Report

MUNICIPALITY OF NORTH Cowichan

Date	May 15, 2024	File: ZB000235
Subject	Zoning Bylaw Amendment: Local Government Act Compliance	

PURPOSE

To provide a summary of Zoning Bylaw changes designed to achieve compliance with the provincial amendments to the *Local Government Act* (LGA) regarding "Small Scale Multi Units Housing" (SSMUsH), and for Council to endorse the proposed approach.

BACKGROUND

At its regular meeting on February 13, 2024 Council received a report regarding the provincial legislative changes announced in November 2023 in the form of Bill 44 and resolved: "*THAT Council directs staff to … bring forward a zoning amendment bylaw to meet the legislative requirements for "Secondary Suites and Missing Middle Unit Housing"…"*

In December 2023, the Province published the *Provincial Policy Manual & Site Standards* (referred to hereafter as the "Policy Manual") to guide and assist local governments in implementing the legislation. This manual, available here, is mandatory reading and must be considered when developing and adopting zoning changes. All local governments must achieve compliance by June 30, 2024, and must not hold a public hearing for zoning amendment bylaws whose purpose is to achieve such compliance.

Given the statutory deadline and lead-in times for public notification prior to the first reading, staff are providing Council with a summary of the proposed changes prior to presenting the amendment bylaw for the first three readings at a future special Council meeting (date to be arranged). Once the bylaw is presented for its first three readings, there won't be time for amendments or revisiting before the bylaw is returned for adoption immediately following statutory sign-off from the Ministry of Transportation and Infrastructure.

DISCUSSION

Approach

Given the short timeline for achieving legal compliance, staff have largely prepared Bylaw 3964 to reflect the minimum zoning changes necessary to achieve compliance without going any further. While the legislation encourages municipalities to go further, and there are many other changes staff would recommend, the statutory deadline of June 30, 2024, does not leave adequate time for Council to debate and choose between competing options, particularly if it wishes to canvass the views of citizens.

This "minimum necessary" approach has some practical limits; a puritanical interpretation that avoids even the most benign administrative changes would lead to complexity in the resulting package of amendments. A reasonable balance must be struck between observing this principle and the practicality of implementing such significant changes *en masse*. In some particular instances, it is necessary to "do more" simply for the sake of feasibility while still holding true to "doing the minimum necessary" in a

more general sense. This approach notwithstanding, staff have identified three further specific issues that are recommended also to be addressed at this time. These issues are as follows and are explored in more detail later in this report:

a. Allow Detached ADUs (Coach Houses)
b. Amend the Single-Family Dwelling definition to allow factory-built homes
c. Remove the size limit for Secondary Suites

Wider Zoning Bylaw Review Context

When Bill 44 was announced, North Cowichan had already embarked on a full review of the Zoning Bylaw following the adoption of the OCP. Clearly, the statutory amendments had to take precedence, and staff have been working solely to those ends since December 2023. However, the Zoning Bylaw rewrite still remains a high priority, and the project is therefore recalibrated around the initial round of changes prompted by SSMUsH legislation. Attachment 4 contains a revised project plan for the Zoning Bylaw rewrite (with the original plan included for reference).

Initially the first module was solely intended to address "legacy zonings" where the permitted land use and density are significantly at odds with the OCP's land use designations. Once the "minimum necessary at this time" zoning changes have been adopted (now "Module 1"), the "Legacy Zones" module (now "Module 2") will be brought forward for Council's consideration. Other modules will be able to revise and revisit the changes introduced for SSMUsH compliance, address potentially problematic site standards, and include a fulsome exploration of competing options and opportunities for public input.

Identification of "Restricted Zones"

The initial task is to identify which zones and parcels are restricted zones and, therefore, affected by the requirements of the LGA. Section 481.3(1) defines a restricted zone outside of the UCB as one where "… *the permitted residential use would be restricted to detached single-family dwellings*". Outside the UCB, the vast majority of zones are restricted zones but are already compliant in allowing a suite or a two-family dwelling and do not require amendment.

