
CITY OF KELOWNA
MEMORANDUM

Date: August 15, 2007
File No.: OCP07-0020, B/L 9842
To: City Manager
From: Planning and Development Services Department
Subject: Bylaw 7600 Official Community Plan - Amendment Bylaw No. 9842

Report prepared by: Gary L. Stephen

RECOMMENDATION

THAT OCP Text Amendment OCP07-0020 – Amendment Bylaw No. 9842 to amend *Kelowna 2020* – Official Community Plan Bylaw No. 7600 to include Aquatic Habitat Protection and Compensation Policies in the Environment section of the OCP be considered for First Reading and forwarded to Public Hearing as outlined in the report of the Planning and Development Services Department dated August 15, 2007;

AND THAT staff be directed to follow the consultation process outlined in the report of the Planning and Development Services Department dated August 15, 2007, prior to forwarding OCP Text Amendment OCP07-0020 – Amendment Bylaw No. 9842 for First Reading.

BACKGROUND:

As outlined in the report from the Environment and Solid Waste Manager dated July 3, 2007 the Environment Division has been working on the Mission Creek Restoration Plan and the Habitat Compensation Banking projects for a number of years. Council has previously endorsed the Mission Creek Restoration Feasibility Plan and most recently (July 23, 2007) endorsed a number of recommendations with respect to the Habitat Compensation Banking project, including direction to staff to bring forward an OCP Amendment Bylaw to include Aquatic Habitat Protection and Compensation Policies in the Environment section of the OCP.

Recently the City commissioned a Shore Zone Fisheries and Wildlife Habitat Assessment – completed by EBA in April 2006, which the Department of Fisheries and Oceans (DFO) has agreed to use as the scientific basis for decision making along the Okanagan Lake shoreline. Direction to staff to use the Shore Zone Fisheries and Wildlife Habitat Assessment (also known as the Aquatic Habitat Index) as a tool in assessing development applications was also made by Council on June 11, 2006.

The City also agreed to undertake a review of the Shore Zone Plan (the review was subsequently renamed the Waterfront Management Strategy) based on the EBA work and on eleven (11) DFO mandated Environmental Principles (Attachment 1) that were endorsed by Council on March 21, 2005.

Given the pressure on limited budgets and staff resources DFO was approached with a suggestion that the DFO mandated “Environmental Principles” be adopted directly into the OCP as Bylaw. These “principles” would be the parameters under which we could consider a development application along the Okanagan Lake shoreline, recognizing that there would still be senior government oversight on any such project. Adoption of these principles as OCP policy would remove the need to pursue the Waterfront Management Strategy.

DFO staff agreed that the adoption of the eleven (11) DFO Environmental principles into the OCP as policy is a workable approach. Their major concern would be that any policy work we put in place meets or beats their objectives and regulations. Again, senior government oversight on any project would be required. After review of the most recent draft policy statements DFO has indicated that the proposed wording is acceptable and that everything proposed will support the enhancement, protection and restoration of aquatic habitats and as such are endorsed and supported by DFO.

Draft OCP Bylaw policy amendments that incorporate the Aquatic Habitat Protection and Compensation Policies as well as the DFO Environmental Principles endorsed by Council are included in the proposed amendments to the Environment Section of the OCP (Attachment 2). The intention is to insert a new section in the OCP Environment Chapter – 7.8 Aquatic Habitat Protection and Compensation Policies and amend or add policies in a renumbered section 7.10 Natural Environment Policies. In order to relate proposed policy direction to the Council endorsed DFO principles, those policy statements in draft Sections 7.8 and 7.10 have been printed in italics.

INTERNAL CIRCULATION TO:

Environment and Solid Waste Manager

LEGAL/STATUTORY AUTHORITY:

Local Government Act (LGA) (Section 876) provides the authority to adopt an Official Community Plan bylaw. *LGA Sections 877 and 878* outline the required content and potential policy statements respectively and *LGA Section 879* outlines the consultation requirements for the adoption and amendment of an OCP.

