



COUNCIL REPORT  
Development Services  
For the January 14, 2020 Council Meeting

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DATE: January 7, 2020 File: Z 19-01

TO: Paul Gipps, CAO

FROM: Jayden Riley, Planner II

RE: Application: Official Community Plan Amendment Bylaw No. 0100.50 and Zoning Amendment Bylaw No. 0154.83  
Legal: Lot 1, DL 3493, ODYD, Plan KAP17359 Except Plan 25556  
Address: 3060 Seclusion Bay Road  
Owner: Sky High Metals Corp.  
Agent: Kevin Johnson / Bear Land Development Services

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**RECOMMENDED MOTION:**

**THAT** Council give third reading to City of West Kelowna Official Community Plan Amendment Bylaw No. 0100.50, 2019;

**THAT** Council give third reading to City of West Kelowna Zoning Amendment Bylaw No. 0154.83, 2019; and

**THAT** Council direct staff to schedule the bylaws for consideration of adoption following:

- Acquisition of necessary water and sewerage approvals from the Province;
- Registration of a blanket Statutory Right of Way will be registered across the Upper Development Area for pedestrian access to provide for future regional trail connections between the District of Peachland and Goats Peak Regional Park;
- Registration of a S. 219 No Build-No Disturb Covenant within the Upper Development Area to ensure environmental protection of sensitive areas; and
- Registration of a S. 219 No Build Covenant, with the exception of 1 unit, on the property to be discharged following substantial completion of upgrades to the private access road, in accordance with *Attachment 6* and recommendations of Traffic Impact Assessment, prepared by CTQ Consultants, dated December 12, 2017.
- Registration of a S. 219 covenant to ensure the recommendations of the geotechnical reporting followed.

**RATIONALE:**

- Council provided direction on January 23, 2018 at first reading of OCP Amendment Bylaw No. 0100.50 to proceed with an application and review for rezoning in relation to the development proposal on this site;
- The proposed CD8 Zone is tailored to the site's unique characteristics and the applicant's vision;

- The site is adjacent to a similarly zoned development (Seclusion Bay Resort) that is not a property that is typical of the Rural Reserve designation;
- The applicant must obtain necessary water and sewerage approvals from the Province prior to adoption of the CD8 zone;
- A Statutory Right of Way will be secured for pedestrian access to provide for future regional trail connections between the District of Peachland and Goats Peak Regional Park;
- A Section 219 No Build-No Disturb Covenant will be registered within the Upper Development Area to ensure environmental protection of sensitive areas;
- A Section 219 No Build Covenant will be registered on title to ensure improvements to the private access road are completed; and
- Geotechnical and Environmental reports were submitted which support the proposal and provide recommendations for future analyses and works during the detailed design stages for the development and servicing of the property.

### LEGISLATIVE REQUIREMENTS

Council has the authority under Part 14, S. 472 of the *Local Government Act* to amend the Official Community Plan. Council has the authority under Part 14 (S. 479) of the *Local Government Act (LGA)* to amend the Zoning Bylaw.

### BACKGROUND:

#### **Proposal**

The applicant proposes to amend the Official Community Plan (OCP) land use designation on the lower (lakefront) portion of the property from Resource Land to Tourist Commercial. Additionally, the applicant proposes to amend the zoning of the subject property from the Rural Residential Small Parcel Zone (RU2) to a Comprehensive Development Zone (CD) to support the development of 16 single detached dwelling units. The CD Zone proposes year-round and short-term occupancy in the lower development area and an upper conservation and servicing area. The applicant also proposes to amend the waterfront from the Recreational Water Use Zone (W1) to the Intensive Water Use Zone (W2) to provide for additional boat slips, boatlifts and moorage.

