

Report

Date June 1, 2022
Subject Official Community Plan Public Hearing Options

File: SPP00040

PURPOSE

To provide Council with options regarding a public hearing for the Official Community Plan (OCP).

BACKGROUND

On April 25, Council gave first reading to [OCP Bylaw 3900 as attached to the Planning Manager's Report dated April 25 2022](#). Subsequently, on May 4, Council considered the OCP in conjunction with the relevant waste management plans and referred the OCP to the Agricultural Land Commission (ALC).

DISCUSSION

Progression to Public Hearing and Potential Dates

Once a referral to the ALC has been made, there are no subsequent statutory requirements articulated by the *Local Government Act* prior to arranging a public hearing. The Municipality is not obliged to wait indefinitely for a response from the ALC; it must only provide a reasonable opportunity for the ALC to comment. Given the current backlogs experienced by the ALC and the shrinking likelihood of receiving timely comment within the next few weeks, waiting until a response is received may prove problematic before commencing public hearing preparations. Doing so would likely mean a public hearing held at an inopportune time in August, or even later, given the lead-in times associated with arranging a public hearing of this magnitude. However, there are a number of considerations for Council in making a decision on the hearing, which are set out in this report.

Should the ALC respond at any time prior to the public hearing, these comments can be included within the public hearing information package. They may potentially be addressed at the time of second reading through amendments to the OCP. As with any public hearing, such as those typically associated with rezoning applications, any comments received after the public hearing or OCP amendments relating to use or density cannot be considered, unless a second public hearing is held.

Section 46(2) of the ALC Act states "*A local government in respect of its bylaws [...] must ensure consistency with this Act, the regulations and the orders of the commission.*" Staff are satisfied that this requirement has been met by having already referred the draft OCP to the ALC in November/December 2021. In its response, the ALC identified a small number of Agriculture Land Reserve designated parcels included within the urban containment boundary. The boundary and land designations were subsequently adjusted to address this. The ALC also commented on some of the policy directions for rural areas, which were also amended. However, it cannot be ruled out that upon a detailed review of the OCP Bylaw, the ALC raises some other objection not already identified. Therefore the risk of proceeding with a public hearing in the absence of comment from the ALC is low but not negligible.

"Risk" in this case means the receipt of comments from the ALC after the hearing, which may trigger the need for a second public hearing. Minor comments that endorse the OCP or do not request any further policy changes would not need to be forwarded to Council, but any substantive comments would need to be received. Receipt of comments after a public hearing requires Council to hold a second public hearing that includes these additional comments within the public record before proceeding to give further readings to the bylaw. This risk can be mitigated by arranging a hearing at a time before which comments from the ALC are more likely to be forthcoming. The process diagram in Figure 1 below shows the order in which events must occur:

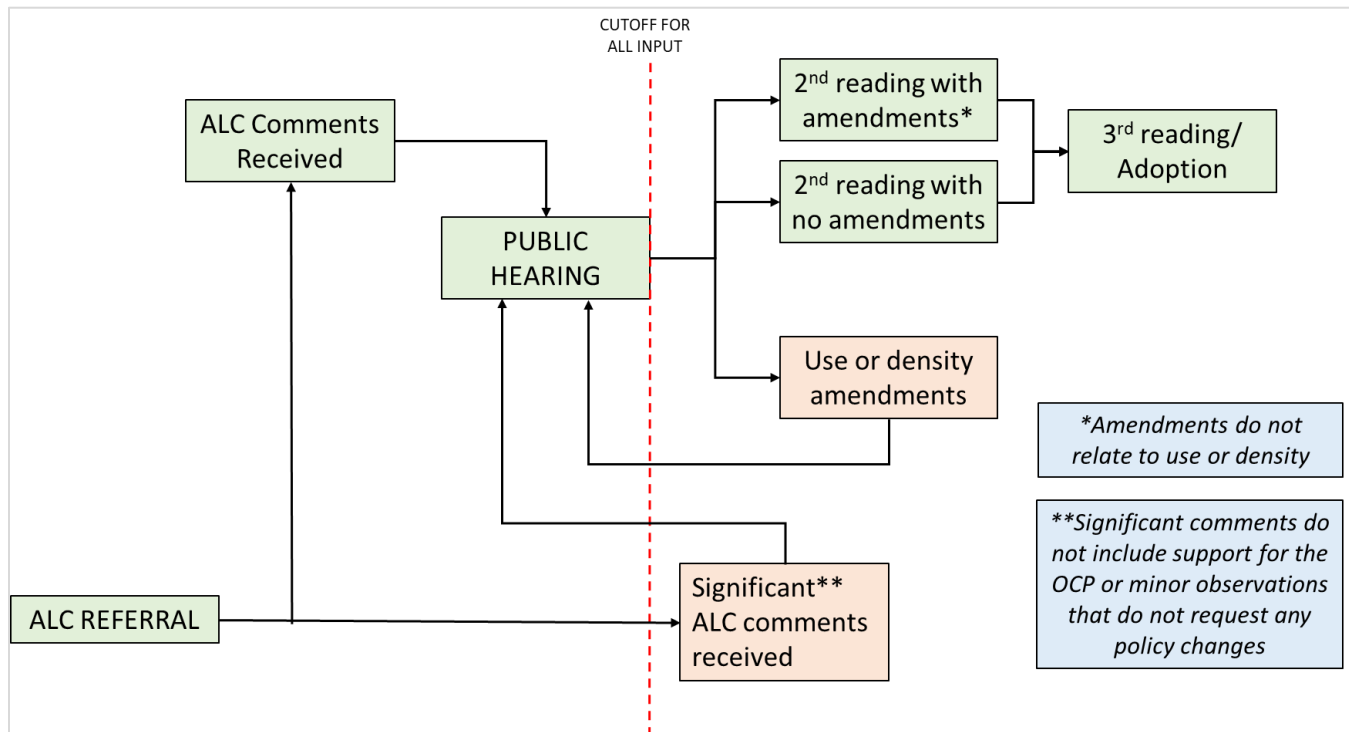


Figure 1: Process Diagram

Potential Second Public Hearing

If substantive ALC comment is provided after a hearing has been held, a second public hearing would be arranged prior to second reading. This could be immediately prior to second reading, i.e. on the same day. It is also perfectly possible that regardless of the ALC's input, Council may wish to make one or more OCP changes in response to input received during the first public hearing. If such changes affect the land use designations map, or policy aspects pertaining to use and density, a second public hearing would be required in any case.

Having already held a full public hearing, any subsequent public hearings would be intended to be focused only on the additional ALC comment and/or any use- or density-related changes directed by Council. Unless Council directed otherwise, it would need only to be subject to the minimum statutory advertising requirements rather than the full publicity efforts that would be undertaken for the first public hearing. Speakers at the second hearing would not be limited to discussing the new changes; legally, the hearing would remain in relation to the entire OCP; however, attendance might be anticipated to be significantly less than for the first hearing as most people will not wish to rehearse the same comments made on the same document in the absence of anything other than wholesale change.

Following the close of this second public hearing, Council may move immediately to additional readings of the bylaw, up to and potentially including adoption. While it is therefore preferable that a second public hearing is not necessary, it is something that can still be accommodated within the process without incurring a significant delay.

Public Hearing Dates

While it remains open to Council to wait until the ALC has provided a response to the OCP referral prior to arranging a public hearing, doing so is neither legally nor practically necessary. Given the expected timelines and lead-in times for arranging a hearing, there is a risk of delay to the process that would see a public hearing held either during August or at a time very close to the 2022 municipal elections on October 15. Should Council instead wish to commence arranging the hearing, two options are identified below:

Option 1: arrange a public hearing on July 18 and 19. This provides sufficient time for a likely ALC response, significant advertising and publicity efforts, and a longer window of time for further written input from the public, stakeholders and First Nations.

