area</i> to any point in the <i>originating area</i> if the return trip is arranged by the time the originating trip terminates.
<b>D. Other Requirements</b>	
Hailing in Originating Area	<ol style="list-style-type: none"> <li>1. A trip may be arranged by taxis by: <ol style="list-style-type: none"> <li>(a) booking the motor vehicle in advance;</li> <li>(b) hailing the motor vehicle from the street;</li> <li>(c) hailing the motor vehicle through a dispatcher; or</li> <li>(d) hailing the motor vehicle through an app that does not process payment for the fare.</li> </ol> </li> <li>2. Passengers must not be hailed through a Transportation Network Service app that connects drivers with passengers who hail and pay for the services through the use of an online platform.</li> </ol>
Top Lights	Motor vehicles may be equipped with a top light.
Taxi Cameras & Meters	Licensees must install taxi camera equipment and taxi meters, including taxi soft meters, in compliance with applicable rules, standards and orders of the Passenger Transportation Board.
Taxi Bill of Rights	<p>A Taxi Bill of Rights may only be displayed in vehicles when the licensee:</p> <ol style="list-style-type: none"> <li>(a) has received written approval of the Board to operate a taxi bill of rights program; and</li> <li>(b) is in compliance with applicable Taxi Bill of Rights rules, supplemental terms and conditions, standards and orders of the Board.</li> </ol>
Eco-friendly taxis	Any conventional taxis or additional conventional taxis approved for this for which a passenger transportation identifier is issued, must be operated as 'eco-friendly taxis' as defined by Board Policy Guidelines in effect at the time the vehicle is issued a passenger transportation identifier.
<i>Liquor Control and Licensing Act Cannabis Control and Licensing Act</i>	The licensee must ensure passenger directed vehicles under their licence are operated at all times in compliance with the <i>Liquor Control and Licensing Act</i> and the <i>Cannabis Control and Licensing Act</i> .

Transfer of a Licence	This special authorization licence may not be assigned or transferred except with the approval of the Board pursuant to section 30 of the <i>Passenger Transportation Act</i> .
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**Penticton Eco Taxi Ltd.**  
Penticton Eco Taxi

**Appendix 3: Supplementary Terms & Conditions**

Supplementary Terms & Conditions Respecting Taxi & Other PDVA Apps, effective September 25, 2019, apply to vehicles with an app that is used for dispatch but not payment processing.

**Appendix 4: Data Requirements**

Data Requirements, effective September 3, 2019, are applicable.