The applicant's vision is for a strata development of 16 eco-villas (single detached dwelling units), an amenity building, and a dock extension to accommodate one boat slip per unit, boatlifts, and visitor moorage (*Attachment 3; Figure 2*). The proposed single detached dwelling units would be approximately 185 m<sup>2</sup> (1,991 ft<sup>2</sup>) in area and include kitchen and bathroom facilities (*Figure 1*). The development concept, as proposed, is envisioned by the applicant to utilize the natural features and environmental assets of the site to minimize development impacts. Due to the lack of community servicing the applicant is proposing on-site servicing (i.e. water, sanitary sewer, storm sewer) for the property, however Provincial approval for these servicing systems is recommend as a condition of rezoning.



**Figure 1: Conceptual Eco-Villa Design**



**Figure 2: Conceptual Site Plan for 3060 Seclusion Bay Road**

### **Overview of Public Hearing**

A Public Hearing was held on November 12, 2019. The agent addressed the application, including the anticipated road improvements and application history. Following this portion of the Public Hearing, two (2) individuals from the public addressed Council with concerns regarding the suitability for the private road to support increased traffic and emergency vehicles, as well as water and sewer servicing, slope stability, potential environmental impacts, and neighbourhood character. Council also raised questions regarding access to the waterfront.

The applicant has submitted a preliminary design and traffic impact assessment that speaks to the private access road improvements to support increased traffic and emergency access. Staff have determined that the proposed improvements would adequately support development of the site, as proposed. Regarding water and sewer, the applicant will need to apply to the Province to service the property with water and sewer, which is a condition included in the recommended motion. The environmental report submitted with the application has suggested enhancement areas and other recommendations which may be applied at time of development permit.

In accordance with the *Official Community Plan Bylaw No. 0100*, the City seeks to obtain public waterfront access to Okanagan Lake and related public amenities through a combination of land acquisition, parkland dedication, rights of way, and negotiation with waterfront development, as per the *Waterfront Plan* and/or *CWK Land Acquisition Strategy*. In accordance with the OCP's Waterfront Policies and Actions, and consistent with the *Land Title Act*, public access to the waterfront is provided via park dedication approximately 300 m east of the subject property (*Figure 3*); therefore, additional public access to the waterfront has not been recommended.

## Location and Surrounding Uses

The subject property is currently zoned Rural Residential Small Parcel (RU2) and is 2.48 hectares in size (6.1 acres) (*Attachment 1 and 2; Figure 3*). The property is vacant due to wildfires in 2010 that destroyed the existing dwelling. The property is steeply sloped on the northern half (greater than 30 percent) and slopes moderately on the south half towards Okanagan Lake. The subject property includes several paved roadways providing private access over the property to adjacent properties by easement. An existing structure is located on the waterfront, in addition to a dock, grassy area, and beach. The property is composed of talus rock outcrops, natural springs, and secondary regrowth after the wildfires. The surrounding land uses include:

- North – Rural Residential Small Parcel (RU2) and Highway 97C (Okanagan Connector) interchange
- West – District of Peachland Zoning A-2 Rural (Non-ALR)
- East – Seclusion Bay Resort, is split zoned: Campground, Cabin, and Motel Commercial (C5) and Rural Residential Large Parcel (RU4).
- South – Okanagan Lake