Inside the UCB, s.481.3(1) defines a restricted zone, but s.481.4 also articulates certain exemptions, including zones with the minimum parcel size greater than 4,050m2. A restricted zone within the UCB is any zone where the current residential permissions fall below the minimum densities set out in the LGA, namely four units per lot (or three on small lots less than 280m2 area). Inside the UCB all the restricted zones must then be amended to allow explicitly up to four units per lot (or three on small lots <280m2). This is achieved through a text amendment to each zone's permitted uses and densities, discussed further below. The LGA defines a further class of zones where up to six units per lot must be permitted, but these are within so-called "Transit Oriented Areas" (TOAs) that exist in more urbanized locations. No TOAs are present in North Cowichan.

One additional category of restricted zone occurs because of the ambiguity in our zoning bylaw's definition of "accessory dwelling unit" which could arguably be constructed as a detached dwelling, making zones where it occurs "restricted zones." This use is permitted in many of our non-residential zones where we do not want residential uses to proliferate. This has been resolved by amending the

definition so that an accessory dwelling unit must be attached to the principal use which clarifies these are not intended as residential zones.

Form of Permitted SSMUsH Use and Density

Local governments still retain control over the form of the required density. At its simplest, this means allowing up to four units within a single residential building (i.e. a fourplex or a four-unit townhome building). There may be reasons for allowing other configurations in some zones (such as two duplexes), but these go beyond the "minimum necessary" principle and therefore may be explored subsequently in the zoning bylaw rewrite.

For restricted zones subject to s.481.3(3) ***(Outside the UCB)***, the following use provisions in combination do the minimum necessary to achieve compliance:

Permitted Use:
"single family dwelling"
"secondary suite"

As noted, most rural zones already comply with this standard by allowing a "two-family dwelling," which allows for a duplex or a single-family dwelling with a suite.

For restricted zones subject to s.481.3(4) ***(Within the UCB)***, the following use/density provisions do the minimum necessary to achieve compliance:

Permitted Uses:
"single family dwelling"
"secondary suite"
"two family dwelling"
"multi family building"

Density:
The maximum permitted density for the [...] zone is as follows:

(a) The number of residential buildings shall not exceed one;
(b) The number of dwelling units shall not exceed:
    (i) Three in the case of lots that are less than 280 m^2 (3,014 sq. ft.) in area.
    (ii) Four in the case of lots that are at least 280 m^2 (3,014 sq. ft.) but not more than 4,050 m^2 (1 acre) in area.
    (i) Two in the case of lots that are greater than 4,050 m^2 (1 acre) in area.

Density & Site Standards: "Stress Testing" Reasonableness Review

It is not enough merely to change the permitted use and density of zones without regard to the other zoning restrictions such as setbacks, height, lot coverage, etc., which collectively are referred to as "site standards". LGA s.457.1 specifies that the general zoning powers "*must not be exercised in a manner that unreasonably prohibits or restricts the use or density of use required to be permitted under section 481.3.*" and subsection 481.3(7) requires that "*in developing or adopting a zoning bylaw to permit the use and density of use required under this section to be permitted, a local government must consider*

applicable guidelines, if any under section 582.1. [provincial policy guidelines related to small-scale multi-family housing]."

This stipulation means that in addition to modifying the zoning bylaw to permit the required density, we must also ensure that the overall zoning regulations (e.g., setbacks, height, parcel coverage) still allow for a building envelope that can reasonably accommodate the required density. The LGA does not provide a precise test or standard here, so the question becomes one of reasonableness. One option to achieve that outcome is to adopt the zoning provisions that are outlined in the sample site standards in the provincial Policy Manual, and any local government doing so can safely be assumed to be meeting the requirements in full. Given the complexities of North Cowichan's situation and its very different urban/rural areas and communities, staff do not recommend adopting one of the site standard packages at this time since they differ considerably from our current standards.

Instead, a more nuanced approach is recommended that applies locally tested site standards that meet the spirit and intent of the LGA without importing a "one-size-fits-all" solution that causes an unnecessary or premature degree of change in some areas. Clearly there will always be exceptions and particular lots that are harder to develop, so revised site standards will not automatically guarantee that every lot may now accommodate the SSMUsH densities, and this includes the Province's own sample site standards. Attachment 3 provides details on the methodology and zoning provision changes recommended.

Summary of Proposed Text Amendments

Attachment 1 summarizes all the zoning changes that will be embodied in Bylaw 3964. To avoid tedious repetition, only the changes as they pertain to the R2 and R3 zones are provided, alongside changes to general regulations and definitions, noting that the same wording formulations in the R2 and R3 zones will be chased through all similar zones in the amendment bylaw itself.

