
CITY OF KELOWNA

MEMORANDUM

Date: February 27, 2002
File No.: B/L 8600; 6480-30

To: City Manager

From: Planning and Development Services Department

Subject: Bylaw No. 8600 - Official Community Plan Amendment No. OCP01-017

Report prepared by: Gary L. Stephen

RECOMMENDATION

THAT OCP Amendment Bylaw 8600 be amended at first reading as per Schedule 1 attached to the Planning and Development Services report dated February 27, 2002;

AND THAT OCP Amendment Bylaw No. 8600 be considered for second and third reading and final adoption.

BACKGROUND

At the Council meeting of December 17, 2001 Council received the Planning and Development Services report dated December 11, 2001 and gave OCP Amendment Bylaw 8600 first reading. At that meeting Council also forwarded the proposed OCP Bylaw 8600 to the Regional District of Central Okanagan, the Land Reserve Commission (LRC) and the District of Lake Country for comment, as per Local Government Act requirements.

Amendment Bylaw 8600 was also referred to other provincial and local agencies as per Council's OCP Consultation Policy No. 296.

REFERRAL COMMENTS

Staff have now received comments from the Regional District of Central Okanagan (RDCO), the Land Reserve Commission (LRC) and the Ministry of Agriculture, Food and Fisheries (MAFF). Copies of those letters have been included in the Council OCP binder in the Clerks office for Council and public review.

RDCO

The Regional District of Central Okanagan was referred Bylaw 8600 because the Local Government Act (LGA) requires Regional Board consideration of a Regional Context Statement in an OCP. The Regional Context Statement is intended to identify the relationship between the OCP and the Regional Growth Strategy. At their meeting of January 14, 2002 the Regional Board accepted the City of Kelowna Regional Context Statement.

LRC

The LRC letter dated February 4, 2002 provided a number of comments with respect to Bylaw 8600. Most significantly, with respect to the agricultural provisions, the LRC expressed “no objections” to the OCP as written. Despite overall concurrence with the Agriculture Chapter policies, the LRC did forward a number of specific comments and suggestions for the City’s consideration.

Firstly, the LRC continues to express concern regarding the inclusion of a growth management policy expressing the City’s intention to initiate a Zoning Bylaw amendment to establish a New Rural Residential Zone (Policy 5.1.3). That new zone is intended to increase the minimum parcel size on non-ALR lands within the Rural / Agricultural designation of the OCP, as well as lands designated as Future Urban Reserve, from 2.0 ha (5 acres) to 4.0 ha (10 acres). This proposed new zone would still be the subject of a separate Zoning Bylaw Amendment process and could not be put into effect without a separate Public Hearing. The LRC’s concern is that raising the minimum parcel size on non-ALR parcels will increase pressure for ALR lands to be used for rural residential subdivisions. City staff suggest that the LRC has sufficient control over ALR parcel sizes to prevent such impacts. It is acknowledged that if non-ALR rural parcels are not available the market may seek ALR parcels instead and some of those parcels may then no longer be actively farmed. However, neither the City nor the LRC can stipulate that rural parcels in the ALR must be farmed. The intention to raise minimum parcel sizes in non-ALR areas is considered an appropriate growth management response to continued pressure to create small rural residential parcels in peripheral areas that place demand on inadequate rural services. Continued development of 2 ha parcels in peripheral areas also decreases potential development options in the future when those lands may be needed for more intensive development. It is suggested that the City of Kelowna should retain this policy direction in OCP Amendment Bylaw 8600 and the LRC has not specifically directed otherwise.

The LRC also expressed concern that the OCP Development Permit (DP) section could be construed to require that farmers apply for a DP before conducting farming operations near watercourses and wetlands. The MAFF expressed the same concern in their letter dated January 30, 2002. This requirement was intended to be an interim step until fine tuned regulations were developed through a Farm Bylaw. When the OCP was originally drafted, the Farm Bylaw was expected to be imminent. Given recent provincial re-structuring the LRC and MAFF are now concerned that the time frame to fine-tune the regulations could be lengthy. They have therefore suggested that typical agricultural activities be exempt from the need for a development permit. The LRC would have no objection to DP requirements applying within the Riparian Management Area setbacks noted in Table 7.1. While staff still maintain the necessity (see Policy 11.1.11) of fine-tuning the development permit designation by way of a Farm Bylaw or other approach, the LRC suggestion has merit as an alternate interim step. Rather than limit the expanded waiver provisions to agricultural lands, it is suggested that Section 7.11 Development Permit Guidelines be amended by including the possibility of a DP waiver for all development activity outside the setback areas specified in the OCP. In this way the property will still be flagged as potentially requiring a development permit, but the requirement MAY be waived for development outside the required Riparian Management Area setback. The OCP specifies conditions under which the DP requirement could be waived.

