

# REPORT TO COUNCIL



**Date:** April 9, 2018

**RIM No.** 1250-40

**To:** City Manager

**From:** Community Planning Department (TA)

<b>Application:</b>	LUCT17-0003/Z18-0005	<b>Owner:</b>	Cornel Reuben EPP CGSB Automotive Group Ltd Inc. No. BC0731187
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<b>Address:</b>	155-165 Old Vernon Road 2155-2165 Rutland Court	<b>Applicant:</b>	City of Kelowna
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**Subject:** Land Use Contract Discharge

Existing OCP Designation: IND - Industrial

Existing Zone: C2 – Neighbourhood Commercial

Proposed Zone: C10 – Service Commercial

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## 1.0 Recommendation

THAT Application No. LUCT17-0003 to terminate LUC77-1015 from Lot 1, Section 35, Township 26, ODYD, Plan EPP60557, located at 155-165 Old Vernon Road, Kelowna, BC, be considered by Council;

AND THAT Application No. LUCT17-0003 to terminate LUC77-1082 from Lot 1, Section 35, Township 26, ODYD, Plan 9018, located at 2155-2165 Rutland Court, Kelowna, BC, be considered by Council;

AND THAT the Land Use Contract Termination LUCT17-0003 be forwarded to a Public Hearing for further consideration;

AND THAT Rezoning Application No. Z18-0005 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of, Lot 1, Section 35, Township 26, ODYD, Plan EPP60557, located at 155-165 Old Vernon Road, Kelowna, BC, from C2 – Neighbourhood Commercial to C10 – Service Commercial be considered by Council;

AND THAT Rezoning Application No. Z18-0005 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 35, Township 26, ODYD, Plan 9018, located at 2155-2165 Rutland Court, Kelowna, BC, from C2 – Neighbourhood Commercial to C10 – Service Commercial, be considered by Council;

AND FURTHER THAT THAT the Rezoning Bylaw be forwarded to a Public Hearing for further consideration.

## **2.0 Purpose**

To consider a Land Use Contract Termination for LUC77-1015 and LUC77-1082 and to rezone the subject properties from C2 – Neighbourhood Commercial to C10 – Service Commercial.

## **3.0 Community Planning**

Staff are bringing forth and are recommending support for this Land Use Contract Termination to terminate LUC77-1015 and LUC77-1082 and to rezone the subject properties from C2 – Neighbourhood Commercial to C10 – Service Commercial. Changes to the Local Government Act in 2014 require that all Land Use Contracts be discharged or terminated by 2022. The instigation for this Land Use Contract Termination is the Land Use Contract Discharge on an adjacent property in order to facilitate the development of a food primary establishment with drive through services (McDonald's).

The underlying zone of C2 – Neighbourhood Commercial is not reflective of the current uses of the subject properties which include Service Commercial Retail Stores and Automotive and Minor Recreational Vehicle Sales, Rentals, and Repairs. Therefore, Staff have initiated a rezoning application to C10 – Service Commercial to reflect the current uses and to conform with the Future Land Use of SC – Service Commercial. There are no other commercial zones that allow for Automotive and Minor Recreational Vehicle Sales, Rentals, and Repairs. Any rezoning bylaw amendment within 800m of Hwy 97 N requires approval from Ministry of Transportation and Infrastructure (MOTI) prior to fourth and final adoption of the bylaw. Should MOTI express concern with the proposed zone of C10 – Service Commercial; other options may include placing a 219 Restrictive Covenant on the subject properties restricting certain uses, or rescinding the rezoning bylaw and allowing the properties to assume the underlying C2 – Neighbourhood Commercial zone with existing legal non-conforming uses.

## **4.0 Proposal**

### **4.1 Background**

Land Use Contracts were a tool regularly used in the 1970's before it was eliminated on November 15<sup>th</sup> 1978. The purpose of the tool was to allow local governments to arrive at agreements with specific developers to grant development rights over and above what was allowed under current zoning. This was typically done in exchange for commitments by developers to help finance the infrastructure costs of development.

Issues have arisen, specifically with the continued application of land use contracts as they supersede any subsequent bylaw dealing with land use and development including: Zoning Bylaws, Development Cost Charge Bylaws, and Development Permits. The Local Government Act was amended in 2014 stating all land use contracts in the province will be terminated as of June 30<sup>th</sup> 2024. Land use contracts will remain in force until that date unless terminated early by the municipality. By June 20<sup>th</sup> 2022, local governments must have appropriate zoning regulations in place to replace land use contracts upon their termination. However, LUC Terminations (unlike LUC Discharges) do not apply when Council adopts the bylaw. Terminations require a one-year grace period as outlined by the Local Government Act.