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

Under the *Local Government Act (Section 879)* there is a requirement for the City to provide one or more opportunities it considers appropriate for consultation in addition to the public hearing required. Given that the development of revised environmental policy direction is of interest to a handful of special interest groups as well as provincial and federal government agencies it is recommended that a consultation process could include direct referral to those groups and agencies as well as advertising to the general community. Therefore, it is suggested that staff be directed to follow a consultation process that, in addition to direct referral to stakeholder groups and agencies, includes posting this proposed amendment package to the City web site and making hard copies available when necessary, advertising in local newspapers to solicit community input (for 1 week / 10 days) related to the posted information and considering any input received for potential changes prior to scheduling First Reading and the Public Hearing.

The *LGA (Section 882 (3))* states that when adopting or amending an OCP the first thing Council must do after First Reading and before Public Hearing is consider the plan amendment in conjunction with “its financial plan and any waste management plan that is applicable in the municipality or regional district”.

Staff has confirmed, in compliance with *LGA Section 882(3)*, that these proposed amendments will not affect the Waste Management Plan or the Financial Plan.

EXISTING POLICY:

Kelowna Strategic Plan (2004)

Goal 1 – To maintain, respect and enhance our natural environment.

Objective 3 – Manage human impacts on our natural environment, including Okanagan Lake and the surrounding hillsides.

Action 1.3.3 – Assess ways to acquire or protect significant natural open space areas, including natural lands abutting Okanagan Lake.

Official Community Plan 2000 - 2020

There is current OCP policy direction with respect to managing the natural environment and management of the impacts from development projects:

Growth Management Policy 5.1.5 **Sustain the Environment.** Encourage development and land use changes to take place in a manner that will not compromise the ability of future generations to meet their needs and to enjoy the quality of life that we experience today.

Environment Policy 7.3.10 **Initiate Watershed Restoration.** Initiate projects to increase watershed health and to demonstrate improved techniques that can be use for watershed restoration.

Environment Policy 7.9.8 **Environmental Review.** Ensure that all development activities occurring on properties designated as environmental development permit areas are reviewed and meet the requirements for mitigation, compensation, protection or replacement.

Environment Policy 7.9.11 **Retention of Natural Areas.** Encourage all development and infrastructure projects to conserve wetlands, wildlife corridors, trees or other indigenous vegetation. Encourage alternative development methods, such as considering increasing density, narrowing right-of-ways or cluster housing.

EXTERNAL AGENCY/PUBLIC COMMENTS:

A supplemental report outlining the results of any feedback related to the specifics of the proposed OCP Amendment Bylaw 9842 consultation will be submitted for Council consideration prior to scheduling First Reading and Public Hearing.

Considerations not applicable to this report:

FINANCIAL/BUDGETARY CONSIDERATIONS:

PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:

ALTERNATE RECOMMENDATION:

Submitted by:

Gary Stephen,
Planner – Long Range

Signe K. Bagh,
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Approved for inclusion

David Shipclark
Acting Director of Planning & Development Services

GLS

Attachment

cc: Environment and Solid Waste Manager

Attachment 1

(Council Endorsed Environmental Principles from DFO)

The City of Kelowna will:

1. Identify appropriate actions toward restoration of damaged ecosystems and ecological health of the lake in the region, and for the benefit of the entire watershed.
2. Seek to maintain ecological linkages and biodiversity, wherever practical, including wildlife movement corridors and aquatic and terrestrial pathways.
3. Not support development in high ESA's.
4. Not support trade-off of unacceptable environmental effects for economic gain (i.e., economic development projects will be directed to locations and/or design options that avoid impacts to environmentally sensitive areas).
5. Support only net neutral or net positive effects for biophysical resources.
6. Not support "significant" adverse effects to any biophysical resource on the basis that compensatory habitat works may offset such effects. Any compensatory habitat works that may be considered within the context of the Kelowna Shore Zone must instead follow the DFO Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat and be consistent with the "No Net Loss" guiding principle of The Department of Fisheries and Oceans Policy for the Management of Fish Habitat.
7. Not support restorative or enhancement habitat works as an acceptable trade-off for incomplete mitigation where more effective mitigation efforts are feasible. A business case will be required to prove mitigation feasibility.
8. Require that no net loss or that a net gain in the productive capacity of biophysical resources is realized prior to, or as a condition of, any approval of shoreline-altering projects.
9. Support only those planning and development compromises or trade-offs that will result in substantial, long-term net positive production benefits for biophysical resources.
10. Encourage the use of Green Technologies and recyclable materials.
11. Encourage recreational pursuits (biking, non-motorized boating), pedestrian traffic and interpretive opportunities in moderate to high sensitive areas, where sensitivities allow.

