
CITY OF KELOWNA
MEMORANDUM

Date: November 14, 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 Council receive the supplemental report from the Planning and Development Services Department dated November 14, 2007 regarding 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;

AND THAT Council re-confirm the previous resolution to forward OCP Text Amendment OCP07-0020 – Amendment Bylaw No. 9842 to First Reading and Public Hearing.

BACKGROUND:

Proposed OCP Bylaw Amendment No. 9842 is intended to include new Aquatic Habitat and Compensation Banking policies into the Environment chapter of the OCP, including new policy wording to satisfy the Department of Fisheries and Oceans (DFO) with respect to the City commitment to preservation of fish habitat.

At the Council meeting of August 20, 2007 the following resolution was adopted:

THAT OCP Text Amendment OCP07-0020 – Amendment Bylaw No. 9842 to amend *Kelowna 2020* – Official Community Plan Bylaw No. 7600 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.

AND THAT staff contact the development community as part of the consultation processes.



As directed by Council, letters outlining the consultation process were sent to stakeholders, including the Urban Development Institute, on September 10, 2007. UDI confirmed that an electronic version of that letter was emailed to their members. Advertising was placed in local newspapers soliciting general public input on the proposed OCP Amendment, advising how to access related information posted on the website and how, where and when to provide any input. The consultation process was completed as of September 24, 2007.

INTERNAL CIRCULATION TO:

Environment and Solid Waste Manager
City Clerk

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. The consultation process directed by Council has been completed and is the subject of this report.

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:

To date there has only been one response to the public process, as well as a response from DFO.

The Friends of Mission Creek sent a letter that expresses their interest in the creation of an Environmental Advisory Committee as well as suggesting that any decisions with respect to Mission Creek compensation banking should also include the Regional District of Central Okanagan (RDCO).

The creation of a new Environmental Advisory Committee, is not germane to this specific OCP amendment, and has been dealt with previously.

While the RDCO does administer the Mission Creek Regional Park and the Mission Creek Greenway they are not considered a senior agency from the perspective of setting policy with respect to fish habitat and would not be included in the Mission Creek Habitat Compensation Bank Advisory Committee. It would be appropriate for the committee to consult with RDCO on matters that might impact Mission Creek Regional Park and Mission Creek Greenway. It should be noted that the RDCO, along with the City and MOE (Penticton), is on the planning committee for the Mission Creek Restoration Plan.

DFO has indicated that they are in agreement with the wording in the proposed bylaw amendment and are supportive of the bylaw moving forward.

Internal comments have resulted in minor changes to the wording of the policy text for clarification and the inclusion of definitions for some of the terms used in the proposed policy additions and thus the recommendation for Council to re-confirm forwarding proposed OCP Bylaw Amendment 9842 to 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,
Manager – Policy, Research and Strategic Planning

Approved for inclusion



David Shipclark
Acting Director - Planning & Development Services

GLS

Attachment

cc: Environment and Solid Waste Manager
City Clerk

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 - OCP Amendment Bylaw 9842

DFO related policy additions are indicated in italics for easier reference.

Definitions:

Aquatic Habitat – means environments characterized by the presence of standing or flowing water that provide food and shelter and other elements critical to an organism's health and survival. Aquatic habitat is associated with all types of watercourses including (but not limited to) lakes, ponds, rivers, streams, creeks, springs, wetlands, swamps, ravines, and some ditches.

Compensation – means, in the context of no net loss, the replacement of natural habitat or increase in the productivity of existing habitat where avoidance, mitigation techniques and other measures are not adequate to maintain those habitats affected by human activity.

Habitat Compensation Bank – means a physical site that has been created, restored or enhanced in anticipation of impacts on other potential development sites.

Habitat Compensation Banking – means restoration, creation, enhancement, and in exceptional circumstances, preservation undertaken expressly for the purpose of compensation for unavoidable habitat losses in anticipation of development activities, when avoidance, restoration or mitigation cannot be achieved at the development site or would not be as environmentally beneficial.

Mitigation – means actions taken during the planning, design, construction and operation of works and undertakings to alleviate potential adverse effects on natural habitats, and includes (but is not limited to) redesign or relocation of project components, timing of works, and methods of construction or operation which avoid or minimize changes to habitat attributes that affect its productive capacity.

7.8 Aquatic Habitat Protection and Compensation Policies

The City of Kelowna will:

Considerations for Future Civic Action

Liaison/Co-operation/Public Relations
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- .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 aquatic habitat protection.

Implementation

- .3 **Mission Creek Aquatic Habitat Compensation Bank.** Establish a Mission Creek "Aquatic 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 Aquatic 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 Aquatic 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 aquatic 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 Aquatic Habitat Compensation Banks.** Consider establishing Aquatic Habitat Compensation Banks on other aquatic systems, subject to an approved restoration feasibility plan that clearly establishes aquatic 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 Aquatic 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 aquatic 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 aquatic habitat through appropriate project siting and design;
 - **Mitigate** minor or temporary impacts by minimizing impacts, and repairing and restoring damaged aquatic habitats to their former state or better;
 - **Compensate** only when residual, permanent loss of aquatic habitat is unavoidable, acceptable and compensable. Aquatic 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 aquatic habitat impacts have been exhausted prior to proposing aquatic habitat compensation measures on or off-site;
- .9 **Compensation Guidelines.** Consider the following general ‘rules of thumb’ in aquatic 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 aquatic habitat. However, in some instances, compensation efforts away from the site may result in greater ecological benefits to the overall watershed, aquatic 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 aquatic habitat with a different type of aquatic habitat. However, replacing with unlike aquatic habitat may be preferable in cases when the replacement aquatic 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 aquatic 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 aquatic habitat;*
- .12 **Incomplete Mitigation.** *Not support restorative or enhancement aquatic 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 aquatic habitat is necessary and acceptable to the City, DFO and MoE, require a compensation ratio (area of replacement aquatic habitat to area of lost aquatic habitat) that takes into account factors such as:*
- *time lags in achieving aquatic habitat replacement;*
 - *risk associated with the success of compensation measures; the relative significance of the impacted aquatic 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 aquatic habitat is of the same type as the lost aquatic 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 aquatic 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.