

Report

Date February 21, 2023

File: ZB133/ZB164/
ZB161/ZB83/
ZB127

Subject Official Community Plan and In-Stream Development Applications

PURPOSE

Consider options for in-stream rezoning applications impacted by the new Official Community Plan (OCP).

BACKGROUND

On August 17, 2022, Council adopted Official Community Plan Bylaw 3900, which replaced North Cowichan's former (2011) OCP with the new (2022) OCP. Much of the content and policies of the 2011 OCP carried over into the 2022 document, but the new OCP also included amendments and new land use and planning policies. Among the changes were new land use designations that supported increased densities in designated areas and reductions to the Urban Containment Boundary (UCB) in other areas.

A primary function of an OCP is to guide land use decisions and to identify future land uses supported by the Municipality. As such, the OCP is the principal policy document for evaluating land use changes and zoning amendment proposals. The *Local Government Act* (s. 478) requires that all bylaws enacted and works undertaken by Council be consistent with the OCP, so zoning amendment bylaws and other land use and planning approvals cannot be given unless they are consistent with the OCP. If a zoning amendment application is inconsistent with the OCP, it can only be considered for approval if the OCP is amended to achieve consistency.

There are five zoning amendment applications currently with the Planning Department that were submitted before the 2022 OCP was adopted. They are not consistent with the new OCP because the properties are either not within the UCB or do not have land use designations that support the type of development proposed in the applications. This report requests Council direction with respect to those applications.

DISCUSSION

Overview of OCP Growth Management Strategy:

Council's 2019-2022 Strategic Plan included "Reconsider the Urban Containment Boundary and where future growth should be concentrated, especially in relation to the Quamichan watershed" as a priority action. Revising the approach to growth management was endorsed as an objective of the OCP review project (October 16, 2019), and the development of a growth management strategy was included in the Municipality's contract with the MODUS Planning, Design and Engagement (the Project Consultants). The process for preparing the OCP, including the growth management strategy component and community engagement, was reviewed and authorized by Council at a number of points during the three-year OCP review process.

The process for obtaining community input on growth management scenarios and the results of the community engagement process is summarized in the June 21, 2021 report "How Should We Grow – Exploring Growth Scenarios" (the "What We Heard" report). After receiving the report, Council passed the following resolution at its July 21, 2021, meeting:

That Council accepts the recommendations of the MODUS June 28, 2021 "What We Heard" report as a basis for drafting a growth management strategy and land use plan for the new Official Community Plan, omitting the part of the plan that references adding 'A Health and Wellness Precinct in Bell McKinnon to allow compact mixed-use development directly adjacent to the hospital site which will protect the natural and rural lands including the Somenos Watershed,' and that staff be directed to schedule a workshop for Council on the implications of options 2Plus on the Bell McKinnon Corridor."

As directed by Council, the UCB and land use designations were prepared using the Option 2 Plus scenario. Council subsequently gave direction to retain all lands in the Bell McKinnon Local Area Plan (BMLAP) south of Herd Road in the UCB and to designate the lands north of Herd Road as a future development area. The first draft of the OCP was released for public input from November 8 to December 22, 2021.

A Special Committee of the Whole Meeting was held on February 15, 2022, where Council participated in a workshop to review public input received on the draft OCP. Correspondence from 11 property owners who objected to having their properties removed from the UCB was provided to Council in advance of the workshop. A staff report provided for the workshop identified the 11 properties and included a map showing the properties relative to the 2011 UCB and the proposed UCB (Attachment 1). On March 16, 2022, Council adopted a resolution to amend the draft UCB to include Crosland Place properties and exclude properties on Anzio Road. No amendments were proposed to include properties with in-stream applications in the UCB.

A staff report on the potential impacts of the new OCP on Land Use Applications was provided to Council at the March 16, 2022, Council meeting (Attachment 2). The report identified seven in-stream rezoning applications that would be impacted by the adoption of the new OCP, four of which are the subject of this report. The March 16, 2022, report suggested that OCP land use designations and the UCB should be determined based on the broad goals and objectives of the OCP and not the preferences or land use intentions of individual property owners. The OCP amendment process was identified as the recommended means for considering unique features and circumstances that may warrant a different land use designation or inclusion in the UCB.

Further input was received from property owners and the public up to the close of the OCP public hearing on July 19, 2022. On August 17, 2022, Council gave third reading and adoption of OCP Bylaw 3900 without further amendments to land use designations or the UCB.

