

Report to Council



Date: May 1, 2012
File: 0910-30
To: City Manager
From: Rob Mayne, Director of Corporate Services
Subject: Lucaya Remediation - 1147-1157 Sunset Drive

Recommendation:

THAT Council under the authority provided in Section 74 of the Community Charter, declares that the crane structure located on the property at 1151 Sunset Dr and legally described as Lot 5, District Lot 139, Osoyoos Division Yale District Plan KAP76304, is a “nuisance” that requires remedial action to remove the crane, of portion thereof, to eliminate the nuisance condition.

AND THAT Council, pursuant to the authority provided in Section 74 of the Community Charter declares that the security measures on the property 1151 Sunset Dr and legally described as Lot 5, District Lot 139, Plan KAP76304, are insufficient and, as a result, Council declares the property to be a nuisance that requires remedial action to secure adequately the vacant construction site.

AND THAT Council imposes the following remedial action upon the registered property owner, Lucaya Redux Corp., in respect of the property located at 1151 Sunset Dr.; to remove the crane span, and to secure the property including exterior security fencing and on site security to eliminate the unsafe condition and declared nuisance.

AND THAT Council authorizes staff to take all appropriate actions in accordance with Section 17 [Municipal Action at Defaulter’s Expense] of the Community Charter to ensure the property is brought into compliance with the Remedial Action specified in the April 30, 2012 Lucaya Remediation Council report

- In the event that the property owner has not fully complied with the remedial action order on or before the compliance date specified in this Council Report; and
- that all costs incurred by the city to bring the property into compliance shall be at the expense of the property owner and, as per Section 17 of the Community Charter, these costs shall be treated as a debt owed to the City of Kelowna, and recoverable in accordance with Division 14 of Part 7 of the Community Charter.

AND THAT Council sets the time limit for compliance with the remedial action detailed in this report at 30 days commencing May 7, 2012.

AND THAT Council sets the time limit for a Notice of a request for Council to reconsider the remedial action requirement set at fourteen (14) days, commencing May 7, 2012.

AND FURTHER THAT Council directs staff to report back with a new Policy that deals with derelict construction sites.

Purpose:

This report provides Council with an update pertaining to the compliance issues and remedial action orders related to the property located at 1131 Sunset Drive (aka Lucaya Development); and seeks Council authorization to impose multiple remedial action requirements on the property to bring the property into compliance. Staff is also seeking Council's authority to proceed with action on the property if compliance is not achieved by the property owner within the required time limit set by Council.

Background:

In June 2008 a building permit was issued for development of an 86 unit, 21 storey condominium tower. In October 2008 progress on the construction slowed and eventually stopped as a result of the developer's inability to secure additional financing. Preparation and pouring concrete for the foundation, underground parkade as well as the first floor were underway.

The property is owned by Lucaya Redux Corp., with offices in Calgary Alberta. Many attempts over the past several months have been made to obtain cooperation from the owners to address the concerns of the City.

The construction crane has remained on site fully erected despite no construction activity in over three years. As on most construction sites, this type of cranes are structurally designed to absorb the impacted wind force. Therefore, the crane cannot be secured in a fixed direction and swings to withstand the shear hazards caused by wind load transfer tension in order to maintain its structural integrity. As a result, the crane is often positioned over the road and into the air space of the adjacent property owners on Sunset Drive. The crane attracts birds seeking a perch and results in bird excrement falling onto patrons and tables of the adjacent restaurant property. Numerous complaints have been received. The photo attached as Attachment 1 shows the impact on the surfaces below the "normal" crane locations. The condition has created a significant public nuisance and has impacted negatively on adjacent residential developments and the businesses.

The property was secured to the level required for an active construction site. However, that level of security has proven to be inadequate for an inactive site that does not have the ongoing presence of a construction workforce and since 2009. The City has received numerous complaints regarding the property. Despite some efforts and actions taken last fall directed to increased site security, two main concerns have not been adequately addressed by the owners of the property.

Transients have continued to trespass onto the property with disregard to signage and fencing. As a result of this activity, risk to public safety and adjacent properties may be occurring due to activities such as open burning in the parkade section of the development site. Fires and other illegal activities have been reported and responded to by the RCMP and Kelowna Fire Department.

The City seeks to remove of all or a portion of the crane to eliminate the unclean conditions and nuisance the bird excrement is creating. Furthermore staff are seeking Council support to impose a higher level of care than demonstrated to date to ensure the property is physically secured and further that regular patrols are implemented to monitor activity on the property.

Internal Circulation:

Mo Bayat, Director of Development Services
Stephen Fleming, City Clerk
Doug Patan, Building & Permitting Branch Manger
Carla Stephens, Director of Communications

Legal/Statutory Authority:

The *Community Charter* lays out the process for Remedial Action Authority & Process as follows:

Section 72 provides the authority to Council to impose remedial actions on property owners, lessee's or occupiers of land in relation to hazardous conditions, declared nuisances, or circumstances (that) harm drainage or dikes. The Section also stipulates the actions that Council may require the person to undertake:

1. remove or demolish the matter or thing,
2. fill it in, cover it over or alter it,
3. bring it up to a standard specified by bylaw, or
4. otherwise deal with it in accordance with the directions of council or a person authorized by council

Section 74 provides clarification of Council's authority by setting out the things and conditions in relation to which Council may declare them to be a nuisance and impose a remedial action requirement on a property. The Section affords Council a significant latitude with regards to determining what "matters or things" in relation to a property can be declared a nuisance (this includes the ability for council to consider a thing that is so dilapidated or unclean as to be offensive to the community). Staff suggest that this broad authority is not without limits and to ensure that it not abused, Council should only declare a matter or thing to be a nuisance if there is a reasonable basis for Council to consider that a nuisance exists.

Section 76 of the Community Charter stipulates the minimum time period that Council can set for compliance must not be less than 30 days from the date of the notice to the affected persons.

Section 77 outlines the process the city must use to notify property owners and other, defined, affected persons of Council's decision impose a remedial action requirement on a property. It also references the ability for the City to exercise the authority under Section 17 of the Community Charter [municipal action at defaulter's expense] if the remedial action requirement is not completed by the compliance date. Furthermore, Section 17 authorizes

the City to collect all related costs as a debt owed to the city, which if unpaid would be transferred to taxes as arrears at the end of the year.

Section 78 grants a person affected by remedial action requirement to request Council reconsider their decision and an opportunity to make a representation directly to Council. The Section stipulates the minimum time period that Council can set for an affected person to request reconsideration at not less than 14 days from the date of the notice to the affected persons; it also defines the reconsideration process.

Section 79 grants Council the authority to reduce both of the time limits stated in Sections 76 & 78, if Council considers there is a significant risk to health or safety if action is not taken earlier.

Section 80 of the Community Charter provides a mechanism for the City, under very specific circumstances, to recover municipal costs through the sale of the property, should the remedial action requirement not be satisfied by the property owner or affected persons, by the date specified for compliance.

Legal/Statutory Procedural Requirements:

Notification by way of the City's solicitor began on March 30, 2012 with attempts to identify the contact person associated with Platinum Equities the owner on record of the property.

The notice of remedial action will follow Council's decision impose a remedial action requirement on a property. The property owners of the land will then have an opportunity under section 77 (c) to request a reconsideration by council in accordance with section 78.

Communications Comments:

Considerations not applicable to this report:

- Financial/Budgetary Considerations:**
- External Agency/Public Comments:**
- Personnel Implications:**
- Existing Policy:**
- Alternate Recommendation**

Submitted by:



R. Mayne, Director of Corporate Services

Approved for inclusion:



cc: Young Anderson, B Williamson

