

# Report

Date July 16, 2025

File: 3360-20 20.06

Subject Zoning Amendment Bylaw No. 3915 to rescind and reconsider third reading

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## PURPOSE

To provide an update on the implications of limited water and sanitary servicing capacity, as well as the draft Interim Community Amenity Contribution (CAC) Policy, on application ZB000133 and the associated Zoning Amendment Bylaw No. 3915 sitting at third reading—which proposes to facilitate an estimated 23-lot subdivision for residential use at 1771 Robert Street—prior to convening a second public hearing.

## BACKGROUND

Following a Public Hearing held on July 17, 2024, and considering the joint Official Community Plan (OCP) and Zoning Amendment application (OCP00026/ZB000133), Council adopted the associated OCP Amendment Bylaw 3914 and gave third reading to Zoning Amendment Bylaw 3915.

Adoption of Zoning Amendment Bylaw 3915 was predicated on first registering on the title of the subject property a *Land Title Act* section 219 covenant or 'development agreement', in which Council approved community amenity contributions (CACs) and development-related major infrastructure works were to be secured (Attachment 1).

However, in the time the applicant and owner prepared the title of the property and applicable documents for this process, the following information, which is highly relevant to Council's consideration of adopting the bylaw, was presented to Council:

- ['State of Land Development and Servicing Constraints/Item 8.1'](#) (March 5, 2025): Limited residual water servicing capacity may affect future development within the municipality, and the,
- ['Draft Interim Community Amenity Contribution \(CAC\) Policy/Item 11.2'](#) (October 16, 2024) is to be considered by staff on all zoning amendment applications going forward, which implicates this rezoning application.

It is recommended that Council consider these items that were presented to Council on October 16, 2024 & March 5, 2025, as supplementary to the information considered when the application was first introduced on July 19, 2023, because:

- Limited municipal water and sanitary service capacity may limit future development of the site, which is germane to the use and density of the zoning amendment being considered, and,
- It is Council's prerogative to reconsider previously agreed upon community amenity contributions (draft Interim CAC Policy).

Finally, considering these items as supplementary information having a material influence on the staff recommendations pertaining to third reading and adoption, a second Public Hearing is required to ensure procedural fairness. This means that all the information on which Council bases its decision has been made available to the public, with the opportunity to comment, following which Council may consider giving third reading to the bylaw (having rescinded the previous third reading).

The October 4, 2023, report to Council, which includes the original July 19, 2023, report, is available in Attachment 1.

Excerpts of the Council minutes providing a summary of the readings to date are provided in Attachment 2.

The draft Interim Community Amenity Contribution (CAC) Policy is provided in Attachment 3.

## **DISCUSSION**

***Municipal Civil Servicing Capacity:*** In its July 19, 2023, report to Council, staff indicated no concerns with the adequacy of North Cowichan's water and sanitary service capacity for the proposed land uses pending detailed development-related system analyses and upgrades at the time of development (Attachment 1).

Subsequently, having completed extensive system modelling, the Engineering Department informed Council on March 5, 2025, that significant capital upgrades to the existing water and sanitary servicing infrastructure would be required to accommodate current and future development-related applications throughout North Cowichan, i.e., zoning amendments, subdivisions, and development/building permits.

In summary, the limited water and sanitary servicing capacity may prohibit future building permit approvals for the subject property if the proposed demand exceeds the currently available supply (Bylaw 4005, March 19, 2025).

Engineering has since done a review of the water and sanitary servicing for this development based on the recently completed modelling. Encumbered applications have been included in the analysis. As this application is a rezoning, it has not been encumbered and has been added to the system loading to ascertain more specifically what, if any, constraints exist.

Bill 44 complicates matters. If this property is rezoned as proposed by the developer into five duplex lots (10 units), 16 single family lots with suites (32 units) and one multi-family lot with up to 10 units then it is possible that on the five duplex and 16 single family lots a developer could put up to 84 units (21 lots x 4 units/lot). Therefore, staff had to consider two scenarios:

- 1) **Scenario #1 – System Loading Based on Developer's Proposal:** Consists of five duplex lots (10 units), 16 single family lots with suites (32 units) and one multi-family lot with up to 10 units. Total of 52 units or approximately **46 ERUs**.
- 2) **Scenario #2 – System Loading Based on Bill 44:** Consists of 21 lots (84 units) and one multi-family lot with up to 10 units. Total of 94 units or approximately **83 ERUs**.