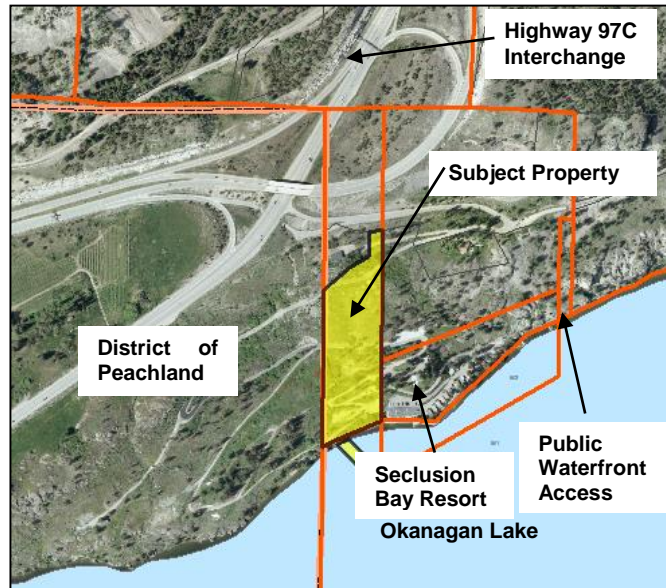


Figure 3: Subject Property

## POLICY AND BYLAW REVIEW

### **Official Community Plan (OCP) Bylaw No. 0100**

The Growth Management Designation (GMD) for the subject property is Rural Reserve.<sup>1</sup> The parcel is located outside of the Rural Reserve Boundary, which is the growth boundary derived from servicing capabilities and long-term infrastructure planning. The Rural Reserve Boundary is intended to promote more efficient use of land and infrastructure and focus growth within existing developed areas. Rural Reserve policies do not support rezoning applications to facilitate subdivision outside the Rural Reserve Boundary.<sup>2</sup> However, during first reading of the OCP Amendment Bylaw No.0100.50 on January 23, 2018, Council provided direction for staff to consider this development proposal within the rural reserve. The subject property is not typical of the Rural Reserve designation due to its proximity to a similarly zoned development (Seclusion Bay Resort), as well as its proximity to the Highway 97 Exchange, the waterfront, and a potential development site adjacent in the District of Peachland.

<sup>1</sup> The West Kelowna Official Community Plan ([s. 3.2, pp. 25-54](#)) delineates and describes the Growth Management Designations throughout the community. Growth Management Designations are intended to identify growth priority areas and support OCP Land Use Designations. Although Growth Management Designations are more descriptive than they are regulatory, a proposal to amend the OCP Land Use Designation for a property should be considered with regard to the policies contained in both the respective Growth Management Designation and the Land Use Designation.

<sup>2</sup> Official Community Plan Bylaw No. 0100, Part 3 – Objectives and Policies, s. 3.2.11 Rural Reserve

The Land Use Designation (LUD) for the subject property is Resource Land. Resource Land policies seek to minimize road access and protect the resource and environmental values of parcels outside the Rural Reserve Boundary.<sup>3</sup>

The proposed Tourist Commercial land use designation applies to projects that are developed primarily for tourist use. Tourist Commercial policies direct developments to be sensitive to environmental impacts, emphasize high-quality green building design, and encourage transportation and pedestrian connectivity.<sup>4</sup> Examples of existing developments that are designated as Tourist Commercial in the OCP include: The Cove Lakeside Resort, Barona Beach Resort, Casa Loma Lakeshore Resort, and Mission Hill Winery. *Attachment 4* includes excerpts of OCP policies that relate to the subject application.

### **Development Permit Areas**

The subject property is located in three Development Permit Areas (DPAs): Aquatic Ecosystem DPA, Sensitive Terrestrial Ecosystem DPA, and the Hillside DPA. These DPAs identify areas of environmental, riparian and hillside (geotechnical) concerns and will require further analysis prior to development. At the Development Permit stage, existing development within the foreshore shall be assessed by the Environmental Assessment report with recommendations for required restoration or compensation to be determined. In addition, a Commercial Development Permit is required to address form and character, siting, access, and landscaping considerations for the proposed development.

### ***Parks Master Plan & Recreational Trails Master Plan***

The Parks Master Plan and the Recreational Trails Master Plan identify and value future trail connections in the vicinity of the subject property, such as pedestrian access through the subject property providing recreational and active transportation connections between the District of Peachland and Goats Peak Regional Park. Accordingly, the applicant proposes to provide a statutory right of way (SRW) for public access over the upper portion of the property to provide a connection from Drought Road in the District of Peachland to Goat's Peak Regional Park. This pedestrian pathway aligns with the Okanagan Trail 2000 initiative and the RDCO's RGS, which envisions recreational and alternate transportation routes linking communities in the Okanagan Valley. As the exact routing of this connection has not been finalized and is an ongoing process that will involve further discussions with stakeholders within the region, in order to ensure that a feasible connection is established it is recommended that an SRW for public access along or adjacent to the current shared access road be secured.

