

File #: OCP-01-2020

ADMINISTRATIVE REPORT

TO:	Planning Committee
FROM:	Administration
DATE:	September 8, 2020
RE:	Public Hearing Report – OCP Amendment (Tank Farm)

ISSUE

A report on the second public hearing for an amendment to the 2010 Official Community Plan (OCP) to allow for commercial and industrial development on a 7.3 ha portion of Lot 429, Group 804, Plan 26170 LTO (“the Tank Farm site”) adjacent to Wasson Place.

REFERENCE

- 2010 Official Community Plan
- Zoning Bylaw 2012-20
- Bylaw 2019-21 and Appendix A
- *Municipal Act (2002)*
- Commercial and Industrial Land Study (2020)

HISTORY

In 2019, 3 Pikas, acting on behalf of the owner of the Tank Farm site, applied to amend the OCP to facilitate industrial/commercial development on a portion of the site. A public hearing was held on April 27, 2020. Following that public hearing, Council amended the bylaw prior to 2nd hearing. Council also directed that a second public hearing be held on August 10, 2020.

The subject area (Phase 1), is a 7.3 ha portion of the Tank Farm site, located in the southeast corner of the lot, adjacent to lots on Wasson Place. The entire site is designated as Residential – Urban in the 2010 OCP and has been designated for long range residential development since the 1987 OCP. Phase 1 is already cleared and mostly free of organics due to extensive excavation work from remediation. The majority of the area is not currently suitable for development as there are deep depressions created through the remediation process. Development at the current grade would require substantial fill to be hauled on-site.

In 2012, the Tank Farm owner undertook initial conceptual planning. A preferred concept was produced which showed the area now known as Phase 1 as commercial and industrial.

A portion of Phase 1 is at the same grade as lots located on Wasson Place. However, due to steep grades on the western portion of the subject area, the proponent expects that an additional 750,000 cubic metres of material will need to be relocated prior to development to another area of the Tank Farm site and stockpiled. Once the excess

material has been relocated, the proposal is to develop approximately 13 fully serviced commercial/industrial lots accessed from an extension of Wasson Place.

Bylaw 2020-10 was amended on July 13th. Notices of a second public hearing were published in the newspapers on July 17 and 24 and a copy of the notice was sent to the Minister of Community Services, per the *Municipal Act*. A total of 294 letters were sent to property owners within 1000 m of the parcel. Government of Yukon (YG) Land Client Services, Kwanlin Dün First Nation, Ta'an Kwäch'än Council, and the Hillcrest and Valleyview Neighbourhood Associations were notified by email.

The second public hearing was held on August 10, 2020. Due to the COVID-19 pandemic, Council Chambers was closed to the public. Input was received through email and posted to the City website. A total of 25 written submissions were received:

- 11 in support, including an informal petition (i.e., not done according to the Petition, Plebiscite and Referendum Bylaw) and signed by 457 people;
- 11 opposed;
- two expressing concern; and
- one providing general input.

Numerous issues were raised and have been grouped into the following categories:

- Public amenities
- Land use
- Site preparation and quarrying activities
- Remediation
- Planning and sustainability
- Other concerns
- Support for development

ALTERNATIVES

- 1) Proceed with second reading under the bylaw process.
- 2) Amend the bylaw at second reading.
- 3) Do not proceed with second reading.

ANALYSIS

Public Amenities

Impact to Public Greenspace

Concern was expressed that existing vegetation and greenspace have been degraded and that the proposed amendment would further impact buffers and recreation areas. One resident expressed that the public should be compensated for the loss of greenspace.

A significant portion of the subject area, as well as other sections of the Tank Farm parcel have been cleared for remediation purposes. This included a City-owned greenspace buffer strip between the Tank Farm lot and Wasson Place. This area used

to allow for a north-south trail connection, which is no longer usable as it has been excavated and connections eliminated.

It should be noted that much of the Tank Farm area is privately owned land designated for future development and although it may seem like passive recreation area to the public, it is not designated as greenspace.

