

REPORT TO COUNCIL



Date: August 26, 2019

To: Council

From: City Manager

Department: Development Planning

Application: LUCT19-0007 / Z19-0093 **Owner:** Roger W and Jocelyn B Hamm

Address: 1265 Toovey Road **Applicant:** City of Kelowna

Subject: Land Use Contract Termination and Rezoning Application

Existing OCP Designation: S2RES – Single / Two Dwelling Residential

Existing Zone: RR3 – Rural Residential 3

Proposed Zone: RU1 – Large Lot Housing

1.0 Recommendation

WHEREAS the BC Provincial Government has mandated that all Land Use Contracts under the jurisdiction of a local government and in the Province of British Columbia be terminated by 2024;

AND WHEREAS the BC Provincial Government has provided a legislated process for the early termination of land use contracts when the local government has adopted a zoning bylaw that will apply to the land at the time the termination bylaw comes into force;

THEREFORE, BE IT RESOLVED THAT as the underlying RR3 – Rural Residential 3 zone for the subject properties under Land Use Contract LUC78-1033 outlined in 'Schedule A' does not meet the land use requirements under City of Kelowna Zoning Bylaw No. 8000;

THAT Application No. LUCT 19-0007 to terminate LUC78-1033 from Lot A, Section 13, Township 26, ODYD, Plan 38165, located at 1265 Toovey Road, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z19-0093 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification for Lot A, Section 13, Township 26, ODYD, Plan 38165, located at 1265 Toovey Road, Kelowna, BC from the RR3 – Rural Residential 3 zone to RU1 – Large Lot Housing zone be considered by Council;

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

AND THAT Council, in accordance with the *Local Government Act* s.464(2), waive the Public Hearing for zoning Bylaw No. 11909;

AND FURTHER THAT final adoption of the Rezoning Bylaw be considered subsequent to the approval of Ministry of Transportation and Infrastructure.

2.0 Purpose

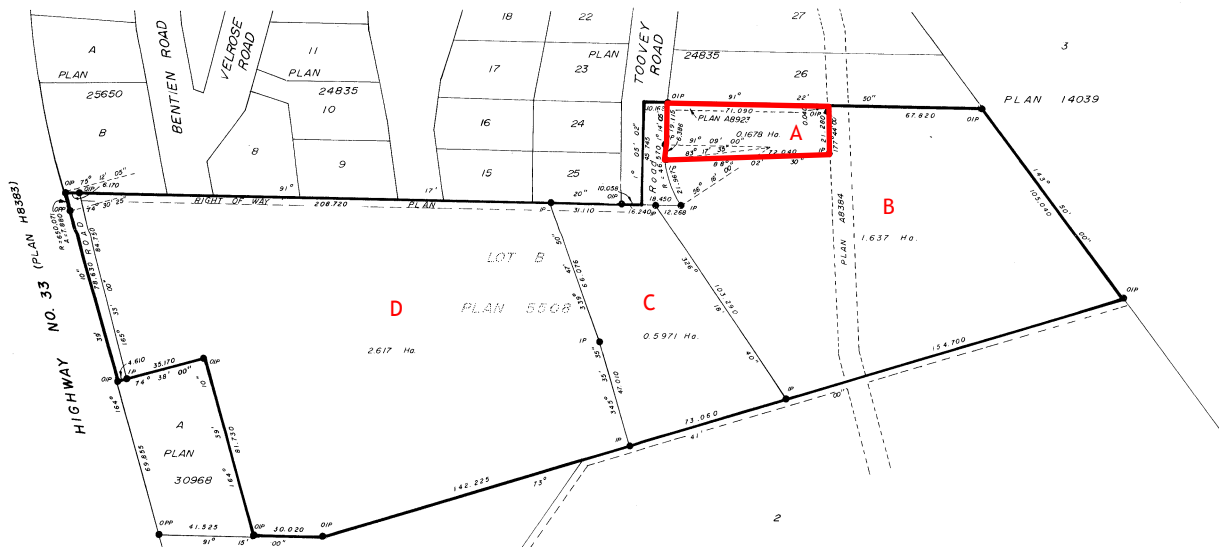
To consider an application for the early termination of Land Use Contract LUC78-1033 and rezone the subject property to the RU1 – Large Lot Housing zone.

3.0 Development Planning

Staff are bringing forth and recommending this Land Use Contract (LUC 78-1033) be terminated and for the subject property to be rezoned. The underlying zoning (RR3 – Rural Residential 3) does not fit within the established neighbourhood. Staff are proposing to adopt the adjacent RU1 – Large Lot Housing zone for the subject property.

The existing Land Use Contract currently affects one property, 1256 Toovey Road (Lot A). However, LUC 78-1033 existed on Lot A, B, C, and D (see map below). City Council discharged, LUC 78-1033 on February 14th, 1991 but Lot A was not included within that bylaw.

The Land Use Contract restricts the use to one single family residential dwelling and permits the addition of an accessory building/structure but does not permit a secondary suite. The Land Use Contract uses and regulations fit within the RU1 zone; however, the new zoning does allow a secondary suite.



4.0 Proposal

4.1 Background

Land Use Contracts were a tool regularly used in the 1970's before it was eliminated on November 15th 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 30th 2024. Land use contracts will remain in force until that date unless terminated early by the municipality. By June 20th 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 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. The municipality must send additional letters after the one-year grace period is complete informing the property owners of which land use regulations apply to their properties.

Staff are recommending Council Notification Policy #367 including early notification and development signage be waived for all Land Use Contract terminations. Public consultation in this case is not recommended as the notification policy is a City initiative. Staff are suggesting the standard development notification, as outlined above, be sent to properties affected by the LUC under consideration for termination.

4.3 Site Context

The subject property is 1679 m² and is located at the end of Troovey Road. The property is designated S2RES – Single / Two Unit Residential in the Official Community Plan and the surrounding area is residential subdivision and agricultural.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	A1 - Agriculture	Residential Subdivision
East	RU1 – Large Lot Housing	Residential Subdivision
South	RU1 – Large Lot Housing	Residential Subdivision
West	A1 - Agriculture	Residential Subdivision

Subject Property Map: 1265 Toovey Road



5.0 Current Development Policies

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

Council Policy No. 282. 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;

5.2 Kelowna Official Community Plan (OCP)

Chapter 4: Future Land Use

Single / Two Unit Residential (S2RES). Single detached homes for occupancy by one family, single detached homes with a secondary suite or carriage house, semi-detached buildings used for two dwelling units, modular homes, bareland strata, and those complementary uses (i.e. minor care centres, minor public services/utilities, convenience facility and neighbourhood parks), which are integral components of urban neighbourhoods.

6.0 Technical Comments

6.1 Development Engineering Department

No Concerns

6.2 Ministry of Transportation and Infrastructure

No Concerns

7.0 Application Chronology

N/A

Report prepared by: Jenna Ratzlaff, Planner

Reviewed by: Laura Bentley, Urban Planning & Development Policy Manager

Approved for Inclusion: Terry Barton, Development Planning Department Manager