

# REPORT TO COUNCIL



**Date:** August 26, 2019

**To:** Council

**From:** City Manager

**Department:** Development Planning

**Application:** LUCT19-0017 / Z19-0085      **Owner:** Salco Management Ltd

**Address:** 1421 Sutherland Avenue      **Applicant:** City of Kelowna

**Subject:** Land Use Contract Termination and Rezoning Application

Existing OCP Designation:      MRM – Multiple Unit Residential (Medium Density)

Existing Zone:      RM6 – High Rise Apartment Housing

Proposed Zone:      RM5 – Medium Density Multiple 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 RM6 – High Rise Apartment Housing zone for Lot A, District Lot 137, ODYD, Plan KAP27186, located at 1421 Sutherland Avenue, Kelowna, BC, under Land Use Contract LUC78-1005 does not meet the land use requirements under City of Kelowna Zoning Bylaw No. 8000;

THAT Application No. LUCT 19-0017 to terminate LUC78-1005 from Lot A, District Lot 137, ODYD, Plan KAP27186, located at 1421 Sutherland Avenue, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z19-0085 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification for Lot A, District Lot 137, ODYD, Plan KAP27186, located at 1421 Sutherland Avenue, Kelowna, BC, from the RM6 – High Rise Apartment Housing zone to RM5 – Medium Density Multiple Housing 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. 11893;

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 LUC78-1005 and rezone the subject property to the RM5 – Medium Density Multiple Housing zone.

## **3.0 Development Planning**

Staff are bringing forth and recommending this Land Use Contract (LUC78-1005) be terminated and for the subject property to be rezoned. The underlying zone is RM6 – High Rise Apartment Housing and does not fit in the established neighborhood. Under the current Land Use Contract its uses are regulated in accordance with the R-5 (High Density) Multi-Family Residential zone in Zoning Bylaw No. 4500. The Zoning Bylaw has since been updated and obtains different uses, requirements and zonings. The equivalent of R-5 in the current Zoning Bylaw, No. 8000, is RM5 – Medium Density Multiple Housing. Therefore, Staff are proposing to adopt RM5 – Medium Density Multiple Housing to the subject property. This zone is in accordance with the Official Community Plan.

The existing Land Use Contract (LUC) affects 1 property at 1421 Sutherland Avenue, and currently restricts the use to one multi-family residential building. The Land Use Contract uses and regulations fit within the RM5 – Medium Density Multiple Housing zone.

## **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 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 has a total area of 3,440 m<sup>2</sup> and is located at 1421 Sutherland Avenue. The property is designated MRM – Multiple Unit Residential (Medium Density) in the Official Community Plan and the surrounding area is residential.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	P1 – Major Institutional	Senior Care
East	LUC75-26 RU6 – Two Dwelling Housing (Rezoning application being tracked to rezone to RM5 – Medium Density Multiple Housing)	Multi-Family Residential Building
South	RU6 – Two Dwelling Housing	Residential Subdivision
West	RM3 – Low Density Multiple Housing	Multi-Family Residential Building

**Subject Property Map: 1421 Sutherland Avenue**



## **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

*Multiple Unit Residential (Medium Density) (MRM). Townhouses, garden apartments, and apartment buildings. Complementary uses (i.e. care centres, minor public services/utilities, and neighbourhood parks) which are integral components of urban neighbourhoods would also be permitted. Building densities would be consistent with the provisions of the RM4 – Transitional Low Density Housing and RM5 – Medium Density Multiple Housing zones of the Zoning Bylaw and may include CD Comprehensive Development zoning for similar densities or land uses.*

## **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