Finally, the LRC has also suggested that the LRC be included in any discussion regarding establishment, expansion or change of use of rights-of-way within the ALR. In order to address this issue the LRC has suggested that a new policy be included in Chapter 12 – Transportation under the Intergovernmental / Inter-Agency Relations section as follows:

- .11 **LRC Consultation.** Co-operate with the Land Reserve Commission on the establishment and expansion of transportation rights-of-way to ensure they are located and designed in such a way as to mitigate their impacts on the agricultural resource and farm community.

While it is acknowledged that the involvement of the LRC with respect to these types of issues may be appropriate, it should be noted that this would only apply to ALR land and would not necessarily apply in all circumstances. Existing rural roads under the jurisdiction of the Ministry of Transportation can be widened to 20 metres, and in some cases beyond 20 metres, without the approval of the LRC as indicated in Certificate of General Order # 1625/83. Therefore it is suggested that the above noted policy could be included as long as it applies only to ALR lands and only where required by ALR legislation and regulations. Amended wording is shown in italics and would read as follows:

- .11 **LRC Consultation.** Co-operate with the Land Reserve Commission on the establishment and expansion of transportation rights-of-way *within the ALR, where required*, to ensure they are located and designed in such a way as to mitigate their impacts on the agricultural resource and farm community.

The LRC has also suggested that a cross-reference in the Liaison / Co-operation / Public Relations section of the Transportation Chapter to Chapter 14 – Parks and Leisure Policy 14.1.21 be included immediately following policy 12.1.13. Policy 14.1.21 **Linkages Across ALR Land** stipulates LRC involvement in the creation of linear park linkages across ALR land. Staff have no objection to including this cross-reference and therefore recommend this amendment.

DISTRICT OF LAKE COUNTRY

As of this date staff have not received any comments from the District of Lake Country.

OTHER

As of this date, the only comment received from the other agencies has been from the Ministry of Agriculture, Food and Fisheries. Their comments are similar to the LRC comments and have been addressed in that section of the report.

STAFF INITIATED AMENDMENTS

Further staff review has brought to light a number of other issues, most of which could be considered housekeeping amendments, that should be addressed before Council gives further readings to Bylaw 8600.

Chapter 7

The text of Amendment Bylaw 8600 was prepared prior to provincial government re-organization of ministerial responsibilities. The names of a number of provincial ministries changed and the document was updated to reflect those changes. However, the Section 7.11 reference to BC Environment on page 48 of the text was missed and should be corrected to refer to the new ministry name, the Ministry of Water, Land and Air Protection.

Chapter 9

Currently, proposed Bylaw 8600 includes Commercial Policy 9.1.12, which encourages restaurants to locate within the downtown core rather than along Ellis Street north of Doyle Avenue. The OCP policy direction responded to concerns raised through earlier planning processes in the Downtown Plan. Since those discussions, the Cultural District Marketing and Implementation Plan has been approved by Council and that plan specifically encourages commercial activity along Ellis Street, which certainly could include restaurants. Given that Council has already adopted policy direction on this issue it would be in order to delete policy 9.1.12, with the remaining policies in Chapter 9 – Commercial renumbered accordingly.

Chapter 13

As part of the preparation of Bylaw 8600 as an amendment to the original OCP Bylaw 7600 the timeframe of 1994 to 2013 was retained to maintain the link with the current financial plan. All references to the 2020 timeframe were to be deleted and replaced with 2013. A search of the document text did not include the mapping and as a result Map 13.2 – Sanitary Sewer System inadvertently still indicates the generalized future sewer limits as being to the year 2020. This oversight must be corrected and therefore the map should be updated to reflect the OCP time frame of 2013.

Chapter 14

Parks and Leisure Policy 14.1.32 currently provides for linear park dedications at subdivision and rezoning for multiple unit housing, commercial, industrial and institutional developments. It could be interpreted that linear park dedications at subdivision would only apply to multiple unit housing, commercial, industrial and institutional development, however, the intention is to provide such dedication at subdivision for all development types. In the interest of removing the ambiguity, it is recommended that Policy 14.1.32 be amended by adding the words “for all development types” after subdivision, and by adding the word “at” prior to rezoning. In addition, further clarification would be appropriate by replacing the words “in those locations” with the words “where trails are”.