The water and sanitary servicing analysis was conducted based on current encumbrances known at this time and unit counts provided by the developer. If other developers, who are not encumbered, advance their applications to obtain a building permit or subdivision ahead of this development application, residual capacity will be consumed, potentially resulting in the need to reassess this application when it comes forward for subdivision approval and/or building permit. The water and sanitary servicing assessment, as of the date of this report, reveals the following:

1) **Scenario #1 – System Loading Based on Developer’s Proposal.**

- a) Sanitary.
  - i) Pipes: **SUFFICIENT** capacity.
  - ii) Pump Stations: **SUFFICIENT** capacity.
  - iii) Treatment Plant: **SUFFICIENT** capacity. Upgrades underway.
- b) Water.
  - i) Water License: **SUFFICIENT** capacity.
  - ii) Pumps: **SUFFICIENT** capacity.
  - iii) Reservoirs: **INSUFFICIENT** capacity (without Paper Excellence fire flow service). **SUFFICIENT** capacity (with Paper Excellence fire flow service in place).
  - iv) Fire Flows: **ADEQUATE** for a level of service of 120 L/s for multi-family.

2) **Scenario #2 – System Loading Based on Bill 44.**

- a) Sanitary.
  - i) Pipes: **SUFFICIENT** capacity.
  - ii) Pump Stations: **SUFFICIENT** capacity.
  - iii) Treatment Plant: **SUFFICIENT** capacity. Upgrades underway.
- b) Water.
  - i) Water License: **INSUFFICIENT** capacity. However, staff will be approaching Paper Excellence about an amendment to our Agreement to increase the amount of water that Paper Excellence provides to Crofton. As Crofton’s water demand is relatively small in comparison to the capacity of the Paper Excellence Water Treatment Plant staff anticipate coming to an agreement for a higher amount of water.
  - ii) Pumps: **SUFFICIENT** capacity.
  - iii) Reservoirs: **INSUFFICIENT** capacity (without Paper Excellence fire flow service). **SUFFICIENT** capacity (with Paper Excellence fire flow service in place). The increased density may generate a required fire flow in excess of 120 L/s if the units are not sprinklered. Ideally the required fire flow should be kept below 120 L/s, but definitely below 150 L/s, in order to not create a reservoir storage capacity issue.
  - iv) Fire Flows: **ADEQUATE** for a level of service of 120 L/s for multi-family. The increased density may generate a required fire flow in excess of 120 L/s if the units are not sprinklered; however, it is not possible to determine this at this time, as a Fire Underwriters Survey fire flow calculation has not been provided. If additional fire flow is required, looping the watermain on Chaplin Street to connect with the watermain on Robert Street will increase the available fire flow.

Engineering is working with Paper Excellence to affect the servicing of the industrial lands fronting Crofton Road, between Mann Street and Cecil Street, with sufficient fire flow through a connection to the Paper Excellence water main. Those discussions appear promising, and staff hope to have a solution in place in the coming months. Construction would likely occur in 2026.

If the solution with Paper Excellence is not possible, then a new reservoir would be required. There was an agreement with the developer for the Trawler Way development to build a reservoir that would be sized to address the industrial fire flow requirement for Crofton and improve pressures in the upper zone. However, the Trawler Way development has new owners, and the status of the reservoir in question is unclear.

Alternatively, staff have allowed for the provision of a new reservoir in the new Crofton Water Development Cost Charges (DCC) bylaw. Once the said bylaw is in place, the new reservoir could be built as a DCC project. The construction of the reservoir would have to be undertaken by a developer or developers, using DCC credits, as the Crofton Water DCC fund will likely not have had sufficient time to build up enough funds to cover the cost of constructing a new reservoir. Alternatively, Council could direct staff to borrow to fund a new reservoir but that comes with some risk that if development slows down, there may not be sufficient DCC funds collected annually to cover the annual loan repayment.

The developer will be responsible for proving out the drainage downstream. If the developer provides stormwater detention facilities that limit post-development peak flows to pre-development peak flows for up to the 200 year return period rainfall event then there will be no need to prove out downstream drainage capacity.

Considering the information presented on March 5, 2025, and the subsequent analysis provided by Engineering based on the recently completed modelling, the applicant has been informed that:

- Municipal water and sanitary service may be limited at the subject properties by the time the developer submits a building permit application;
- Future building permit issuance will depend on the availability of municipal water and sanitary services for the demand as proposed in the application; and,
- A no-build covenant is recommended to be registered on the subject property by Council as a condition of successful rezoning, and to which the proponent has preemptively agreed.