Owner's Rights: OCP Designations vs Zoning

The zoning of a parcel sets out an owner's development rights, and it is important to remember that no zonings have been changed as a result of the OCP adoption. Zoning parcels is also a discretionary function of a council, and council can change the zoning on any parcel at any time without the owner's consent. A council can also decline to change a zoning, even if such a change would be consistent with an OCP designation. However, the *Local Government Act* does provide protection for owners who established uses and buildings (or demonstrate commitment thereto) in accordance with the zoning at the time, a provision commonly called "grandparenting." A Council may still rezone a parcel, but an owner is statutorily allowed to continue any legally non-conforming uses indefinitely, subject to certain conditions.

In contrast, an OCP designation is an expression of the policy wishes of council and is intended to be *indicative* of how future zoning decisions might be resolved and not prescriptive. It does not provide any development rights, and any assumptions made about future zonings are speculative unless and until a zoning amendment has been adopted. No owners are "owed" a particular land use designation. Accordingly, no corresponding "grandparenting" clause is set out in any statute providing in-stream protection in the same way the zoning (development rights) is protected. Doing so would fetter a council's discretion to enact and implement land use policy in response to the conditions of the time and significantly compromise the effect and usefulness of establishing land use designations in the first place.

Summary of 5 "In-Stream" Zoning Amendment Applications

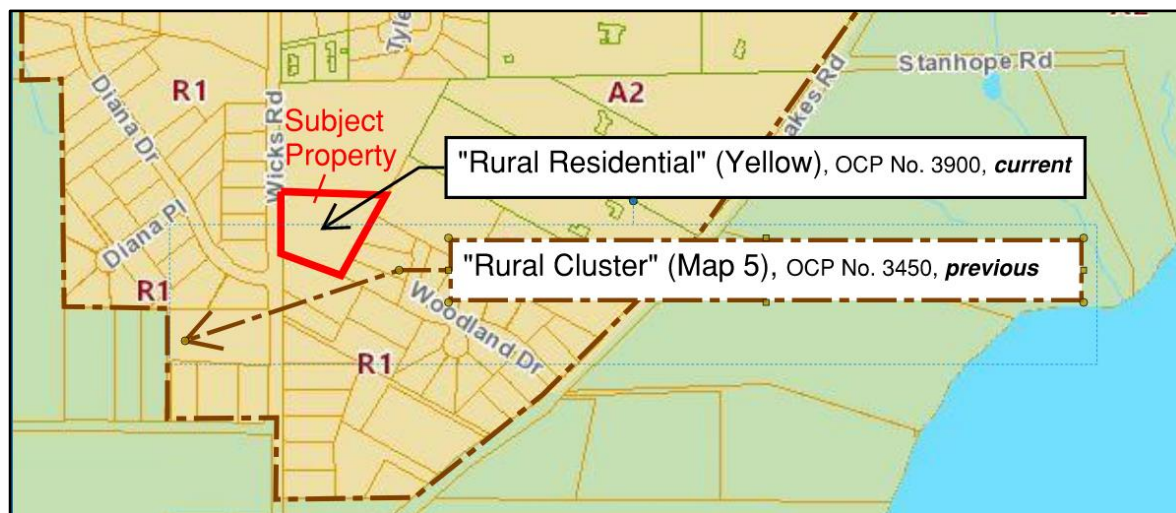
The five zoning amendment applications that are the subject of this report are summarized below. Please note that the applications are not presented in full, as staff are just seeking direction on potential OCP amendments. Should Council wish to consider concurrent OCP and zoning amendments for one or more of the applications, full staff reports on the applications and draft bylaw amendments will be brought forward at future meetings.

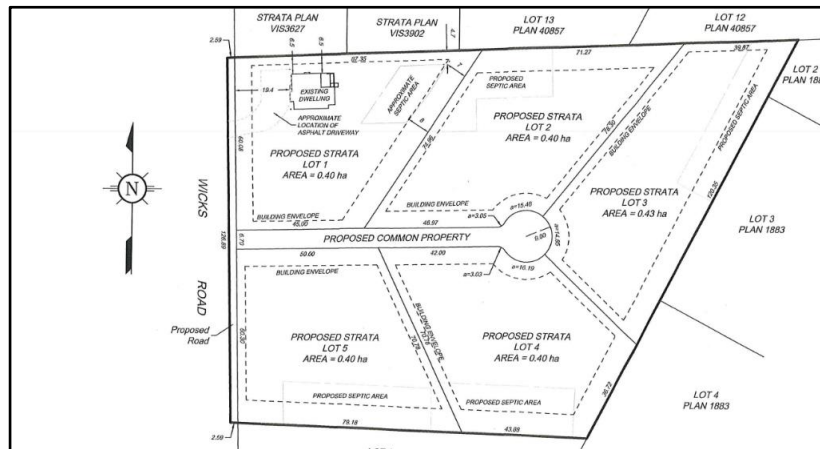
1. **1771 Robert Street** (Application ZB133)

Date of Submission -	June 11, 2021
Application Status	Application review completed
Proposal -	To rezone from A2 to R3 and R3-MF to facilitate a housing development of approximately 14 single family lots, 6-7 duplex lots and 6-10 ground oriented multi family units for a total of 34 to 40 housing units.
Servicing Considerations -	Can be serviced with municipal water and sewer. Downstream drainage issues remain unresolved and may require additional on-site stormwater management, potentially resulting in reduced density.
Policy Consideration -	<ul style="list-style-type: none"> Property was included in UCB with the 2011 OCP Current OCP designation is Rural Residential, which does not support subdivision less than 2ha. or higher density residential use.