Similarly, Parks and Leisure Policy 14.1.40 provides for the establishment of a 10-metre route of access along the shore zone on applications for subdivision and rezoning to multiple unit housing, commercial, industrial and institutional development. Again, the intention is to provide such dedication at subdivision for all development types. Therefore it is recommended that Policy 14.1.40 be amended by adding the words “for all development types” after subdivision, and by adding the word “for” prior to rezoning.

Chapter 19

Council recently adopted the Kirschner Mountain Area Structure Plan and amended the OCP to delete the reference to the ASP 12 – Gallagher Ridge from Table 15.1 of the current OCP. Due to renumbering Table 15.1 has become Table 19.1 in the proposed new bylaw. Bylaw 8600 should be updated to reflect this recent Council approval by deleting ASP 12- Gallagher Ridge from Table 19.1.

Other Housekeeping Revisions

Over the past few months, since first reading of OCP Amendment Bylaw 8600, there have continued to be approvals granted for subdivisions. Some of the subdivisions are within or adjacent to areas designated as Commercial or Industrial Development Permit Areas on Map 6.2 or as Natural Environment or Hazardous Condition Development Permit Areas on Map 7.1. Some of the newly created lots are no longer abutting the conditions requiring the DP designation and could be exempted from the DP requirements. It is suggested that these maps should be replaced with updated maps that reflect the most current information prior to final adoption of Bylaw 8600.

Council has also approved the Kirschner Mountain Area Structure Plan that has provided refined information on steep slopes. This information should ideally be reflected by updating the OCP Hazardous Condition DP mapping.

Similarly, there have been several ALR exclusions approved by the LRC. There are two maps in Bylaw 8600 that indicate the ALR: Map 11.2 Urban – Rural / Agricultural Boundaries and Map 14.2 Linear Park Concept Plan. Both of these maps need to be updated.

CONCLUSION

It is recommended that the amendments to OCP Amendment Bylaw 8600 proposed in the Planning and Development Services report of February 27, 2002 be given favourable consideration in order to respond to agency referral comments and to reflect necessary bylaw updates.

Signe K. Bagh
Long Range Planning Manager

Approved for inclusion

R.L. Mattiussi, ACP, MCIP
Director of Planning and Development Services

GLS

Attachment

Schedule 1

1. Amend Section 7.11 Development Permit Guidelines for the Protection of the Natural Environment, its Ecosystems and Biological Diversity by revising the language of the fourth bullet on page 48 to read:
 - A development when the proposed use is at a location which:
 - Does not include areas of 30% slope or more;
 - Is beyond the boundary of a Riparian Management Area as determined using Table 7-1; and
 - Is situated a minimum of 15 m (49 feet) from any fish bearing stream or 7.5 m (25 feet) from any non-fish bearing stream.
2. Amend Section 7.11 Development Permit Guidelines for the Protection of the Natural Environment, its Ecosystems and Biological Diversity by changing the reference to BC Environment on page 48 to the Ministry of Water, Land and Air Protection.
3. Delete policy 9.1.12 (Commercial Along Ellis Street) and renumber the remaining policies in Chapter 9 accordingly.
4. Add a new policy to the Intergovernmental / Inter-Agency Relations section of Chapter 12 – Transportation as follows:
 - .11 **LRC Consultation.** Co-operate with the Land Reserve Commission on the establishment and expansion of transportation rights-of-way within the ALR, where required, to ensure they are located and designed in such a way as to mitigate their impacts on the agricultural resource and farm community.
5. Renumber the policies after 12.1.11 in Chapter 12 to reflect the above insertion.
6. Add a cross-reference to Parks and Leisure Policy 14.1.21 immediately following Transportation Policy 12.1.13.
7. Remove the reference to the year 2020 on Map 13.2 – Sanitary Sewer Map and replace it with the year 2013.
8. Amend Parks and Leisure Policy 14.1.32 by adding the words “for all development types” after subdivision, by adding the word “at” prior to rezoning, and replacing the words “in those locations” with the words “where trails are”.
9. Amend Parks and Leisure Policy 14.1.40 by adding the words “for all development types” after subdivision and by adding the word “for” prior to rezoning.
10. Delete the reference to Area Structure Plan 12 - Gallagher Ridge from Table 19.1.
11. Replace Map 6.1 Urban Development Permit Area Designation and Map 7.1 Natural Environment / Hazardous Condition Development Permit Area Designation with updated versions that reflect recent subdivisions and Council approval of the Kirschner Mountain ASP.
12. Amend Map 11.2 Urban – Rural / Agricultural Boundaries and Map 14.2 Linear Park Concept Plan with updated versions that reflect recent ALR exclusions.