

REPORT TO COUNCIL



Date: June 28, 2021

To: Council

From: City Manager

Department: Development Planning

Application: LUCT21-0001 Z21-0038 **Owner:** Multiple Owners

Address: Multiple Addresses **Applicant:** The City of Kelowna

Subject: Land Use Contract Termination and Rezoning Application

Existing OCP Designation: SC – Service Commercial and PARK – Major Park/Open Space (public)

Existing Zone: A1 – Agriculture 1 and I1 – Business Industrial

Proposed Zone: C10 – Service Commercial, C3 – Community Commercial, P3 – Parks and Open Space and A1 – Agriculture 1

1.0 Recommendation

THAT Land Use Contract Termination Application No. LUCT21-0001 to terminate LUC77-1085 from the subject properties identified in Schedule 'A', located on Hunter Road, Hunter Court, Leckie Road and Enterprise Way, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z21-0038 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification for the subject properties identified in Schedule 'B', located on Hunter Road, Hunter Court, Leckie Road and Enterprise Way, Kelowna, BC, from the A1 – Agriculture 1 and I1 – Business Industrial zones to the C10 – Service Commercial zone be considered by Council;

AND THAT Rezoning Application No. Z21-0038 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification for the subject properties identified in Schedule 'C', located on Hunter Road and Leckie Road, Kelowna, BC, from the A1 – Agriculture 1 zone to the C3 – Community Commercial zone be considered by Council;

AND THAT Rezoning Application No. Z21-0038 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A District Lot 125 ODYD Plan 30395 Except Plan M14878, located at 1455 Dilworth Drive, Kelowna, BC from the A1 – Agriculture 1 zone to the P3 – Parks and Open Space zone be considered by Council;

AND THAT Rezoning Application No. Z21-0038 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of portions of Strata Plan KAS483 and Lot 9 District Lot 125 ODYD Plan

31272 Except Plan KAP50559 located at 1415 and 1418-1420 Hunter Court, Kelowna, BC from the A1 – Agriculture 1 zone to the C10 – Service Commercial zone as shown on Map 'A' attached to the Report from the Development Planning Department dated June 28, 2021 be considered by Council;

AND THAT Rezoning Application No. Z21-0038 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of portions of Lot A District Lots 125 and 532 ODYD Plan 39897, Lot B District Lots 125 and 532 ODYD Plan 39897, Lot 1 District Lots 125 and 532 ODYD Plan KAP82764 and Lot 2 District Lots 125 and 532 ODYD Plan KAP82764, located at 2303 and 2343 Leckie Road and 2330 and 2350 Enterprise Way, Kelowna, BC from the A1 – Agriculture 1 zone to the C10 – Service Commercial zone as shown on Map 'B' attached to the Report from the Development Planning Department dated June 28, 2021 be considered by Council;

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

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 the early termination of LUC77-1085 and to rezone the subject properties as identified in 'Schedule A, B & C'.

3.0 Development Planning

Staff are recommending support for the proposed Land Use Contract Termination to terminate LUC77-1085 and subsequent Rezoning Application for the subject properties. The Land Use Contract (LUC) affects 20 properties on Hunter Road, Hunter Court, Leckie Road and Enterprise Way, and the underlying zone are not appropriate for the existing uses. Staff are recommending to rezone the properties to C10 – Service Commercial, C3 – Community Commercial and P3 – Parks and Open Space. The proposed zones were based off the allowable uses in the LUC, the existing uses on site and the Future Land Use Designation. The Land Use Contract (LUC77-1085) splits the properties into three areas:

1. The first area is allowed the Development Regulations of Zoning Bylaw 4500's C3 – Community Commercial zone. These properties are at 2280 Leckie Road and 2281 Hunter Road, which Staff are proposing to adopt the current C3 – Community Commercial zone, as this best matches the current uses and the LUC.
2. The second area affects only one property at 2455 Enterprise Way, which is allows the uses of Bylaw 4500's C12 – Sales Lot zone and C3 – Community Commercial zone. Staff are proposing to adopt the C10 – Service Commercial zone, which allows for the uses of automotive sales and meets the Future Land Use Designation.
3. The final area encompasses all other properties, and the LUC, under Zoning Bylaw 4500 allows the uses of the C7 – Service Commercial zone, C8 – Gasoline Service Station Commercial zone, C8a – Self-Service Gasoline Service zone and the C12 – Sales Lot zones. Staff are proposing to adopt the C10 – Service Commercial zone for all of these remaining properties, as this matches the Future Land Use Designation and the uses allowed in the LUC.

There are three properties that have or partially have the Future Land Use Designation of PARK – Major Park/Open Space (public) because they are within the riparian setback area of Mill Creek. The first is a City-

owned property at 1455 Dilworth Drive. Staff are proposing to rezone this property to the P3 – Parks and Open Space zone, as this best meets the use. The other two properties are 1418-1420 Hunter Ct and 1415 Hunter Ct. Staff recommend that only the portion with the Future Land Use Designation of SC be rezoned to C10 and the northern portion to remain A1 (Map A). 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 initially apply when Council adopts the bylaw. Terminations require a one-year grace period as outlined by the Local Government Act before the LUC is removed, and the underlying zone comes into effect.

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 development regulations apply to the land. Staff sent the required letter to all affected owners on May 3rd, 2021. The municipality must also send an additional letter within 30 days of adoption, informing the owners and providing information about the Board of Variance.

4.3 Site Context

The subject properties are located on Hunter Court, Hunter Road, Enterprise Way and Leckie Road in the Central City OCP Sector. The properties have a Future Land Use Designation of SC – Service Commercial and PARK – Major Park/Open Space (public). The surrounding area primarily has the Future Land Use Designation of SC – Service Commercial, IND – Industrial, PARK – Major Park/Open Space (public) and PSU – Public Services/Utilities.

Subject Property Map: Hunter Road Area



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

Service Commercial (SC): Developments for the provision of business support services and other commercial uses requiring extensive on-site storage. Building densities would be consistent with the provision of the C10 zone of the Zoning Bylaw.

Major Park/Open Space (public) (PARK): City, District, Community, Neighbourhood and Linear parks. Not all parks required over the next 20 years are indicated on the map, as Neighbourhood parks will be provided at City standards as integral components of new and redevelopment initiatives. A major Recreation Park will be provided in the Glenmore Valley area. Open space indicated at the south end of Ellison Lake is intended as wildlife habitat preservation subject to approval of the appropriate provincial ministry or agency.

6.o Application Chronology

Date of Application Received: April 23rd, 2021
Date of Owner Notification: May 3rd, 2021

Report prepared by: Tyler Caswell, Planner I
Reviewed by: Dean Strachan, Community Planning & Development Manager
Reviewed by: Terry Barton, Development Planning Department Manager
Approved for Inclusion: Ryan Smith, Divisional Director, Planning & Development Services

Attachments:

Schedule A: Affected Addresses #1
Schedule B: Affected Addresses #2
Schedule C: Affected Addresses #3
Attachment A: Proposed Rezoning Map
Attachment B: Map 'A' – Proposed Rezoning - Portions Remaining A1
Attachment C: Map 'B' – Proposed Rezoning - Portions Rezoning to C10