Proposed Mapping Amendments (Parcel Redesignation)

One difficulty posed by the LGA is the differentiation of zoning permissions outside a UCB from those within it. The UCB is defined in the OCP and is not recognized in the zoning bylaw. The UCB is intended to advise and inform zoning choices rather than exert direct influence on specific zoning permissions. North Cowichan has several zones that apply to parcels inside and outside of the UCB; however, the LGA now requires that properties with the same zoning are treated differently depending on location. As a policy tool, it would not be appropriate to "import" the UCB into the zoning bylaw (and create an overly complex form of "dual zoning"); therefore, it is necessary to split some zones up and rezone some parcels.

The following restricted zones are effectively split by the LGA, depending on their application relative to the UCB. The following table summarizes the number of entities (parcels and building strata units) within each zone existing inside and outside of the UCB:

ZONE	# Entities within UCB	# Entities outside UCB
R1 Residential Rural Zone	370	1,922
R2 Residential Restricted Zone	1,090	17
R3 Residential One and Two-Family Zone	4,566	71
CD18 Kingsview CD Zone	177	4

The proposed changes rezone the smaller number of properties and adjust the existing zone provisions as needed without changing the zone for the larger number.

With the R1 zone, the vast majority of parcels lie outside of the UCB and the zone is already LGA-compliant for those parcels. The minority group of R1 parcels inside the UCB needs to be rezoned to a zone allowing 3-4 units. A new zone, R1-A is proposed to achieve this.

In the case of the R2, R3, and CD18 zones, the vast majority of parcels lie within the UCB. These zones are, therefore, adjusted to reflect the required SSMUsH densities without changing the designation of the majority of parcels. It is the minority R2, R3, and CD18 parcels outside of the UCB that are redesignated by adding a suffix -R to the zone name but otherwise keeping the zoning provisions substantially the same.

Redundant Zones

In a few limited cases, some zones become virtually indistinguishable from others once the SSMUsH provisions are added in. These zones can be consolidated without any "downzoning" of affected parcels. Specifically, this involves redesignating all R2-A, R3-N, and CD5 parcels to R3 along with most R3-CH parcels.

Attachment 2 summarizes all the zoning mapping changes that will be embodied in Bylaw 3964. These changes are also shown graphically in the three area maps contained in Attachment 2.

Official Community Plan Policy

The requirement for OCP consistency is temporarily suspended in the case of bylaws intended to achieve LGA compliance. However, while the LGA amendments likely go farther than what the OCP envisions in terms of density increases in non-growth areas, they are not fundamentally at odds with the new OCP. As previously advised, the OCP must be amended by the end of 2025 to provide a policy context and designations that accommodate a 30-year housing need. While this need is yet to be defined through an update to the Housing Needs Report, the OCP growth area designations contain a significant amount of developable and re-developable land capable of meeting any reasonable growth trajectory.

Optional Provisions Recommended to be Included

Three further provisions are recommended as a qualified exception to the "minimum necessary" principle. While it is possible to proceed without these amendments, including their results in a more coherent and practical package of amendments. intent in all three instances is to provide more flexibility without a significant commensurate increase in potential impacts beyond what is already created in responding to the SSMUsH legislation in the first place.

Optional Provision (a): Detached Accessory Dwelling Units (ADUs)

Noting the increasing popularity and prevalence of ADUs, it is recommended that for SSMUsH zones within the UCB, ADUs are permitted alongside a single-family dwelling to provide a reasonable and lower-impact alternative to the construction of triplexes and fourplexes. Many owners may wish to add a unit to their lot without tearing down their home in order to construct a multiplex, and expanding the provisions for ADUs is also a feature of the draft Affordable Housing Policy. In terms of SSMUsH

compliance, it is difficult to imagine a scenario whereby a single-family dwelling with a suite and ADU has a systemically greater impact on adjoining properties than the fourplex that would otherwise be permitted.

Specifically, should Council opt to include this within the amendment bylaw, the density provision part (a) in such zones within the UCB would read as follows:

> Density:
> The maximum permitted density for the [...] zone is as follows:
> (a) The number of residential buildings shall not exceed one, except where the principal residential building consists of a single-family dwelling with or without a secondary suite, in which case one detached accessory dwelling unit is permitted.