### **4.2 Project Description**

The termination of LUC77-1015 and LUC77-1082 would permit the subject properties to absorb the underlying zone of C2 – Neighbourhood Commercial. The subject properties currently have uses that were permitted under LUC77-1015 and LUC77-1082, namely Service Commercial Retail Stores and Automotive and Minor Recreational Vehicle Sales, Rentals, and Repairs. Neither of those are permitted uses in the C2 – Neighbourhood Commercial zone, and therefore rezoning to C10 – Service Commercial will align with the Future Land Use of SC – Service Commercial and the current uses. The suite of allowable uses is considerably greater in the C10 zone, and the purpose of the zone is to designate and preserve land for the accommodation of a mix of **commercial uses**, including vehicular oriented areas, not provided for in other **zones**. Primary uses include:

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|---|---|
| (a) animal clinics, major                                 | (y) greenhouses and plant nurseries                                 |
| (b) animal clinics, minor                                 | (z) household repair services                                       |
| (c) amusement arcades, major                              | (aa) liquor primary establishment, major (C10lp and C10lp/rls only) |
| (d) automotive and minor recreation vehicle sales/rentals | (bb) non-accessory parking  |
| (e) automotive and equipment repair shops                 | (cc) offices, construction and development industry                 |
| (f) auctioneering establishments                          | (dd) participant recreation services, indoor                        |
| (g) bingo facilities                                      | (ee) pawnshop   |
| (h) breweries and distilleries, minor                     | (ff) private clubs  |
| (i) broadcasting studios                                  | (gg) rapid drive-through vehicle services                           |
| (j) business support services                             | (hh) recycled materials drop-off centres                            |
| (k) child care centre, major                              | (ii) retail stores, service commercial                              |
| (l) commercial schools                                    | (jj) service stations, minor  |
| (m) commercial storage                                    | (kk) supportive housing   |
| (n) community garden                                      | (ll) temporary parking lot  |
| (o) community recreation services                         | (mm) temporary shelter services                                     |
| (p) convenience vehicle rentals                           | (nn) thrift stores  |
| (q) equipment rentals                                     | (oo) truck and mobile home sales/rentals                            |
| (r) emergency and protective services                     | (pp) used goods stores  |
| (s) flea markets  | (qq) utility services, minor impact                                 |
| (t) fleet services  | (rr) vehicle and equipment sales/rentals, industrial                |
| (u) food primary establishment                            | (ss) vehicle and equipment services, industrial                     |
| (v) funeral services                                      | (tt) warehouse sales  |
| (w) gas bars  |   |
| (x) government agencies                                   |   |

#### 4.3 Notification

Local governments must provide notice to each owner that the termination of land use contract is occurring and must provide notice of what the new zoning regulations apply to the land. After adoption of the LUC Termination, the City will send notices to all affected properties that the termination will come into effect one year after Council approval. Staff have sent a letter to both properties affected by the LUC Termination on January 11, 2018 and have not received any feedback from the property owners.

#### 4.4 Site Context

The subject properties are located near “Reid’s Corner” at the intersections of Rutland Court, Old Vernon Road, Rutland Road North, and Highway 97 N.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C2 – Neighbourhood Commercial	Auctioneering Establishment
East	A1 – Agriculture 1	Vacant
South	A1 – Agriculture 1	Vacant
West	C2 – Neighbourhood Commercial	Vacant

**Subject Properties Map: 155-165 Old Vernon Road, 2155-2165 Rutland Court**



## 5.0 Current Development Policies

### 5.1 Council Policy No. 282 – Strategy for Elimination of Remaining Land Use Contracts

**Council Policy No. 282.**<sup>1</sup> Includes the following statement:

That the City of Kelowna initiate proceedings to discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts.

## 6.0 Technical Comments

### 6.1 Ministry of Transportation

Approval of the Rezoning Bylaw will require approval from Ministry of Transportation.

## 7.0 Application Chronology

<sup>1</sup> City of Kelowna Council Policy 282 Strategy for Elimination of Remaining Land Use Contracts.

Date of Application Received: January 10, 2018

**Report prepared by:** Trisa Atwood, Planner II

**Reviewed by:** Terry Barton, Urban Planning Manager

**Approved for Inclusion:** Ryan Smith, Community Planning Department Manager