2. **6409 Wicks Road** (Application ZB161)

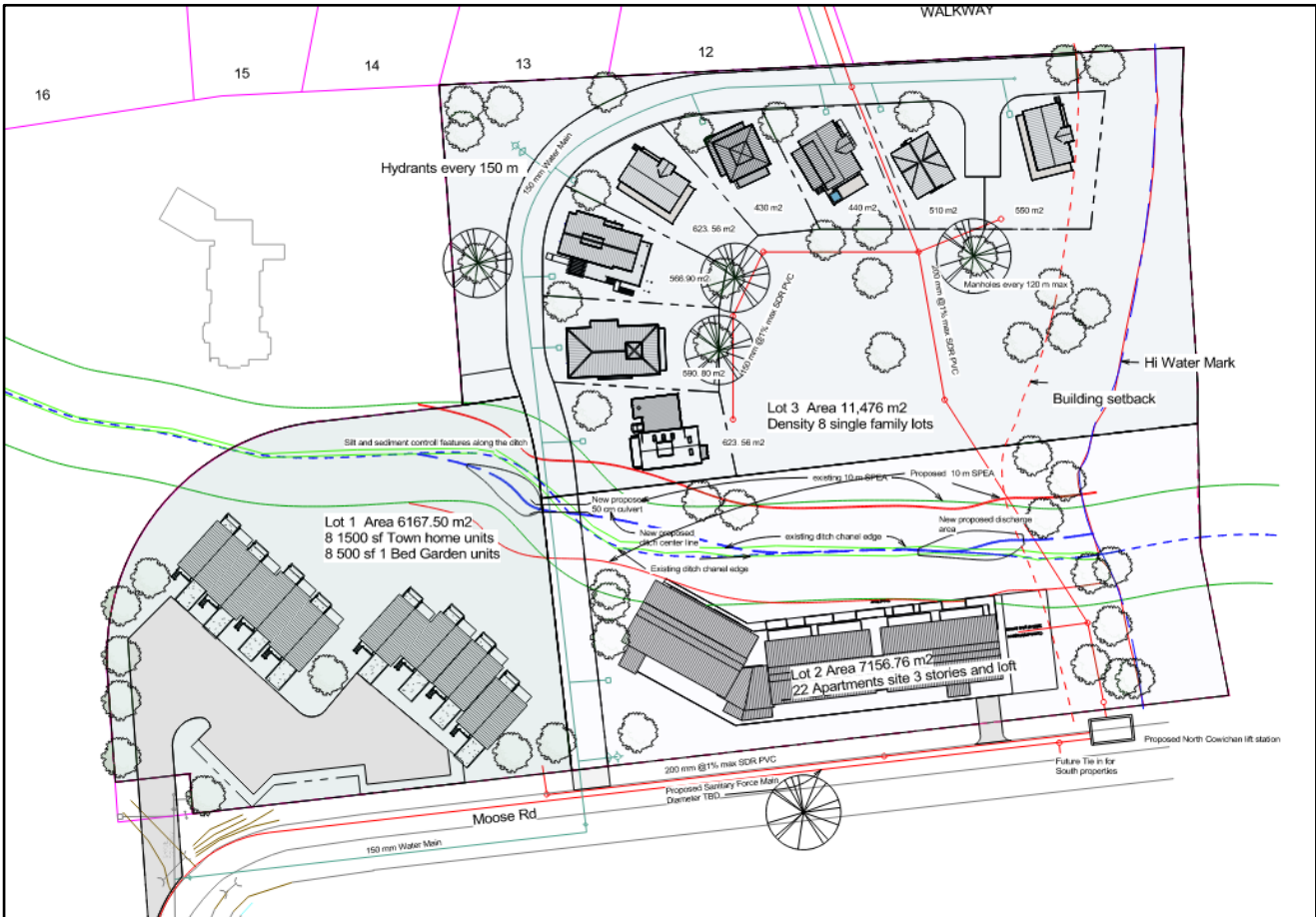
Date of Submission -	September 24, 2021
Application Status -	Application review completed
Proposal -	To rezone from A2 to A5 to permit a 4-5 lot bare land strata subdivision with lot sizes of approximately 4000 square metres (1 acre). Suites and duplexes are permitted in the A5 zone so that rezoning could allow between three and eight new dwelling units.
Servicing Considerations -	<ul style="list-style-type: none"> Can be serviced with municipal water. On-site sewage disposal and stormwater management will require approvals and prove-out at the time of subdivision.
Policy Consideration -	<ul style="list-style-type: none"> Property was not in UCB previously but had "Rural Cluster" designation, which provided limited support for rezoning where land uses are inconsistent with surroundings. Property remains outside of the UCB and has a Rural Residential designation that does not support subdivision.
OCP Amendments needed for rezoning to proceed -	<ul style="list-style-type: none"> Redesignation from Rural Residential to some form of new land use designation that supports subdivision in rural areas.