Some limitations are placed on ADUs such as a maximum size of 120m^2 and provisions to reduce overlook into neighbouring properties (see amendment to section 40.0 in Attachment 1)

Optional Provision (b): "Single Family Dwelling" includes "Manufactured Dwellings"
An increasingly popular and viable form of housing involves factory-assembled dwellings that are subsequently moved onto a lot and placed on a permanent foundation. Building technology has advanced to the point where such dwellings can be constructed to stringent energy efficiency standards, customized to the owner's preferences, and incorporate a high standard of finish and aesthetic appeal. Although factory-built homes are often indistinguishable from homes constructed on-site, the existing bylaw prohibits them except in a few zones. There is no compelling reason to draw a distinction in zoning terms between dwellings manufactured offsite rather than framed onsite, and both require building permits. It is recommended that the definition of "single-family dwelling" is therefore expanded to include manufactured dwellings on a permanent foundation (but not include mobile homes placed on cribbing).

Issue (c): Removal of Secondary Suites size:
With the ability for all urban lots to host multiplexes, the requirement that a secondary suite occupies no more than 40% of the floor area of the building (to a 90m2 maximum) becomes largely irrelevant. It is understood that the origin of this requirement was in reflecting a BC Building Code standard that is now long obsolete. Outside the UCB, this provision also serves little purpose and needlessly restricts the configuration of suites in small dwellings, as well as creating a need for horizontal fire separation in a building due to the inability to utilize an entire basement or attic floor for a suite. Maintaining the two-bedroom limit serves as an adequate check in most cases to prevent a limitlessly large "suite" from turning a dwelling into a duplex, as does the definitional requirement that a suite is an "accessory to a single-family dwelling." Specifically, this proposed change would constitute the deletion of zoning bylaw section 40.4(a).

Summary
The proposed zoning bylaw amendment brings the North Cowichan Zoning Bylaw into compliance with the LGA by doing, in most cases, the minimum necessary to achieve this. Having had due regard to the Policy Manual and "stress tested" site standards, the package of amendments to zoning bylaw uses,

densities, setbacks, height, and parking achieves the desired result without causing a high level of change beyond what is legally required at this time.

The recommendation includes addressing three further issues which, while not strictly necessary to achieve compliance, result in a more flexible and coherent package of changes that provide more practical and affordable options to site owners without introducing additional significant systemic impacts. Should Council not wish to address these issues at this time, Option 2 below provides a more austere approach that is more narrowly confined to the "minimum necessary" principle.

Given the nature of these changes, there will inevitably be scope for improvement, refinement, and potential correction, as well as introducing other changes that are desired by Council and/or recommended by staff outside of the considerations of Bill 44. To this end, a variety of further amendments will subsequently be brought forward for Council's consideration as part of the zoning bylaw rewrite project, alongside consideration of "legacy zonings". Finally, the amendments will include a small number of site-specific exceptions crafted to avoid disrupting those subdivision applications currently in progress, which could otherwise potentially be negatively affected.

OPTIONS

1. **(Recommended Option)**
   THAT Council direct staff to bring forward Zoning Amendment Bylaw 3964, 2024 for initial readings to include provisions that:
   a. Permit accessory dwelling units in addition to a single-family dwelling inside the Urban Containment Boundary wherever a zone allows for three or four units per lot;
   b. Amend the definition of "single-family dwelling" to include manufactured homes on a permanent foundation; and,
   c. Remove the floor area limit for secondary suites.

   - This option addresses three issues that are largely redundant and unnecessary in the face of the new requirements; however, the requirements would still be fulfilled in progressing without these specific amendments.

2. THAT Council direct staff to bring forward Zoning Amendment Bylaw 3964, 2024 for initial readings without including provisions that address optional issues (a), (b) & (c) described in the Community Planning Department's May 15, 202, report.

   - This option would achieve compliance with the legislation but goes no further in addressing the three specific issues outlined in this report. These issues can be revisited in the Phase 2 zoning.

3. THAT Council direct staff to bring forward Zoning Amendment Bylaw 3964, 2024 for initial readings, incorporating the following provisions: [*provisions to be identified by Council*].

   - Council may request other provisions to be introduced in this bylaw; however, prior to doing so, it should receive confirmation from staff that the requested provisions do not do any of the following:
     - Fall short of compliance with the LGA;

- Introduce changes not related to LGA compliance; and,
- Create complexities or changes on a scale that imperils the ability to meet the statutory deadline of achieving compliance by June 30, 2024.

