

REPORT TO COUNCIL



Date: August 28th, 2017

RIM No. 1250-40

To: City Manager

From: Community Planning Department (JR)

Application: LUC17-0002/Z17-0049 **Owner:** Derek L & Tammy L Cartier

Address: 521 Curlew Drive **Applicant:** Urban Options Planning & Permits

Subject: Land Use Contract Discharge and Rezoning Application (LUC 77-1002)

Existing OCP Designation: S2RES – Single / Two Unit Residential

Existing Zone: RR1 – Rural Residential 1

Proposed Zone: RU1c – Large Lot Housing with Carriage House

1.0 Recommendation

THAT Application No. LUC 17-0002 to discharge LUC77-1002 from Lot 15 Section 24 Township 28 SDYD Plan 32591 located at 521 Curlew Drive, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z17-0049 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification for 521 Curlew Drive, Kelowna, BC from the RR1 – Rural Residential 1 zone to RU1c – Large Lot Housing with Carriage House be considered by Council;

AND FURTHER THAT the Land Use Contract Discharge and Zone Amending Bylaws be forwarded to a Public Hearing for further consideration;

2.0 Purpose

To consider a Land Use Contract discharge and rezoning of the subject property from RR1 – Rural Residential 1 to RU1c – Large Lot Housing with Carriage House.

3.0 Community Planning

The applicant is proposing to rezone the subject property to facilitate the construct of a carriage house. However, the parcel is currently under the regulation of a Land Use Contract (LUC) which does not permit the construction of a carriage house and so the LUC needs to be discharged. The LUC (LUC77-1022) was created in 1978 and permitted 168 total residential parcels in the neighbourhood. Further, the LUC stipulates that the provisions of Zoning Bylaw No. 4500 A4 – Rural Residential regulations apply to the development of the land whereby carriage houses are not permitted. Community Planning staff supports

the request to discharge the LUC and rezone the property as the underlying RR1 zone is not appropriate. Rezoning will provide the property with an appropriate zone and will facilitate the construction the proposed carriage house. The LUC will be discharged in accordance with Council Policy No. 282 (Strategy for Elimination of Remaining Land Use Contracts).

In conformance with Council Policy No. 282, Staff will bring a bylaw terminating the Land Use Contract from the remainder 167 parcels within the Upper Mission Area of Kelowna. This is a separate process from the discharge of an LUC, as termination eliminates the LUC one year after Council adoption (whereas a discharge is immediate).

4.0 Proposal

4.1 Background

The Province first experimented with contract zoning in 1971. The Land Use Contract was a tool that entered into use 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.

However, 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. From 1978 to 2014, municipalities or the owners of the land could not unilaterally discharge, cancel, or modify the land use contract without the other party's consent. The Local Government Act was amended in 2014 stating all land use contracts in the province need to be terminated as of June 30th 2024. This provides property owners with ten years to complete any development authorized by their land use contract unless the LUC is terminated prior to that date. By June 20th 2022, local governments must have appropriate zoning regulations in place to replace land use contracts upon their termination. However, due to this requirement of the Local Government Act, staff are recommending whenever a property owner applies to change land uses within an LUC, that staff initiate the process to eliminate the whole LUC. This approach will help alleviate the future work load of eliminating and rezoning all LUC's at one time.

In addition, local governments must provide notice to each owner that the termination of land use contract is occurring 1 year after adoption and must provide notice of what the new zoning regulations are that apply to the land.

4.2 Project Description

The applicant is proposing to rezone the subject property to RU1c – Large Lot Housing with Carriage House to facilitate the construction of a carriage house. The existing LUC needs to be discharged prior to supporting the rezoning and construction of the carriage house.

4.3 Site Context

The subject property has a total area of 1255 m² and is located on Curlew Drive, and is connected to community sewer. The property and the surrounding area is designated S2RES – Single / Two Unit Residential in the Official Community Plan. The LUC applies to 168 parcels which front onto Curlew Drive, Curlew Court, Lark St, Wren Place, and Stellar Drive.

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

Council Policy No. 282.² Includes the following statement:

That the City of Kelowna initiate proceedings to discharge the contacts subject to consultation with affected owners of the land and subject to prior approval by council with regard to affected contracts;

6.0 Technical Comments

6.1 Building & Permitting Department

- Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permits.
- A third party work order may be required with the Development Engineering Department for an upgraded water line and sewage connection. These requirements are to be resolved prior to issuance of the Building Permit.
- HPO (Home Protection Office) approval or release is required at time of Building Permit application.
- At time of Building Permit application, the spatial calculations are to be provided from the designer.
- Full Plan check for Building Code related issues will be done at time of Building Permit applications. Please indicate how the requirements of Radon mitigation and NAFS are being applied to this complex at time of permit application.

6.2 Bylaw Services

- No concerns

6.3 Development Engineering Department

- See Schedule A

6.4 Interior Health

- No concerns

6.5 Fire Department

- No concerns with LUC Discharge and Zoning
- Requirements of section 9.10.19 Smoke Alarms and Carbon Monoxide alarms of the BCBC 2012 are to be met.
- All units shall have a posted address on Curlew Drive
- If a fence is ever constructed between the units a clear width of 1100mm is required to be maintained for access
- Maintain access to the carriage house from Curlew Dr

² City of Kelowna Council Policy 282 Strategy for Elimination of Remaining Land Use Contracts.

7.0 Application Chronology

Date of Application Received: May 29, 2017
Date of Public Consultation Completed: July 3, 2017

Prepared by: Jenna Ratzlaff, Planner

Reviewed by: Terry Barton, Urban Planning Manager

Approved for Inclusion: Ryan Smith, Community Planning Department Manager

Attachments:

Schedule 'A': Development Engineering Memo

Schedule 'B': Plans