

# Report

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Date	March 16, 2022	File: SPP00040
Subject	Potential Impacts of new Official Community Plan on land use applications	

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## PURPOSE

To provide Council with information about how land use applications may be impacted if Council adopts a new Official Community Plan.

## BACKGROUND

Council has received a draft Official Community Plan (OCP) that is the product of a process that began in 2019 to review and update the 2011 Official Community Plan. The draft OCP was reviewed and discussed by the Committee of the Whole at workshops on February 15 and March 8. On March 16 Council is expected to consider and debate potential amendments to the document before the bylaw is considered for first reading.

At the February 15 Committee of the Whole meeting, staff were asked to explain how applications submitted prior to the adoption of the new OCP will be processed and how those applications could be impacted. As the response to that question is complex, staff committed to provide the information at a subsequent meeting in a staff report.

## DISCUSSION

### Defining “In-Stream” Land Use Applications:

Applications are considered to be “in-stream” when the applicant has submitted all required application materials, including the application fee, and the application has been entered into the Municipality’s record management system as “opened and received”. Pre-application discussions with staff and applications that have been submitted without all required application materials are not considered to be in-stream applications.

The Municipality is responsible for processing many types of development approvals, including zoning amendments (rezonings), OCP amendments, temporary use permits (TUPs), development permits, development variance permits, building permits, and subdivision applications. Most permit applications are processed in relation to the Zoning Bylaw, the Building Bylaw and other applicable development regulations rather than OCP policy. They are therefore not impacted by the adoption of the new OCP. Applications for changes in land use (rezonings, OCP amendments and TUPs) are potentially impacted by changes in OCP policy and it is those types of applications that are the focus of this report.

### Defining “Impacted Applications”:

OCPs are broad-based policy documents intended to provide local governments direction on various land use, community planning, and development-related issues. Most OCPs, including North Cowichan’s draft OCP, contain a broad array of objectives and policies that guide Council decisions on land use applications in many ways. In this sense, adoption of a new OCP could potentially impact any

land use application that subsequently comes before Council. The impact a new OCP would have on decisions before Council is difficult to generalize because it will ultimately be up to Council to determine if and how OCP policy will influence their decision making when voting on land use applications.

Section 478 of the *Local Government Act* requires that all bylaws adopted by Council be consistent with the OCP. Adopting a new OCP that results in changes to OCP land use designations will preclude Council from approving zoning amendment applications and temporary use permit applications where the proposed land use is inconsistent with the OCP land use designation or is in direct conflict with other OCP policy.

### **Effect of Official Community Plan**

**478 (1) An Official Community Plan does not commit or authorize a municipality, regional district or improvement district to proceed with any project that is specified in the plan.**

**(2) All bylaws enacted or works undertaken under section 711 of the *Municipal Act, R.S.B.C. 1979, c. 290*, or an official settlement plan under section 809 of that Act, before the repeal of those sections became effective, must be consistent with the relevant plan.**

The adoption of a new OCP potentially impacts all in-stream land use applications because new policy may influence Council's decision-making and the outcome of the application. In-stream applications that are not consistent with the new OCP's land use designations and policies would be directly impacted because Council could not consider the application without first amending the OCP.

### **Summary of In-Stream Land Use Applications**

As of March 2, 2022, there are 23 in-stream land use applications at various stages of the development review process. These are summarized in Table 1. Policies in the new OCP potentially impact all applications in Table 1.

Applications that are directly impacted by adoption of the new OCP and would require an OCP amendment to be considered are highlighted in yellow.

*Table 1*

Application Type:	File No.	Property Location:	Application Date:	Proposed Amendment(s)
OCP and Zoning Amendment	OCP00015	3137 Henry Road	Oct. 27, 2020	A3 to I1
OCP and Zoning Amendment	OCP00016	6846 Bell McKinnon Rd.	Dec. 11, 2020	A2 to Mixed Use, Commercial & Residential CD Zone
OCP and Zoning Amendment	OCP00017	3037/3041 Henry Rd. 3036 Juniper Rd. 9337 TCH	Nov. 16, 2020	R1& I2 to C3

