

REPORT TO COUNCIL



Date: February 1, 2021

To: Council

From: City Manager

Department: Development Planning Department

Application: LUCT20-0009 / Z20-0074 **Owner:** BCJ Properties Ltd., Inc.No. 472355

Address: 3646-3652 Hwy 97 N **Applicant:** The City of Kelowna

Subject: Land Use Contract Termination and Rezoning Application

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

Existing Zone: A1 – Agriculture 1

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

1.0 Recommendation

THAT Land Use Contract Termination Application No. LUCT20-0009 to terminate LUC77-1040 from Lot A Section 35 Township 26 ODYD Plan 37430, located at 3646-3652 Hwy 97 N, Kelowna, B.C. be considered by Council;

AND THAT Rezoning Application No. Z20-0074 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of a portion of Lot A Section 35 Township 26 ODYD Plan 37430, located at 3646-3652 Hwy 97 N, 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 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 77-1040 and to consider an application to rezone the subject property.

3.0 Development Planning

Staff are recommending the Land Use Contract (77-1040) be terminated and for the subject property to be rezoned. The property has the underlying zone of A1 – Agriculture 1 and is not appropriate for the current land uses, which is general automotive repairs and a gas bar/service station. These uses are currently permitted in the Land Use Contract, under the former Zoning Bylaw 4500's A6 – Rural-Industrial Reserve with the additional uses of: service station, automatic transmission repairs, general automotive repairs and automotive body shop. The Zoning Bylaw has since been updated and obtains different uses, requirements and zonings.

The lot in question has the Future Land Use Designation of both IND – Industrial and PARK – Major Park / Open Space (public). The reason for this is because the north section of the property falls within the Mill Creek riparian setback. Staff recommend that only the portion with the Future Land Use Designation of IND be rezoned to I2 and the northern portion to remain A1. The reason for this is that this portion of the parcel is within the riparian area of Mill Creek wherein development is prohibited under provincial law. As 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

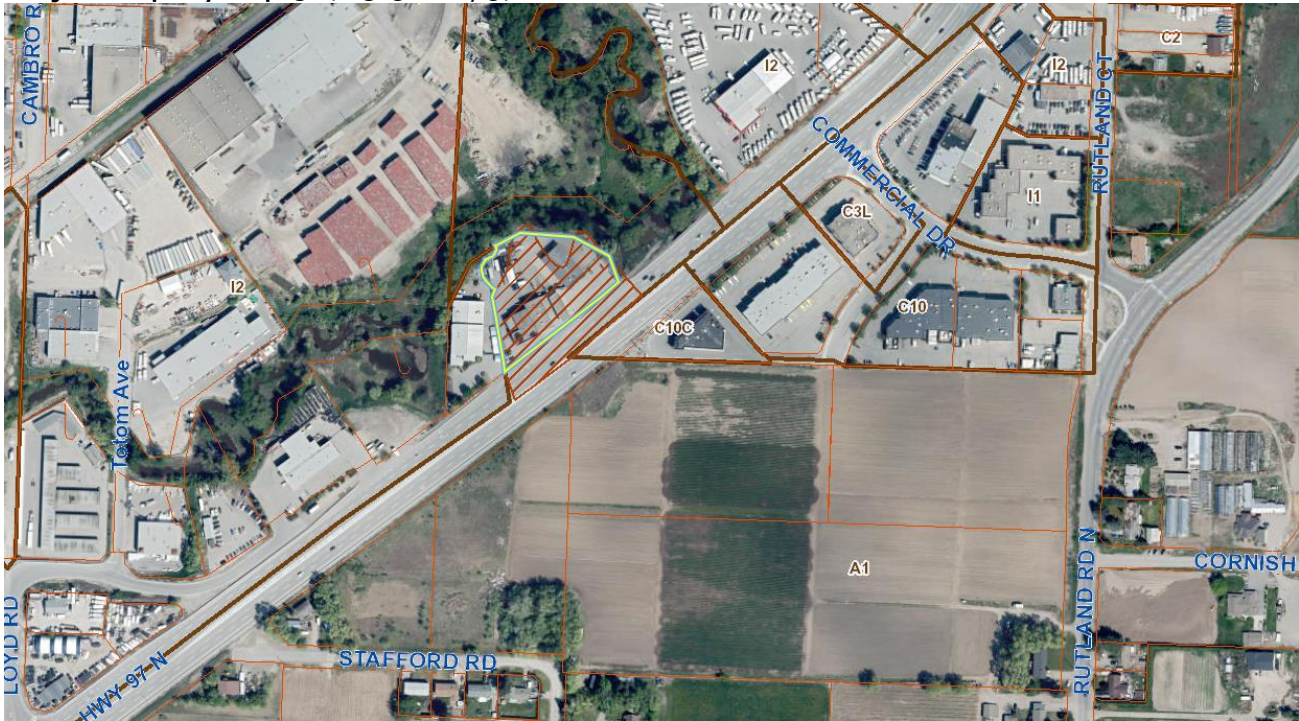
The subject property has a total area of roughly 6,380m² and is located on 3646-3652 Hwy 97 N. The property has been designated IND – Industrial and PARK – Major Park / Open Space (public) in the Official

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

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	A1 – Agriculture 1	Mill Creek
East	A1 – Agriculture 1 and C10C – Service Commercial with Retail Cannabis	General service commercial businesses and Mill Creek
South	A1 – Agriculture 1	Active Farm within ALR
West	I2 – General Industrial	Automotive shop

Subject Property Map: 3646-3652 Hwy 97 N



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 26, 2020
Date of Owner Notification: 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