### ***Zoning Bylaw No. 0154***

The applicant is proposing to rezone the subject property from the Rural Residential Small Parcel Zone (RU2) to a Comprehensive Development Zone (CD8) and to rezone the waterfront from the Recreational Water Use Zone (W1) to the Intensive Water Use Zone (W2) (*Attachment 8*). The applicant has requested a Comprehensive Development Zone in order to design the zoning regulations specific to the site conditions. The CD8 Zone will allow for 16 residential/tourism units with a maximum floor area of 185 m<sup>2</sup> that may be used for short-term or long-term occupancies.

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<sup>3</sup> Official Community Plan Bylaw No. 0100, Part 3 – Objectives and Policies, s. 3.3.9 Resource Land

<sup>4</sup> Official Community Plan Bylaw No. 0100, Part 3 – Objectives and Policies, s. 3.3.3 Commercial

**Table 1: Comparison of Zoning Regulations**

Zone	Existing Zone (RU2)	Proposed Zone (CD8)	Comparison Zone (C5)
Min. Parcel Area	1.0 ha	2.477 ha	1.0 ha
Min. Parcel Frontage	30 m	20 m	50.0 m
Max. Density	1 SFD	<ul style="list-style-type: none"> <li>• 16 Single Detached Dwellings</li> <li>• 1 Amenity Building or Structure</li> <li>• 0.12 FAR</li> </ul>	<ul style="list-style-type: none"> <li>• 1 caretaker unit per parcel</li> <li>• 0.8 FAR for motel and tourist cabin</li> <li>• 20 campsites per ha</li> </ul>
Max. GFA	N/A	<ul style="list-style-type: none"> <li>• 185 m<sup>2</sup> (per dwelling unit)</li> <li>• 100 m<sup>2</sup> (per amenity building)</li> <li>• 200m<sup>2</sup> (combined accessory buildings and structures)</li> </ul>	N/A
Max. Parcel Coverage	10%	40%	30%
Max. Building Height	9.0 m	9.0 m to a maximum of two storeys	9.0 m (3 storeys)
<b>Siting Regulations - Setback</b>			
Front Parcel Boundary	6.0 m	6.0 m	4.5 m
Rear Parcel Boundary	7.5 m	6.0m	3.0 m (6.0 abutting a residential zone)
Interior Parcel Boundary	4.5 m	3.0 m	3.0 m (6.0 abutting a residential zone)
Exterior Side Parcel Boundary	4.5 m	N/A	4.5 m

The CD8 Zone (*Attachment 8*) also includes provisions for an amenity building and conservation areas. The proposal intends to maintain the riparian shoreline of Okanagan Lake and includes a dock with boat slips (one per unit), boatlifts, and visitor moorage. Table 1 provides a comparison of the proposed CD8 Zone with the existing RU2 Zone as well as the C5 Zone, which also allows for short-term and long-term rental accommodation (e.g. Seclusion Bay Resort).

The proposed CD8 Zone is designed to fit the proposal with the character of the site and to allow uses that are complementary to the adjacent Seclusion Bay Resort property. The siting regulations meet and exceed the setbacks of the C5 Zone. The proposed building height of 9 m is limited to a maximum of two storeys, which is one storey less than permitted for Seclusion Bay Resort. The subject property will have a greater density than Seclusion Bay Resort; however, less units will be located on the subject property. A density comparison between the proposal and the adjacent Seclusion Bay Resort is summarized in Table 2.