IMPLICATIONS

Public Expectations & Communication

The zoning amendment is designed to meet the minimum requirements of the LGA in allowing greater numbers of small-scale housing units in zones that are otherwise zoned for single-family dwellings. The provisions enacted within this zoning amendment bylaw, as mandated by the provincial government, represent some of the most sweeping changes seen in B.C. planning legislation for many years and dismantle many decades of single-family zoning. Neighbourhood character will inevitably evolve, to varying degrees, depending on the neighbourhood, and resident expectations will evolve too. However, as with any significant change, there will be a period of adjustment, and North Cowichan may expect to be faced with various queries and challenges, not all of which will be within municipal control.

Staff will post information on the website as soon as practicable, including a comprehensive FAQ and clear explanations of the upcoming changes. There is no scope for public input on this zoning change since a public hearing is prohibited, and by extension, so are any similar processes that solicit public input. The subsequent modules of the wider zoning rewrite project will provide opportunities and a chance to consider the pros and cons of competing options or alternative ideas.

Property Ownership

It is worth reminding here that by statute, property owners are not "owed" property value through zoning. Section 458(1) of the LGA provides that: "*Compensation is not payable to any person for any reduction in the value of that person's interest in land, or for any loss or damages that result from … the adoption of a [zoning] bylaw.*." In other words, land ownership in B.C. carries an inherent risk of unsought zoning change, resulting in market value changes. In most cases, Bylaw 3964 gives greater development rights, which generally serve to increase land value. However, this is also not universally welcomed by owners, particularly those who may be concerned more about tax levies than resale value. The impact of province-wide zoning *en masse* for SSMUsH in terms of land value and how BC Assessment responds remains to be seen.

Where minimum lot sizes or frontages in a zone are changing, it is important to note that s.3(2) of the zoning bylaw speaks to the interpretation of "non-conformity" here, by stating the following: *"Minimum lot sizes and minimum frontage requirements are set out for the purpose of subdivision only. Any lot existing prior to the adoption of this Bylaw which, at the time of adoption of this Bylaw, fails to meet the minimum lot size and frontage requirements of a zone as set out in this Bylaw, shall not, by reason thereof, be deemed to be non-confirming or unlawful. However, any subsequent use of the lot shall comply with the regulations specified for the zone in which it is located.*

This provision ensures that while changing the minimum lot size (e.g., of the R3 zone to 670m2 in all cases), no existing lots are "stigmatized" by non-conforming status and suffer no change in their development rights as a result. The only impact is a potential limitation of subdivision potential, which

in any case could be subject to a variance request to permit smaller lots to be created. For subdivision applications in process, the amendments are proposed to include site-specific exemptions from the new lot size.

Variances

Clearly, the changes cannot anticipate or accommodate every unique situation or scenario, and any site standards, no matter how permissive, will eventually still make realizing the zoned density challenging or impossible on some lots. Development Variance Permits (and Board of Variance decisions) are still available as a recourse to any owner who cannot realize their density provisions without contravening a site standard (or whose design preferences exceed the standards).

Variances must not pertain to zoned "use" or "density." However, since the number of units per lot is not tied to lot area (except in the statutory case of exceptionally small lots less than 280m2, where the SSMUsH maximum is three units rather than four), variances to the minimum lot area are permissible for the purposes of subdivision.

In the wake of the adoption of SSMUsH zoning amendments, variance applications will continue to be a helpful tool and be processed as usual. Allied to this consideration is the need for a follow-up zoning response to the LGA amendments to refine the approach and tailor zoning requirements to North Cowichan's particular needs to be integrated into the zoning bylaw rewrite project. Such refinements may result in fewer variances being necessary.

RECOMMENDATION

THAT Council direct staff to bring forward Zoning Amendment Bylaw 3964, 2024 for initial readings, including provisions that:

a. Permit accessory dwelling units in addition to a single-family dwelling within the Urban Containment Boundary wherever a zone allows for three or four units per lot;
b. Amend the definition of "single-family dwelling" to include manufactured homes on a permanent foundation; and,
c. Remove the floor area limit for secondary suites.

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Attachments:
(1) Summary of Zoning Bylaw Text Changes including excerpt of draft amendment bylaw in track changes format
(2) Summary of Zoning Bylaw Map Changes including maps
(3) Site Standards Stress Testing
(4) Zoning Bylaw Rewrite Revised and Original Project Plans