Option 2: arrange a public hearing on June 27 and 28. This is the earliest time to hold a hearing given the necessary advertisements and logistics but means that the likelihood of receiving subsequent ALC comments and holding a second hearing is considerably higher.

Figure 2 below shows the timelines associated with these two options to arrive at consideration of OCP adoption, should Council give second reading:

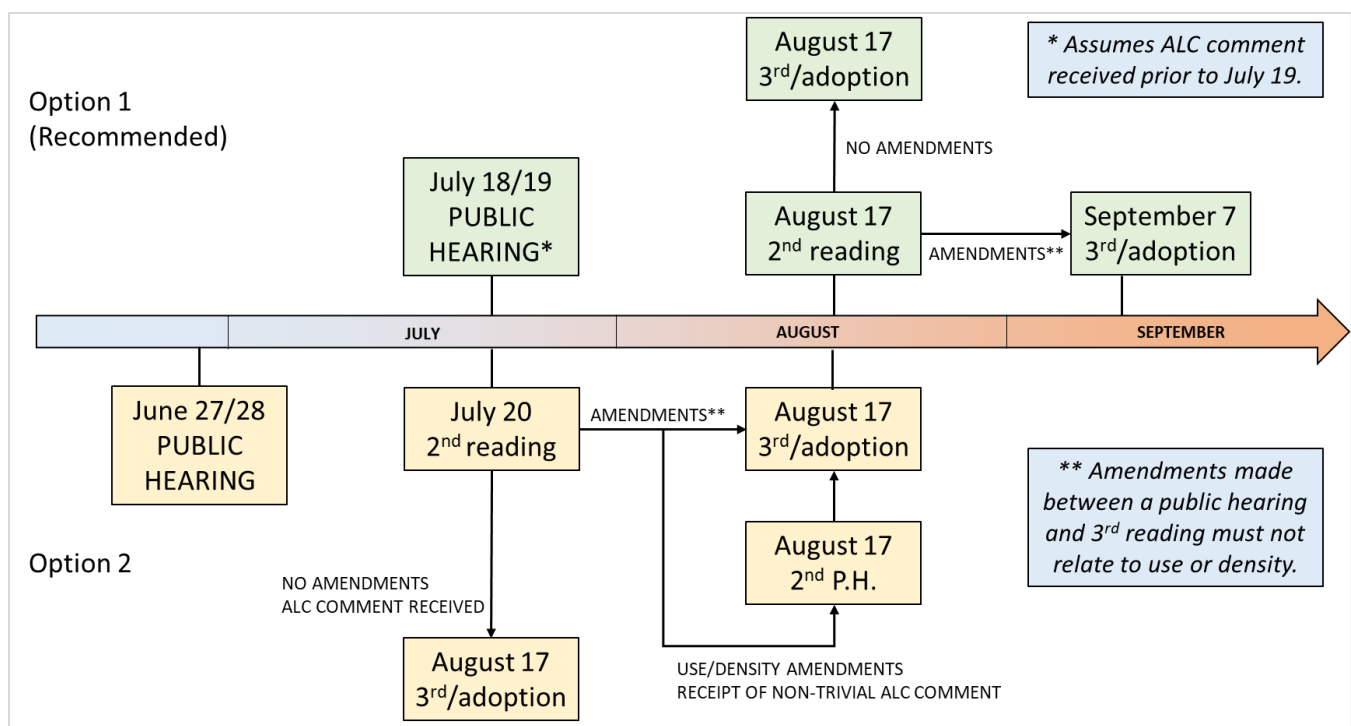


Figure 2: Timelines

Public Hearing Format

A public hearing associated with the adoption of a new OCP is likely to be a significant event attracting a large number of speakers. As we emerge from the COVID-19 pandemic and restrictions on gathering are lifted, individuals have different levels of comfort, preference and enthusiasm regarding electronic format versus in-person gatherings. It is also possible to consider practical arrangements that combine these two approaches.