**Draft Interim Community Amenity Contribution Policy:** When the draft Interim Community Amenity Contribution (CAC) Policy was presented to Council on October 16, 2024, Council passed a resolution to utilize the draft policy while further consultation with the development community was carried out (reporting on this is scheduled to be provided to Council during summer 2025).

Specifically, the draft policy guides staff in their negotiations for CACs with developers/owners and Council to consider zoning amendment applications in the context of the draft policy going forward (Attachment 3 – excerpt below for convenience).

## 2. SCOPE

North Cowichan staff will consider this policy when reviewing any applications for zoning bylaw amendments. Staff will communicate this policy to the development industry, property owners, and the public.

In considering applications for zoning bylaw amendments, North Cowichan Council will consider this policy. However, nothing in this policy fetters Council's discretion in considering applications for zoning bylaw amendments.

Since the draft policy was presented (October 16, 2024) well after Council accepted CAC contributions from the developer (October 4, 2023), which included \$4,000 per unit to be put toward the municipal Affordable Housing Fund, it is recommended that Council accepts that the CACs offered by the developer occurred in the absence of the draft Interim CAC Policy.

However, since the province's Bill 44 resulted in sweeping changes to the R3 zone on June 19, 2024, to permit up to 4-units per R3 lot instead of the 2-unit maximum permitted in that zone prior to that date, it is also noteworthy that the maximum residential yield per R3 lot is now twice what it was when the applicant applied for the requested zoning (i.e., R3 & R3-MF).

In summary, given the 'Scope' of the draft Interim CAC Policy approved for implementation:

- Staff communicated the draft policy to the developer/owner; and,
- It is Council's prerogative to consider the draft Interim CAC Policy prior to and in consideration of third reading.

Therefore, it is recommended:

- Setting aside the draft Interim CAC Policy, that Council accepts the developer/owner's CACs as offered i.e., land dedication for trail, trail construction, enhanced public roadway design, widening Robert Street, and vegetation replanting and protection measures, and, \$4,000 per unit toward the Affordable Housing Fund (noting also that the financial contribution of \$4,000/unit is consistent with the draft Interim CAC Policy (section 5) (Attachment 1);  
*BUT ADDITIONALLY*
- Since the maximum residential yield per R3 lot has doubled from 2 to 4 units since June 19, 2024, that Council considers requesting the section 219 development agreement includes a provision that any residential unit over and above what was previously negotiated in the R3 zone for a \$4,000 per unit financial contribution toward the municipal 'Affordable Housing Fund', (i.e., over and above two units per lot), will be subject to three times the DCC rate to be contributed toward the 'Short-term Infrastructure Fund' per the draft Interim CAC Policy (section 4) and until/unless the DCC Bylaw is updated such that the clause is no longer applicable.

This recommendation strikes a balance of honouring the CACs as previously negotiated while ensuring that the policy captures any additional density accessed as a result of Bill 44. The policy also ensures that in the event that new DCC rate increases are less than the CAC sum provided in the section 219 agreement (three times the current DCCs), the owner may pay that lesser rate.

## **SUMMARY & CONCLUSION**

In summary, this report appraises Council that:

- Water and sanitary service may be insufficient to meet the demand at the subject properties at the time the developer submits an application for a building permit, and the developer/owner has been made aware of this possibility and agrees to waive the right to apply for a building permit until such time as servicing capacity has been confirmed to exist;

- In the absence of a draft Interim CAC Policy at the time, the owner/developers' CACs were reviewed by staff, and financial contributions under the draft policy were not requested. Rather, the owner/developer offered land dedication for trail, trail construction, enhanced public roadway design, land to widen Robert Street, vegetation replanting and protection measures, and, \$4,000 per unit toward the Affordable Housing Fund (noting also that this financial contribution is consistent with the draft Interim CAC Policy, section 5); and
- It is Council's prerogative to consider that the developer contributes toward the 'Short Term Infrastructure Fund' per the draft Interim CAC Policy prior to and in consideration of third reading.

Since the above constitutes supplemental information that may affect a decision related to the use and density of the zoning amendment requested (Bylaw 3915), and to ensure procedural fairness, it is recommended that Council:

- Rescinds third reading of Bylaw 3915; and,
- Convenes a second public hearing after which third reading can be reconsidered by Council.

