

# REPORT TO COUNCIL



**Date:** February 1, 2021

**To:** Council

**From:** City Manager

**Department:** Development Planning Department

**Application:** LUCT20-0008 / Z20-0073      **Owner:** McIntosh Properties Ltd.,  
Inc.No. 0846631

**Address:** 2821 Fenwick Rd      **Applicant:** The City of Kelowna

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

**Existing OCP Designation:** IND – Insturial and PARK – Major Park / Open Space (public)

**Existing Zone:** A1 – Agriculture 1

**Proposed Zone:** A1 – Agriculture 1 and I2 – General Industrial

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## 1.0 Recommendation

THAT Land Use Contract Termination Application No. LUCT20-0008 to terminate LUC77-1004 from Lot 1 Section 34 Township 26 ODYD Plan 29162, located at 2821 Fenwick Road, Kelowna, B.C. be considered by Council;

AND THAT Rezoning Application No. Z20-0073 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of a portion of Lot 1 Section 34 Township 26 ODYD Plan 29162, located at 2821 Fenwick Road, Kelowna, B.C. from the A1 – Agriculture 1 zone to the I2 – General Industrial zone as shown on Map "A" attached to the Report from the Development Planning Department dated February 1, 2021 be considered by Council;

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

AND THAT the notice sign requirements under Council Policy No. 367 be altered to allow for placement on the City of Kelowna's boulevard;

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 proceed with early termination of Land Use Contract 77-1004 and to consider an application to rezone the subject property.

### **3.0 Development Planning**

Staff are recommending the Land Use Contract (77-1004) be terminated and for the subject property to be rezoned. Portions of the property has the underlying zone of A1 – Agriculture 1 and is not appropriate for the current land use, which are general industrial uses. Currently the Land Use contract allows the uses in the former Zoning Bylaw 4500 I3 – Heavy Industrial Uses, in addition to steel fabrication and sales. The former steel fabrication business on site is no longer active. The Zoning Bylaw has since been updated and obtains different uses, requirements and zonings.

The lot in question is a hooked parcel, with a portion of the parcel north of Mill Creek and a portion of the parcel south of Mill Creek. Both portions of this site are zoned A1 – Agriculture 1. Since a large portion of this site falls within the riparian area of Mill Creek, wherein development is prohibited under provincial law, Staff are proposing that only the area south of Mill Creek that has the Future Land Use Designation of Industrial be rezoned to I2 – General Industrial. This would result in the area in the riparian setback with the Future Land Use Designation of PARK, remain A1. This portion of the property cannot be further developed, it should not be rezoned.

### **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 Public 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 also send an additional letter within 30 days of adoption, informing the owners and providing information about the Board of Variance. Due to the file being Staff initiated, Staff suggest Council Policy #367 development signage requirements be altered to allow for the development signs to be placed on the City of Kelowna's boulevard, rather than on the subject property.

#### **4.3 Site Context**

The subject property has a total area of roughly 12,869m<sup>2</sup> and is located on 2821 Fenwick Road. The property has been designated IND – Industrial and PARK – Major Park / Open Space (public) in the Official

Community Plan. The surrounding area is a mix of SC – Service Commercial, IND – Industrial, COMM – Commercial and PARK – Major Park / Open Space (public).

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	IND – Industrial and PARK – Major Park / Open Space (public)	Mill Creek, Industrial Land and Vacant Land
East	TC – Transit Corridor	Rail Trail
South	REP – Resource Protection and PARK – Major Park / Open Space (public)	Active Farm in the ALR
West	REP – Resource Protection and PARK – Major Park / Open Space (public)	Mill Creek and Vacant Land

**Subject Property Map: 2821 Fenwick Road**



**5.0 Current Development Policies**

5.1 Kelowna Official Community Plan (OCP)

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

Industrial (IND): Light and heavy industrial uses as well as Industrial/Business activities and airport related industrial uses. Industrial/business refers to uses that provide services and support to industrial and business customers. This designation may also include CD Comprehensive Development zoning that provides for industrial uses.

**6.o Application Chronology**

Date of Application Received: August 25, 2020

Date Public Consultation Completed: October 1, 2020

**Report prepared by:** Tyler Caswell, Planner I

**Reviewed by:** Dean Strachan, Community Planning & Development Manager

**Approved for Inclusion:** Terry Barton, Development Planning Department Manager

**Attachments:**

Attachment A: Map 'A' – Proposed Rezoning