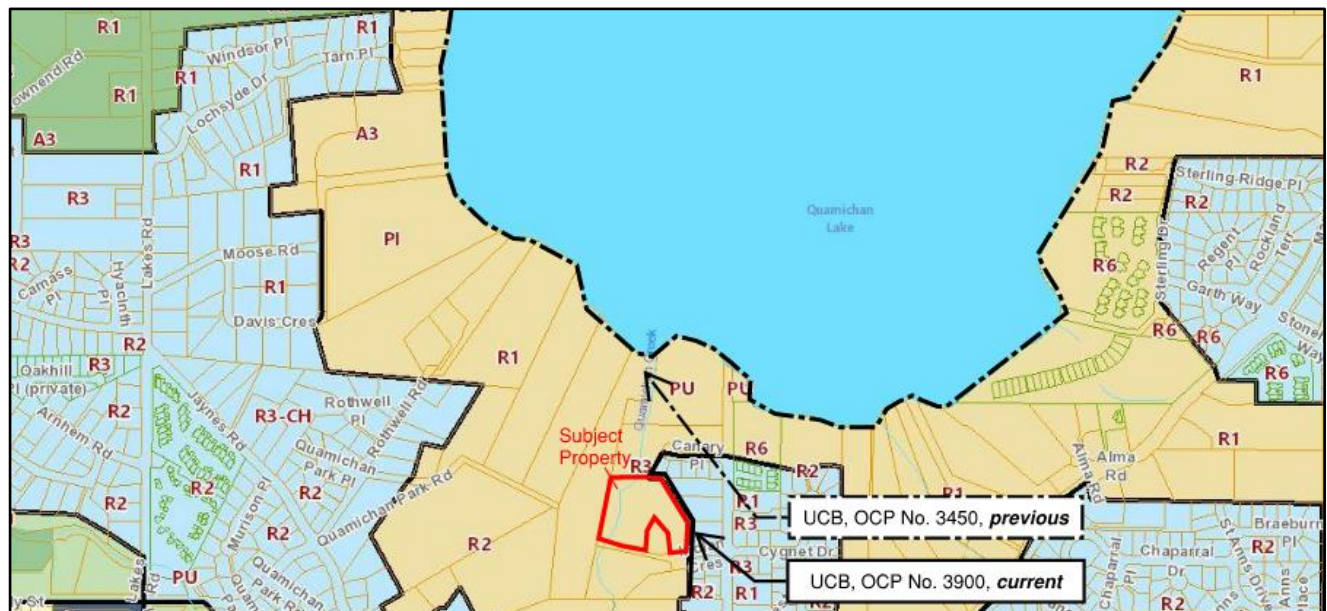
3. **Lot 2 Moose Road** (Application ZB164)