Attachment 2

(Proposed Policy Additions / Changes for OCP Amendment Bylaw 9842)

7.8 Aquatic Habitat Protection and Compensation Policies

All references to habitat in this section mean “aquatic habitat”.

The City of Kelowna will:

Considerations for Future Civic Action

Liaison/Co-operation/Public Relations

- .1 **Senior Government.** Continue to work with senior government environment and fisheries agencies and First Nations in meeting the requirements of provincial and federal legislation regarding fish and wildlife habitat as well as the City’s habitat policies and bylaws;
- .2 **Stewardship Groups.** Work cooperatively with community-based stewardship organizations in habitat restoration planning and implementation, and in promoting public information regarding habitat protection.

Implementation

- .3 **Mission Creek Habitat Compensation Bank.** Establish a Mission Creek “Habitat Compensation Bank” (the Bank) based on the Mission Creek Restoration Feasibility Plan (2003, 2004) endorsed by Council. The Bank may be used to compensate for unavoidable losses to aquatic habitat in the Mission Creek watershed caused by City infrastructure projects and private development projects. Such projects may apply to the Bank where it can be clearly shown that:
 - a) every effort has been made to avoid, reduce and mitigate negative impacts to aquatic habitat on the project or development site but that residual, permanent losses of habitat still remain; and
 - b) opportunities to compensate for these losses on-site have been exhausted and/or greater benefit to the Mission Creek system can be realized through implementing the projects in the Bank than through on-site compensatory measures.
 - guidelines for use of the Bank will be established, including the geographical area within which the Bank may be used to compensate for habitat loss, project priorities, a comprehensive listing of costs, and the method for valuing the compensation contributions from development applications;
 - property acquisition is considered an acceptable compensation measure when it is linked to, and a necessary component in fulfilling one or more of the Bank projects and the Mission Creek Restoration Feasibility Plan;
 - establishment of the Bank must be approved by senior government environment agencies;
- .4 **Mission Creek Habitat Restoration Fund.** Establish a dedicated fund for receiving contributions, donations or grants received to assist in implementing the restoration projects in the Mission Creek Habitat Compensation Bank. The contributions may be in the form of monetary funds, financial assets or real property.

Further Studies/Reviews

- .5 **Habitat Restoration Feasibility Plans.** For the purpose of determining other potential habitat compensation banking opportunities, conduct studies on other aquatic systems that will identify appropriate actions for restoring the health and productivity of damaged ecosystems. Priority systems in this regard are Mill Creek and the Lake Okanagan Shore Zone;
- .6 **Other Habitat Compensation Banks.** Consider establishing Habitat Compensation Banks on other aquatic systems, subject to an approved restoration feasibility plan that clearly establishes habitat preservation and restoration priorities. Any such plan will define acquisition needs and restoration projects for a given watershed or stream within the city; these acquisitions and projects will then form the basis for defining options for off-site compensation within these systems.

Considerations in Reviewing Development Applications

General Principles

- .7 **No Net Loss of Habitat Productivity.** *Practice the principle of “no net loss/net gain” with respect to land use decisions that affect aquatic habitat. Based on the “no net loss” guiding principle of the Department of Fisheries and Oceans “Policy for the Management of Fish Habitat”, this means that no individual land use or development project should result in a net loss in habitat productivity, and that the City will strive for a net gain in overall productivity throughout the city’s aquatic habitats in the long term;*
- .8 **Habitat Management Hierarchy.** To achieve the no net loss/net gain principle, require that all City infrastructure projects and private development proposals adhere to the following sequence of management actions:
 - **Avoid** impacts to habitat through appropriate project siting and design;
 - **Mitigate** minor or temporary impacts by minimizing impacts, and repairing and restoring damaged habitats to their former state or better;
 - **Compensate** only when residual, permanent loss of habitat is unavoidable, acceptable and compensable. Habitat compensation proposals will not be accepted as a trade-off for incomplete on-site mitigation where effective mitigation efforts are feasible. Development proponents are responsible for proving that all measures to avoid or mitigate potential habitat impacts have been exhausted prior to proposing habitat compensation measures on or off-site;
- .9 **Compensation Guidelines.** Consider the following general ‘rules of thumb’ in habitat compensation decisions:
 - On-site compensation (i.e., in or near the same location as the area being impacted) is generally preferred over off-site compensation, particularly when sufficient space is available and there is adequate biophysical capacity on the site to create or enhance similar habitat. However, in some instances, compensation efforts away from the site may result in greater ecological benefits to the overall watershed, habitat type, species or community;
 - When it is deemed necessary or appropriate, off-site compensation should occur within the same watershed or ecological unit as the area being impacted;