Further, it is recommended that Council request of the owner/developer the following items are secured with a section 219 covenant agreement and conditional to zoning amendment approval:

- A building permit application will not be accepted ('no-build covenant') during any time period where sufficient servicing capacity has not been confirmed to exist. [Enshrining this by covenant also makes these restrictions clear to future or prospective owners];
- A financial Community Amenity Contribution to the 'Short Term Infrastructure Fund' at three times the current DCC rate per the draft Interim CAC Policy (4.1a) to be made for any unit over and above two units on any R3 lot, until/unless the DCC Bylaw is updated such that the clause is no longer applicable.

This report is provided for information and decision, and does not otherwise amend the bylaw (Attachment 1).

## **OPTIONS**

### **1. (Recommended Option)**

1. THAT Council rescinds third reading of Zoning Amendment Bylaw No. 3915, 2025, and, approves the second public hearing to be held on July 16, 2025, at 7:00 p.m.
2. THAT Council:
  - (a) accepts the community amenity contributions offered by the developer/owner on October 4, 2024, which were provided in the absence of the Draft Interim Community Amenity Contribution Policy; and, prior to acceptance, confirms the applicability of Clause 4 of the Policy, requiring the owner/developer to pay three times the DCC rate for any residential unit exceeding two units on any R3 lot, with payment due prior to building permit issuance and secured through a section 219 covenant agreement,

(b) requires that the owner/developer register a section 219 'no build covenant' whereby a building permit application will not be accepted should municipal civil services be insufficient to meet the demand.

2. (Alternative Option)

THAT Council confirms the applicability of the draft Interim Community Amenity Contribution Policy to the zoning amendment application with associated bylaw, and directs staff to engage the owner/developer for financial contributions toward the 'Short-term Infrastructure Fund' and the 'Affordable Housing Fund' in accordance with the draft policy, noting the owner has already agreed to provide \$4,000 per residential unit toward the municipal 'Affordable Housing Fund' per the October 4, 2023, report to Council, which is consistent with the draft policy.

## **IMPLICATIONS**

Should Council confirm the applicability of the draft Interim CAC Policy to application ZB000133 and associated bylaw 3915, in accordance with the Scope (section 2) of the draft policy and direct staff to engage the owner/developer to offer CAC contributions in accordance with the draft policy, the owner/developer may offer all, some, or none of these requested CACs. Staff would report to Council the outcome of its engagement with the owner/developer in advance of Council's reconsideration of third reading.

Following reconsideration of third reading, Council may give or deny third reading, in which case the bylaws would be abandoned.

## **RECOMMENDATION**

1. THAT Council rescinds third reading of Zoning Amendment Bylaw No. 3915, 2025, and approves the second public hearing to be held on July 16, 2025, at 7:00 p.m.
2. THAT Council:
  - (c) accepts the community amenity contributions offered by the developer/owner on October 4, 2024, which were provided in the absence of the draft Interim Community Amenity Policy; and, prior to acceptance, confirms the applicability of Clause 4 of the Policy, requiring the owner/developer to pay three times the DCC rate for any residential unit exceeding two units on any R3 lot, with payment due prior to building permit issuance and secured through a section 219 covenant agreement,
  - (d) requires that the owner/developer register a section 219 'no build covenant' whereby a building permit application will not be accepted should municipal civil services be insufficient to meet the demand.

Report prepared by:

*Caroline von Schilling*

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Caroline von Schilling, MCIP, RPP  
Development Planner

Report reviewed by:

*Pablo Golob*

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Pablo Golob  
Acting Director, Planning and Building

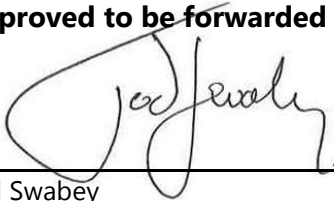
Report reviewed by:

*Gf*

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George Farkas  
General Manager, Planning,  
Development and Community  
Services

**Approved to be forwarded to Council:**



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Ted Swabey  
Chief Administrative Officer

Attachments:

- (1) October 4, 2023, report to Council, incl. July 19, 2023, report to Council
- (2) Minutes: July 19, 2023, August 16, 2023, October 4, 2023, July 17, 2024
- (3) Draft Interim CAC Policy