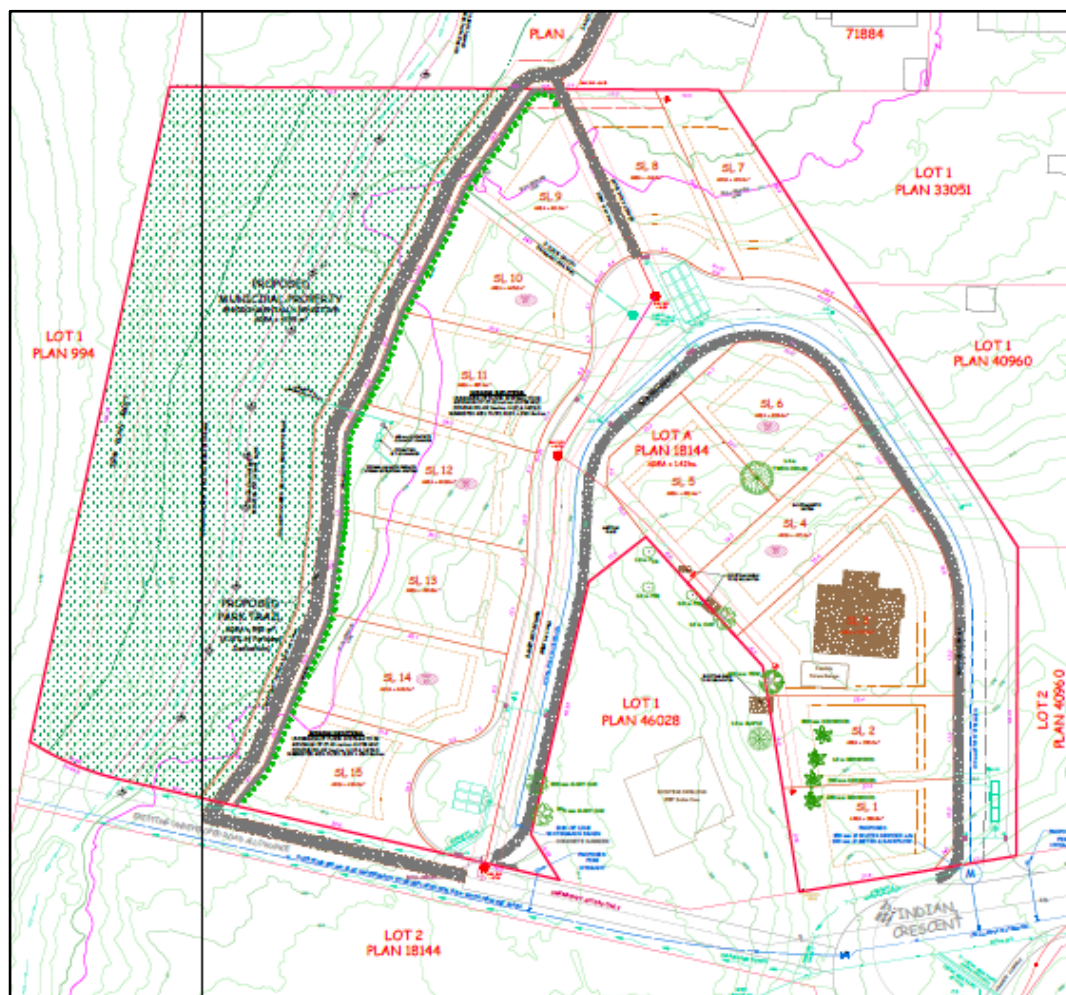
Date of Submission -	June 11, 2021
Application Status -	Awaiting re-submission of application material
Proposal -	To rezone from A3 new Comprehensive Development zone to facilitate a housing project of approximately eight single family dwellings, eight townhomes with secondary suites, 22 apartment units and 200 square metres of commercial space.
Servicing Considerations -	<ul style="list-style-type: none"> Can be serviced with municipal water and sewer but will require infrastructure upgrades. Municipal pump station needed to service lakefront properties with Municipal sewer
Policy Consideration -	<ul style="list-style-type: none"> Property was previously in the UCB, but OCP policies did not fully support proposed land use. Property is outside of UCB and has a Rural Residential designation that does not support subdivision or medium/high density residential use.
OCP Amendments needed for rezoning to proceed -	<ul style="list-style-type: none"> Inclusion in UCB and redesignation from Rural Residential to some form of new land use designation. Residential Neighbourhood designation that applies to Moose Road and Tarn Place neighbourhood not suitable due to the proposed land use and density.



4. **2083 Indian Crescent** (Application ZB83)

Date of Submission -	April 2018
Application Status -	Awaiting re-submission of application material
Proposal -	To rezone from R2 to R3-S to facilitate a residential development of 15 single family dwellings on strata lots.
Servicing Considerations -	<ul style="list-style-type: none"> Can be serviced with municipal water and sewer.
Policy Consideration -	<ul style="list-style-type: none"> Property was previously in the UCB and was removed due to its proximity to Quamichan Lake and Quamichan Creek. Property is designated Rural Residential, which does not support subdivision with lot sizes less than 2 ha. UCB and Residential Neighbourhood designation located on the property's eastern boundary. Riparian assessment work is incomplete, and property may not be fully developable as proposed.
OCP Amendments needed for rezoning to proceed -	<ul style="list-style-type: none"> Inclusion in UCB and redesignation from Rural Residential to Residential Neighbourhood.