The logistics of arranging a hearing in an in-person or combination format are not trivial, both in terms of IT demands and orderly procedure; however, staff have identified the potential for a public hearing format which begins online and reconvenes in-person on the following day. A third day would be reserved for online continuation, should the number of speakers warrant it. Although an in-person portion in this format would be live-streamed and viewable remotely, there would only be facilities for electronic participation available during the (online) portion held on the first day. Holding the online portion on the first day also allows members of the public who experience technical difficulties to attend the following day to provide their comments in person.

The Municipal Council Chambers are not large enough to accommodate the expected high number of participants an OCP public hearing typically attracts. The Cowichan Exhibition Grounds have been identified as the most appropriate location of the available venues and has been provisionally booked for both the June and July dates specified in this report (June 28 and July 19). An external contractor will provide audio/visual support, including livestreaming and recording.

OPTIONS

1. (Recommended Option) Proceed with arranging a public hearing on July 18 and 19, 2022

THAT Council direct staff to arrange a public hearing for Official Community Plan Bylaw No. 3900, 2022 to be held at 2:00 p.m. on Monday, July 18, 2022, through electronic means and that this hearing be continued in person at 2:00 p.m. on Tuesday, July 19, 2022, at the Cowichan Exhibition Grounds.

- Risk of needing a second public hearing immediately prior to second reading is relatively low;
- Provides further time for publicity and advertising the public hearing and for receipt of public and stakeholder input, including from First Nations; and,
- Should Council wish to hold the public hearing at a later time than 2:00pm on these dates, it may amend the resolution accordingly. Given the venue and technical support arrangements, an earlier time is not possible on July 19.

2. Proceed with arranging a public hearing on June 27 and 28, 2022

THAT Council direct staff to arrange a public hearing for the Official Community Plan Bylaw No. 3900, 2022 to be held at 2:00 p.m. on Monday, June 27 through electronic means and that this hearing be continued in person at 2:00 p.m. on Tuesday, June 28 2022, at the Cowichan Exhibition Grounds.

- The public hearing can progress earlier, albeit with a probability of not having received formal comment from the ALC. This significantly increases the likelihood of needing a

second public hearing immediately prior to second reading, should the ALC's comment be anything other than minor, or expressing no objections; and,

- Council should be fully prepared to hold a second public hearing if it chooses this option, although such a hearing might also be held on the same day as further bylaw readings. Should Council wish to hold the public hearing at a later time than 2:00 p.m. on these dates, it may amend the resolution accordingly. Given the venue and technical support arrangements, an earlier start time is not possible on June 28.

3. Do not schedule a public hearing until receipt of comments from the ALC

THAT Council direct staff to report back to Council regarding public hearing options and dates following receipt of the Agricultural Land Commissions' comments on the Official Community Plan Bylaw No. 3900, 2022.

- This option would ensure the ALC's formal response would be received prior to the public hearing but results in uncertainty over the timing and a hearing being held at a time later in the summer or fall, which Council may consider sub-optimal; and,
- Avoiding a second public hearing is not guaranteed, since Council may still wish to contemplate use- or density-related changes following the initial public hearing.

IMPLICATIONS

The recommended public hearing dates are proposed to minimize the risk of needing a second public hearing, albeit without entirely eliminating such risk. Waiting until a response has been received from the ALC before commencing any public hearing preparation would result in a public hearing held in August or later. Nor does this eliminate the possibility of a second public hearing since Council may still direct changes pertaining to use and density following the first public hearing.

Regardless of the timing, renting a facility with sufficient capacity for a large number of speakers along with appropriate audio/visual tech support is expected to cost in the region of \$6,000-\$8,000. This expenditure may result in this project coming in over budget once the bylaw is adopted.

RECOMMENDATION

THAT Council direct staff to arrange a public hearing for Official Community Plan Bylaw No. 3900, 2022 to be held at 2:00 p.m. on Monday, July 18, 2022 through electronic means and that this hearing be continued in person at 2:00 p.m. on Tuesday, July 19, 2022, at the Cowichan Exhibition Grounds.

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