Application Type:	File No.	Property Location:	Application Date:	Proposed Amendment(s)
OCP and Zoning Amendment	OCP00018	3418 & Lot 3, Cowichan Lake Road	Apr. 15, 2020	R3 & R4 to CD zone
<b>Zoning Amendment</b>	<b>ZB000083</b>	<b>2083 Indian Crescent</b>	<b>Apr. 4, 2018</b>	<b>R1 to R3-S</b>
Zoning Amendment	ZB000122	6478/6489/6493/6494 Paddle Road	Oct. 15, 2020	R1 to CD zone
Zoning Amendment	ZB000126	934 Khenipsen Road	April 9, 2020	Site Specific amendment for second dwelling
Zoning Amendment	ZB000127	7022 Bell McKinnon Rd.	Mar. 6, 2020	A2 to industrial/commercial zone
<b>Zoning Amendment</b>	<b>ZB000133</b>	<b>1771 Robert St.</b>	<b>June 11, 2021</b>	<b>A2 to R3, R3-MF &amp; PC</b>
Zoning Amendment	ZB000138	3005/3011 Drinkwater Rd.	Aug. 7, 2020	R1 to multi-family zone
Zoning Amendment	ZB000142	6644 Bell McKinnon Rd.	Sept. 22, 2020	R1 to multi-family zone
Zoning Amendment	ZB000143	6194 Marsh Rd.	March 22, 2021	R3 to multi-family
Zoning Amendment	ZB000153	3288/3330 Cowichan Lake Rd.	March 15, 2021	Site specific amendment for cannabis retail
Zoning Amendment	ZB000155	7167 Bell McKinnon Rd.	June 28, 2021	Site specific amendment for 2 <sup>nd</sup> dwelling
Zoning Amendment	ZB000159	Lot 32, Pacific Place	Apr. 9, 2021	Site specific amendment for 2 <sup>nd</sup> dwelling
<b>Zoning Amendment</b>	<b>ZB000161</b>	<b>6409 Wicks Road</b>	<b>Sept. 28, 2021</b>	<b>A2 to A5 for 5 lot subdivision</b>
<b>Zoning Amendment</b>	<b>ZB000164</b>	<b>Lot 2, Moose Road</b>	<b>Nov. 9, 2021</b>	<b>A3 to CD/mix housing zone</b>
Zoning Amendment	ZB000169	3833 Gibbins Road	Oct. 25, 2021	Site specific amendment for 2 <sup>nd</sup> dwelling
Zoning Amendment	ZB000172	Lot 71 Viewtop Rd.	Oct. 29, 2021	To amend definition of townhouse for two family dwelling
Zoning Amendment	ZB000173	3110 Moorfield Rd.	Nov. 9, 2021	Site specific amendment for 2 <sup>nd</sup> dwelling
Zoning Amendment	ZB000177	2950 Elm St.	Nov. 25, 2021	Amendment to CD6 zone
Zoning Amendment	ZB000179	3543 Auchinachie Rd.	Jan. 24, 2022	Site specific amendment for 2 <sup>nd</sup> dwelling

### Issues and Considerations for Directly Impacted In-Stream Land Use Applications

Of the 23 in-stream applications listed in Table 1, seven would require an amendment to the new OCP in order for Council to approve them (assuming the new OCP is adopted before the proposed zoning amendment is adopted). Of those seven applications, three would require an amendment to the current 2011 OCP.

Council should keep in mind that any amendment to zoning is approved at Council's discretion and Council isn't compelled to approve any application just because it is supported by the OCP land use designation or other policies in the applicable OCP. So, while applications highlighted in yellow are identified as directly impacted should the new OCP be adopted as currently proposed, they wouldn't necessarily be approved as proposed under the current OCP. Three of the seven are inconsistent with the current 2011 OCP and would require an amendment to both the current OCP and new OCP. The

impact on the yellow highlighted applications is largely procedural. Under the current OCP, four of the seven of the applications could be approved with just a zoning amendment. If the new OCP is adopted before the applications are decided, all seven would require amendments to the OCP before the proposed zoning amendment could be considered (i.e. they are inconsistent with the new OCP). The decision to approve or deny any of the applications in Table 1, including the ones highlighted in yellow, ultimately rests with Council.

**Subdivision Applications:**

This report only addresses in-stream applications for land use changes and not other types of development applications. However, since the subdivision approving officer is required by the *Land Title Act* to consider the “public interest” when considering the approval of subdivision applications and an OCP can be considered to be an expression of the public interest, a few words on how adoption of a new OCP could impact in-stream subdivision applications are in order.

Section 511 of the *Local Government Act* gives in-stream subdivision applications 12 months of protection from bylaw changes that effect the subdivision from the date the bylaw is adopted. In-stream subdivision applications would therefore not be subject to policies of the new OCP for a 12 month period after its adoption. Twelve months following adoption of the new OCP the subdivision approving officer could consider policies of the new OCP when considering subdivision applications submitted prior to adoption of the new OCP.

**Concluding Comments:**

There is no protection in law for land use applications submitted before a new OCP is adopted, and Council has no obligation to consider in-stream applications any differently than applications received after a new OCP has been adopted. However, Council has considerable discretion when reviewing land use applications before it. The date of when an application was submitted can be considered in the decision if Council believes it to be relevant.

Land use designations and the urban containment boundary in the draft OCP were prepared based on the broad goals and objectives of the OCP and not the preferences or intentions of individual land owners. It is recommended that Council also take this approach when reviewing the draft OCP. The application process provides an opportunity for any property owners to request changes to land use designations and to highlight any unique features or circumstances that may justify land uses that are different from what is identified in the OCP.

**RECOMMENDATION**

THAT Council receive for information the March 16, 2022 report from the Director of Planning and Building regarding the potential impacts of new Official Community Plan on land use applications.

Report prepared by:



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**Approved to be forwarded to Council:**



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