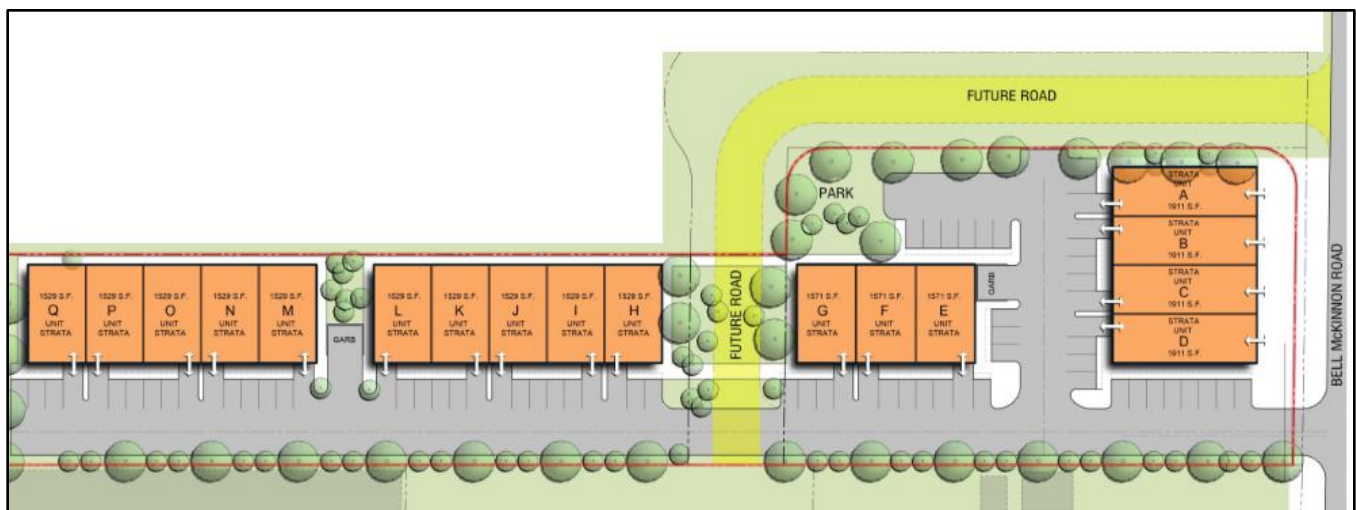
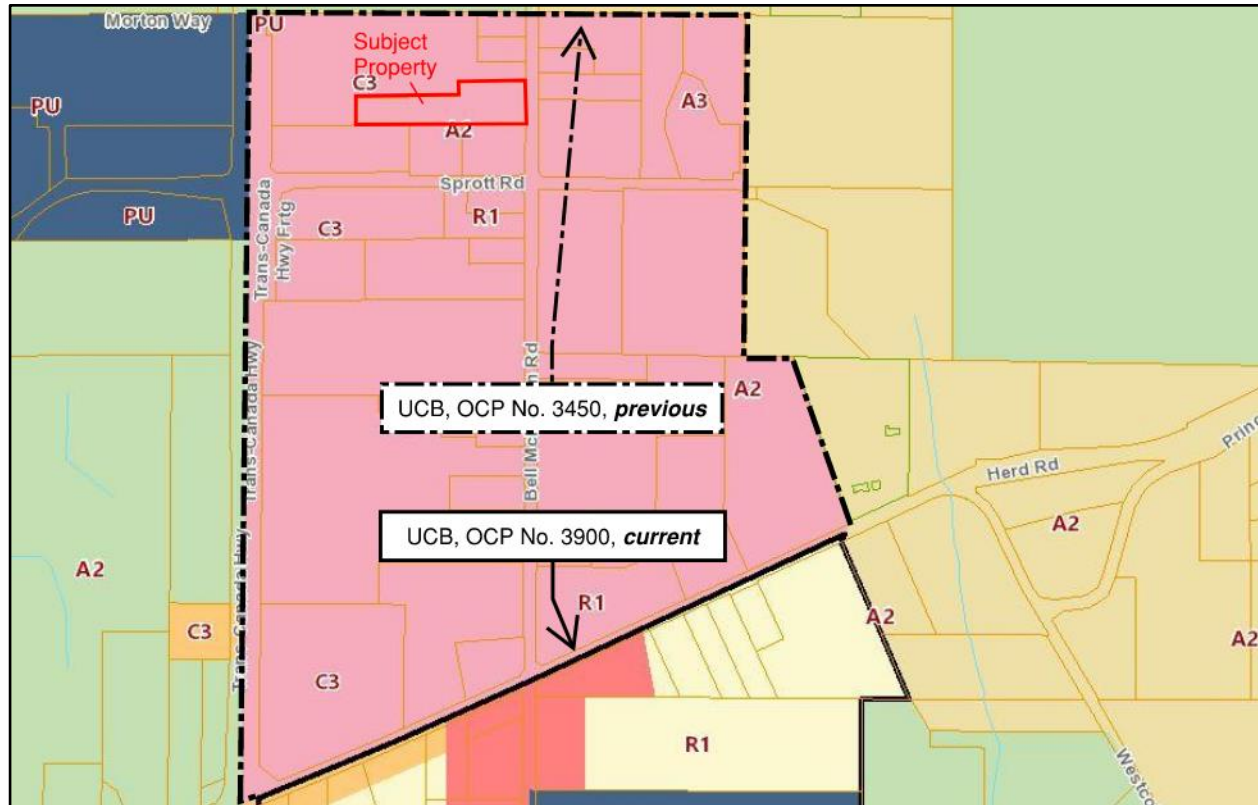