**Table 2: Density Comparison of Proposal with Seclusion Bay Resort**

	Proposal (CD8)	Seclusion Bay Resort (C5)
Parcel Area (ha)	2.477 ha	5.80 ha
Units	16	28
Density (d.u./ha)	6.46	4.83
Floor Area Ratio (FAR)	0.12	0.8

## TECHNICAL REVIEW

### **Servicing**

As noted, the subject property is in the Rural Reserve, i.e. outside the urban growth boundary, and there are no plans to extend community services to the subject property. The applicant indicates that the project proposes to accommodate water and sewer services on site (*Attachment 5*). Concerns about servicing the development with private water and sewer systems include the significant burden placed on private property owners as private systems are typically less reliable than municipal servicing. Further, should the applicant proceed with stratifying the property, they will be subject to further requirements of the Works and Services Bylaw, and all other applicable regulations.

### **Water System**

Concerns regarding the water system may be exacerbated in this situation because a private water system is proposed to supply firefighting water. Moreover, the City's infrastructure and servicing policies discourage the establishment of new private water systems.<sup>5</sup> Further, the applicant is proposing to utilize existing springs on the property, which have water licences and have historically supplied water to the property and adjacent properties including Seclusion Bay Resort. Further, the applicant is proposing a lake intake to provide domestic and firefighting water to the development and has applied to the Province for licensing. Provincial approval for the water licence and Interior Health approval of a small water system will be required prior to adoption. The applicant will need to demonstrate that the water supply system meets the requirements of the Works and Services Bylaw No. 0249 and a Development Variance Permit application will be required to allow onsite water supply where a community water system is not available.

### **Sewage Disposal**

The applicant is proposing an onsite sewage disposal gravity system that includes pre-treatment of the waste water, flow into a lift station, and a septic field located above the proposed development. The Works and Services Bylaw permits onsite sewage disposal systems when a community waste water system is not available for parcels over one-hectare. Finally, the proposal exceeds the regional standard of one-hectare minimum parcel area for developments without a connection to a community waste water system. The subject property is larger than one hectare; however, the proposed density of 6.46 units per hectare exceeds the expectations of the one-hectare policy.

### **Stormwater**

The applicant proposes to reduce the need for major stormwater infrastructure by implementing onsite rain gardens and integrated stormwater landscape design. The internal road network is proposed to include a bio-swale on the upper side of the road to help reduce flow rates and erosion and also promote ground water infiltration. The proposed stormwater network is proposed to tie into the existing storm drains that discharge at the waterfront which may require additional approval from the Province through a Section 11 Notice. Due to the proximity to the waterfront, no detention systems are anticipated.

### **Access**

The application proposes to maintain use of the existing private access road, which includes various access easement agreements and a portion that extends through land within the District of Peachland. The owner is responsible for frontage improvements on Seclusion Bay Road.

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<sup>5</sup> Official Community Plan Bylaw No. 0100, Part 3 – Objectives and Policies, s. 3.6.2 Water

The applicant has proposed upgrades to the private access road to best meet the Hillside Private Lane road standard. Upgrades include the installation of storm water and drainage works, such as ditch and culvert installation, clearing and grubbing along the shoulder, the creation of two pull out areas in order to allow for safe two-way passage, and road surface restoration (*Attachment 6*). A No Build Covenant will be registered on the property to ensure upgrades to the private access road are completed at the owners' expense, with the exception of one single detached dwelling unit. The owner may be required to obtain approvals from adjacent property owners as well as the District of Peachland where works to the private access road are proposed on adjacent property.



**Figure 4: Access Road Map**

Ongoing maintenance of the private access road will not be provided by the City and is subject to the current easement agreements in place that require the owners to share the maintenance costs of the private access road.