- 'Like-for-like' compensation is generally preferred over replacing lost habitat with a different type of habitat. However, replacing with unlike habitat may be preferable in cases when the replacement habitat will have higher productivity and/or will address a limiting factor within the natural system affected.

☒ Note Chapter 7 – Natural Environment Policy 7.10.10 Maintaining Biodiversity.

Application Processing

- .10 **Environmental Assessments.** Require that environmental assessments for development proposals define impacts to habitat and lay out satisfactory avoidance, mitigation and compensation measures;
- .11 **No Net Loss.** *Require that no net loss or that a net gain in the productive capacity of aquatic habitat is realized prior to, or as a condition of, any approval of projects that affect that habitat;*
- .12 **Incomplete Mitigation.** *Not support restorative or enhancement habitat works as an acceptable trade-off for incomplete mitigation where more effective mitigation efforts are feasible. A business case will be required to prove mitigation feasibility;*
- .13 **Unacceptable Environmental Impacts.** *Not support trade-off of unacceptable environmental effects for economic gain (e.g. development projects will be directed to locations and / or design options that avoid impacts to environmentally sensitive areas). Support only those planning and development trade-offs that will result in substantial, long-term net positive production benefits for aquatic habitat;*
- .14 **Compensation Ratio.** When compensation for loss of habitat is necessary and acceptable to the City, DFO and MoE, require a compensation ratio (area of replacement habitat to area of lost habitat) that takes into account factors such as:
 - time lags in achieving habitat replacement;
 - risk associated with the success of compensation measures; the relative significance of the impacted habitat (e.g., does it support threatened, endangered and / or economically important species);
 - whether compensation is occurring on site or off-site; and
 - whether the replacement habitat is of the same type as the lost habitat (i.e., in-kind or out-of-kind);
- .15 **Use of Compensation Bank.** When compensation is required to address harmful alteration, disruption or destruction of fish habitat (a HADD) under the federal *Fisheries Act*, the ability to contribute to the Mission Creek Compensation Bank or any other future Bank as a compensation option will be at the discretion of senior fisheries agencies. For non-HADD related compensation, proposals to contribute to the Bank will be at the discretion of the City with input from senior agencies, as needed;

Applications Affecting Lake Okanagan

- .16 **Shore Zone ESA Protection.** *Not support development within environmentally sensitive areas (ESA's) identified as having high value in the Kelowna Shore Zone Fisheries and Wildlife Habitat Assessment (2006);*
- .17 **Shore Zone Habitat Protection.** *Not support avoidable or mitigate-able adverse effects to any aquatic habitat on the basis that compensatory habitat works may offset such effects. Any proposed compensatory works must follow the Habitat Management Hierarchy and be consistent with the no net loss principle.*

7.10 Natural Environment Policies

The City of Kelowna will:

Considerations for Future Civic Action

Liaison/Co-operation/Public Relations

- .1 **Public Education.** Continue comprehensive education programs to schools and local organizations by City staff, and encourage public and private interests directed at natural resource protection and watershed stewardship;
- .2 **Donations Toward Environmental Protection.** Encourage the activities of nature trust organizations and corporations for the purposes of receiving donations of funds or land toward protection of natural attributes within the community;
- .3 **Land Donations.** Facilitate the work of groups and individuals willing to donate land for protection of natural attributes or public access;
- .4 **Fish Habitat Awareness.** Co-operate with senior levels of governments to promote public awareness of fish habitat;
- .5 **Agricultural Land Reserve.** Continue to involve the appropriate provincial ministry or agency in establishing Natural Environment Development Permit conditions for properties located within the Agricultural Land Reserve.