5. **7022 Bell McKinnon Road** (Application ZB127)

Date of Submission -	March 2020
Application Status -	Awaiting re-submission of application material
Proposal -	To rezone from A2 to C3 facilitate a service commercial development.
Servicing Considerations -	<ul style="list-style-type: none"> • Can be serviced with municipal water. • Municipal sewer is not available, so on-site sewage disposal is required.
Policy Consideration -	<ul style="list-style-type: none"> • Property was added to the UCB with the adoption of the 2011 OCP but was not designated for commercial use. • Property was designated for "Employment Lands" in 2018 Bell McKinnon LAP. • 2022 OCP included property in "Future Growth Area" designation. The designation is intended to reserve lands for future growth and discourage development that may interfere with future urban development.

	<ul style="list-style-type: none"> Policy guidance in the BMLAP for roads, infrastructure, community amenities etc., no longer applies.
OCP Amendments needed for rezoning to proceed -	<ul style="list-style-type: none"> Re-designation from Future Growth Area to Commercial.



Considerations and Approaches

The five applications presented in this report share the common features of having been submitted before the new OCP was adopted. All require an amendment to the OCP before they can be considered for approval. Council has three options available when considering each of the applications at this stage:

Option 1 – Deny

If Council believes the zoning amendment application to be incompatible with both the letter and intent of the OCP, denial of the application should be considered. Denying applications that would unlikely be approved saves the applicant from further investment in the application process, frees up limited staff resources for other priorities and may reduce potential community controversy.

Option 2 – Direct staff to initiate an OCP amendment

If Council believes there is merit in the proposed zoning amendment application and is prepared to amend the OCP to accommodate the zoning change, direction could be given for staff to initiate an OCP amendment bylaw that could be considered concurrently with the zoning amendment bylaw. By having the Municipality initiate the OCP amendment, the proponent would not have to pay the \$2,500 application fee. This option should be reserved for applications Council is willing to consider approving and where Council wishes to provide relief from the application fee because it was submitted prior to the OCP being adopted or some other circumstance beyond the applicant's control.

Option 3 – Invite the applicant to submit an OCP amendment application

Property owners always have the option of applying to amend the OCP, so this option re-iterates what is already available. However, it would confirm that Council expects a completed application and application fee before the zoning amendment application will be considered. If an OCP amendment application is pursued by any of the applicants, a deadline (e.g., 60 days) should be established for submitting the subsequent application so that the zoning amendment is not held in abeyance indefinitely.

Summary and Conclusion:

The OCP review and update process was not designed to consider land use designations and UCB status (in or out) on a rigorous property-by-property basis. Rather, the designations were assigned at a high-level using planning principles and community input received through public engagement processes. Property owners did have an opportunity to request changes to land use designations, and several such requests were received. Council did make some adjustments to the UCB and land use designations in response to public input before the new OCP was adopted but did not accommodate every request.

The OCP amendment application process allows every property owner to have the land use designation for their property reconsidered and for Council and staff to provide more focused consideration of the land use designations for specific properties that are not practical when preparing a land use plan for the entire Municipality. Should Council wish to consider any or all of the five applications for approval, OCP amendments will be required in order to comply with the requirements of the *Local Government Act*.

Council is not obliged to approve any of the five applications and can deny one or more of the applications because of inconsistency with the new OCP. This option should not be taken lightly but should be considered for applications that are considered to be so misaligned with the new OCP that approving them would seriously undermine the OCP's growth strategy.

1771 Robert Street and 2083 Indian Crescent:

Of the five applications, planning staff consider two (1771 Robert Street and 2083 Indian Crescent) to be sufficiently compatible with the structure and intent of the OCP that an OCP amendment could be approved without undermining the land use planning objectives of the Plan. Because those applications can be accommodated within the existing policy framework of the OCP and were submitted well before the new OCP was adopted, it is recommended that staff be directed to initiate OCP amendments to be considered concurrently with the proposed zoning bylaw amendments.

6409 Wicks Road & Lot 2, Moose Road:

Two of the applications (6409 Wicks Road and Lot 2, Moose Road) would require site-specific OCP amendments that are not compatible with the OCP policy framework and would potentially undermine the growth management strategy of the Plan in favour of piecemeal and ad hoc land use decision making. There are no existing land use designations within the current structure of the OCP that are suitable for the proposed land uses, so structural changes to the OCP's land use planning framework would be needed to accommodate the proposals. As the zoning amendment applications for 6409 Wicks Road and Lot 2 Moose Road would require significant re-working of the OCP in order for the applications to be approved, denial of these two applications is recommended.