### **Geotechnical**

Several geotechnical reports were submitted, including a third party review commenting on the instability on the property and adjacent areas. The reports include a Landslide Assessment Assurance Statement and indicate the subject property is suitable for the intended use. To support the application, a geotechnical report has also been submitted that indicates the subject property is suitable for the proposed sewage disposal system. It is recommended that a covenant be registered on title to ensure that the future construction is in accordance with the geotechnical recommendations.

### **Environmental**

An environmental report has been submitted that provides recommendations to maintain a wildlife corridor in the proposed septic field area, development of a restoration plan during the detailed design stages of the development and compensation areas for proposed encroachment into the 15m riparian setback.<sup>6</sup> A Section 219 No Build No Disturb Covenant will be required to be registered to protect the steep slope and environmentally sensitive areas in the Upper Development Area.

To support the application, an environmental report has also been submitted that indicates that the subject property is suitable for an on-site sewage disposal system. However, the report also identifies that further hydrogeological issues remain to be understood and that additional works and analysis will be required at the time of detailed system design. Additional environmental reporting will be required as part of the Development Permit process for the proposed development.

<sup>6</sup> Matters related to encroachment into the riparian area will be addressed at Development Permit.

## COUNCIL REPORT/RESOLUTION HISTORY

Date	Report Topic/Resolution	Resolution No.
January 23, 2018	<b>THAT</b> Council give first reading to Official Community Plan Amendment Bylaw No. 0100.50 (File: OCP 17-03).	C100/18
July 23, 2019	<b>THAT</b> Council give second reading to City of West Kelowna Official Community Plan Amendment Bylaw No. 0100.50, 2019;  <b>THAT</b> Council give first and second reading to City of West Kelowna Zoning Amendment Bylaw No. 0154.83, 2019; and  <b>THAT</b> Council direct staff to schedule the proposed bylaw amendment for a Public Hearing.	C281/19
August 13, 2019	<b>THAT</b> Council rescind second reading of City of West Kelowna Zoning Amendment Bylaw No. 0154.83, 2019; and  <b>THAT</b> Council give second reading, as amended, to City of West Kelowna Zoning Amendment Bylaw No. 0154.83, 2019; and  <b>THAT</b> Council direct staff to schedule the proposed bylaw amendment for a Public Hearing	C297/19

## ALTERNATE MOTIONS

### **Alternate Motion #1 – Postpone**

This alternate motion is provided should Council wish to provide direction on a specific matter related to the application.

**THAT** Council postpone third reading to City of West Kelowna Official Community Plan Amendment Bylaw No. 0100.50, 2019 and Zoning Amendment Bylaw No. 0154.83, 2019 (File Z 19-01).

Should Council postpone third reading of the Official Community Plan and Zoning Amendment Bylaws, further direction to staff on how to proceed is required.

### **Alternate Motion #2 – Deny Bylaw Amendments**

This alternate motion is provided should Council wish to deny the proposed bylaw amendments.

**THAT** Council rescind first and second readings to City of West Kelowna Official Community Plan Amendment Bylaw No. 0100.50, 2019 and Zoning Amendment Bylaw No. 0154.83, 2019 (File: Z 19-01) and abandon the bylaw.

Should Council rescind first and second readings of the proposed bylaw amendments, the application will subsequently be closed in accordance with Development Applications Procedures Bylaw No. 0260. Council shall not reconsider an application of this nature for the property for a period of six months.

REVIEWED AND APPROVED BY:

Brent Magnan, Planning Manager  
Bob Dargatz, Development Manager  
Mark Koch, Director of Development Services  
Tracey Batten, Deputy CAO/Corporate Officer  
Paul Gipps, CAO

Powerpoint: Yes ☒ No ☐

Attachments:

1. Context Map
2. Subject Property Map
3. Seclusion Bay Summary Report – Executive Summary (1 page)
4. OCP Policy Excerpts
5. Conceptual Servicing Plan
6. Access Road Improvements and Maintenance Plan
7. OCP Amendment Bylaw No. 0100.50
8. Zoning Amendment Bylaw No. 0154.83