Further Studies/Reviews

- .6 **Natural Features Identification.** Continue to identify and assess Natural Environment areas with the objective of formulating protective strategies, encouraging restoration, and obtaining knowledge to facilitate appropriate land use and servicing decisions;
- .7 **Terrestrial Habitat.** *Develop guidelines for protection, mitigation and compensation for loss of wildlife habitat, indigenous vegetation areas and other non-aquatic habitat.*

☒ Note Section 7.8 Aquatic Habitat Protection and Compensation Policies for policy regarding mitigation and compensation for impacts to aquatic habitat.

Implementation

- .8 **Environmental Review.** Ensure that all development and activities occurring on properties designated as Natural Environment development permit areas are reviewed and meet the requirements for mitigation, compensation, protection, or replacement;
- .9 **Environmental Management System.** Ensure that the management of City activities has the necessary structure and processes to:
- Identify all aspects of City operations that may have a significant impact on the environment;
 - Manage and control operations and processes to minimize impacts on the environment;
 - Achieve compliance with environmental legislation and regulations;
 - Ensure a defence of due diligence in the event of non-compliance;
 - Continuously improve the City's environmental performance.
- ☒ Note Chapter 17 – Social Environment Policies 17.3.23 Sustainable Development and 17.3.27 Development Standards.

Considerations in Reviewing Development Applications

Application Processing

- .10 **Maintaining Biodiversity.** *Seek to maintain ecological linkages and biodiversity, including wildlife movement corridors and aquatic and terrestrial pathways, in all land use and development decisions.*

Uses to be Encouraged

- .11 **Tools to Encourage Voluntary Protection.** Encourage voluntary protection of natural features in cases where it is an objective of the City to protect (for stream conservation, water quality protection, or habitat preservation) land in excess of that which is, by virtue of municipal and senior government regulations, required to be protected.
- To encourage *voluntary* placement of conservation covenants, the City may give consideration to allowing increased density on the balance of the subject property, transferring density to another property, trading land, purchasing land, offering grants-in-aid, or granting tax exemptions. Owners placing voluntary conservation covenants on their land shall not be deprived of the privilege to enjoy the land as their own but they may not close, fence or otherwise obstruct any adjoining public route of access;
- .12 **Retention of Natural Areas.** Encourage all development and infrastructure projects to conserve wetlands, wildlife habitat, trees or other indigenous vegetation. Encourage alternative development methods, such as considering increasing density, narrowing right-of-ways, or cluster housing;
- .13 **Indigenous Plants.** Encourage, wherever possible, the use of indigenous plants in landscape planting schemes (please contact the City of Kelowna Environmental Division for a list of appropriate indigenous plants);

☒ Note related Development Permit requirements in Section 7.12

- .14 **Wetland Buffers.** Encourage the retention and use of wetlands as natural buffers between urban and rural uses;
- .15 **Green Technology.** *Encourage the use of Green Technologies and recyclable materials in all new developments.*

☒ Note Chapter 14 – Parks and Leisure Policy 14.1.30 Viewing Areas and Interpretative Centres.

Uses to be Discouraged

- .16 **Lot Clearing.** Discourage complete or indiscriminate lot clearing.

☒ See Natural Environment DP Guidelines for requirements in Section 7.12, prior to disturbing the land.

Special Requirements

- .17 **Natural Environment Development Permit.** Require, unless exempted under the provisions of Section 7.12, that those owning properties located within Natural Environment Development Permit Areas (See Map 7.1a) obtain development permits prior to altering land or receiving building permit or subdivision approval. (Please see Section 7.12 in the Environment Chapter for an explanation of development permit criteria and exemption provisions);

☒ Note that properties may also be subject to Development Permit requirements for other purposes. To determine applicability of other requirements, refer to the following portions of the OCP:

- Hazardous Condition – Section 7.13
- Commercial – Section 9.2
- Industrial – Section 10.2
- Multiple Unit – Section 8.2
- Urban Centre – Section 6.2

- .18 **Site Density Calculations.** Allow the owner(s) of land affected by dedications for environmental protection to use the original site area in computing density and floor area ratios and minimum area for development or subdivision purposes;
- .19 **Landscape Bonding for Sensitive Environmental Areas.** Require as part of the Development Permit process, landscape bonding to provide funding for rectifying deficient landscape conditions or for addressing damage to the environment caused by development activity;
- .20 **Placement of Utility Lines.** Require that all service lines be placed in such a way as to minimize encouragement of weed growth and in such a way that service lines would not be subject to continual maintenance, or contact and damage by maintenance equipment.