7022 Bell McKinnon Road:

The 7022 Bell McKinnon Road application differs from the other applications in that it proposes a commercial land use. The issue with this application is that the property is within an area designated as a Future Growth Area, and there is no policy direction in the OCP regarding preferred land uses and development requirements other than the area should be reserved for future development.

The Future Growth Area designation suggests that land uses in the area should largely remain as they are until an OCP amendment to open that area up for development is passed and a development plan for the area is prepared. As the BMLAP no longer applies to the lands north of Herd Road, there is no development plan for the area to provide direction on issues such as the road network, servicing standards and community amenities that are typically negotiated and secured through the rezoning process. So, while Council could consider an OCP amendment for 7022 Bell McKinnon Road within the existing Plan framework, it is not recommended because the pre-planning work to guide development in the Future Growth Area designation is not in place. For this reason, it is recommended that Council deny the application.

OPTIONS

Option 1 (Recommended Option):

THAT Council:

1. Direct staff to initiate an amendment to Official Community Plan Bylaw No. 3900 for 1771 Robert Street to be presented at a future meeting concurrently with Zoning Amendment Application ZB133;
2. Direct staff to initiate an amendment to Official Community Plan Bylaw No. 3900 for 2083 Indian Crescent to be presented at a future meeting concurrently with Zoning Amendment Application ZB83;
3. Deny Zoning Amendment Application ZB161 (6409 Wicks Road) due to it being inconsistent with the land use designation in the Official Community Plan;
4. Deny Zoning Amendment Application ZB164 (Lot 2, Moose Road) due to it being inconsistent with the land use designation in the Official Community Plan; and,
5. Deny Zoning Amendment Application ZB127 (7022 Bell McKinnon Road) due to it being inconsistent with the land use designation in the Official Community Plan.

Option 2 (Alternative Options):

THAT Council:

1. Direct staff to initiate an OCP amendment for (Council to select one or more of the following properties: 1771 Robert Street; 2083 Indian Crescent; 6409 Wicks Road; Lot 2 Moose Road; 7022 Bell McKinnon Road).
2. Direct staff to invite the applicants for zoning amendment applications (Council to select one or more of the following applications: ZB133, ZB83, ZB161; ZB164; ZB127) to submit OCP amendment applications by April 30, 2023, to be presented at a future meeting concurrently with the zoning amendment application.
3. Deny zoning amendment applications (Council to select one or more of the following applications: ZB133; ZB83; ZB161; ZB164; ZB127) due to it being inconsistent with land use designations in the Official Community Plan.

IMPLICATIONS

If Council decides to maintain the OCP land use designations for any of the subject properties, the in-stream zoning amendment applications could not be approved, and a resolution to deny the applications would be needed in order to close them. As the applications have not yet proceeded to a public hearing, the applicants would be eligible for a \$500 refund.

If Council decides to either direct staff to initiate OCP amendments or invite applicants to submit OCP amendment applications, the zoning amendment applications will return to Council at a future meeting along with OCP amendment bylaws. There are procedural requirements for OCP amendment bylaws set out in the *Local Government Act* that must be satisfied before Council can give readings to the amendment bylaws.

Council has the authority to amend the OCP at its discretion, provided all procedural requirements are followed. Amendments that deviate from the general intent and structure of the OCP should be undertaken cautiously, as they may erode the public's confidence in the OCP and encourage land use applications that are incompatible with the OCP's vision, principles, and growth management strategy.

RECOMMENDATION

THAT Council:

1. Direct staff to initiate an amendment to Official Community Plan Bylaw No. 3900 for 1771 Robert Street to be presented at a future meeting concurrently with Zoning Amendment Application ZB133;
2. Direct staff to initiate an amendment to Official Community Plan Bylaw No. 3900 for 2083 Indian Crescent to be presented at a future meeting concurrently with Zoning Amendment Application ZB83;
3. Deny Zoning Amendment Application ZB161 (6409 Wicks Road) due to it being inconsistent with the land use designation in the Official Community Plan;
4. Deny Zoning Amendment Application ZB164 (Lot 2, Moose Road) due to it being inconsistent with the land use designation in the Official Community Plan; and,
5. Deny Zoning Amendment Application ZB127 (7022 Bell McKinnon Road) due to it being inconsistent with the land use designation in the Official Community Plan.

Report prepared by:



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George Farkas
General Manager, Planning, Development and

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Map from February 15, 2022 Special Committee of the Whole meeting
- (2) March 16, 2022 Staff Report on In-stream Applications