Per the proponent's application submission, a large greenspace would be located along the top of the proposed north-south escarpment running roughly through the middle of the property. This corridor would allow for natural drainage, buffering for residential properties, recreation and active transportation linkages. Final design and location of this greenspace will be identified during the master planning process.

As part of normal subdivision process, the *Municipal Act* requires a dedication of 10% of land to be subdivided for public use. This dedication is in addition to transfer of streets and lanes. In other developments, such as Whistle Bend, the public use land dedication has typically been through transfer of neighbourhood greenspaces and park sites. This dedication would ensure that the greenspace buffer would be publicly owned.

Bylaw Removes Reference to Transportation Links

There was concern raised that the amended bylaw removed reference to transportation linkages on and within the site.

While this specific reference to transportation connections in relation to the Tank Farm has been removed from the proposed bylaw, numerous policies within the OCP achieve the same goal. Specifically, Objective 12: Improve Transportation, has several policies guiding active transportation linkages citywide. Section 18.2: Trail Development, also promotes trail networks and linkages between neighbourhoods.

Land Use

Proposed Designation Not Compatible with Surrounding Land Uses

Concerns were raised that the proposed Mixed-Use – Industrial/Commercial designation is incompatible with surrounding land uses.

The subject area is immediately adjacent to development on Burns Road and Wasson Place, which are already designated as Mixed-Use – Industrial/Commercial. The purpose of this designation is to provide appropriate areas for light commercial/industrial activity. Typical uses would include storage, light manufacturing and warehousing, which can be largely accommodated within an enclosed building. The nature of industrial uses would not be as intense as fully industrial areas, such as Kulan, Mt Sima, or Taylor.

OCP Section 6.2.2(a) calls for a suitable, publicly owned, vegetated buffer between Mixed-Use – Industrial/Commercial and residential areas. The proponent has provided designs showing a significant natural buffer that will range from 30 m to 100 m in width from the future residential areas to the west. The buffer from residential development in Hillcrest would be approximately 120 m. Part of this buffer is a natural slope and depression that will serve as a drainage area, as well as a potential future recreational and active transportation link.

Furthermore, there would be a significant grade change of approximately 12 m between proposed Phase 1 and future residential areas, which should limit impacts of the proposed amendment to Phase 1 on any future residential development.

Natural resource extraction, such as quarrying, is not clearly distinguished from site preparation and re-grading in the existing OCP. For the purposes of this amendment, the proposed site work is considered as re-grading, not quarrying. The proposal to re-grade the site through relocation of material would facilitate future land development and is supported by Administration, subject to conditions, as stated elsewhere in this report.

Residential Land Designation Better Use of Land

Some public input stated that residential development would be the more appropriate use for the subject area and that the excavated material could be replaced.

The current Phase 1 area should be considered generally unsuitable for residential development. If the current Phase 1 area was retained for residential use and left at its current grade, it would be located adjacent to mixed-use industrial/commercial uses on Wasson Place and Burns Road, and on top of an escarpment that regularly experiences high winds and is subject to noise from the Alaska Highway and airport.

Once appropriate setbacks have been established from the escarpment, very little developable area will remain, which would be difficult to service. Any infrastructure would need to be connected to the remainder of the Tank Farm site, which would have significant impact on the proposed greenspace that would be located to the west of Phase 1. The highly-excavated site would likely require significant engineering to ensure proper compaction and stability of soils, which could result in additional excavation work and on-site processing to achieve ground conditions that facilitate residential development.

Site Preparation and Quarrying Activities

Quarry Designation and/or Regulations Should Apply

It was suggested that the regrading proposed for Phase 1 is similar to quarrying, therefore all OCP quarry regulations, specifically the buffer distance of 300 metres (Section 8.2), should apply. These quarry regulations arise under a Natural Resource designation, which is not being proposed. A Natural Resource designation would allow the developer to quarry the site without any plans for other future uses.

OCP designations set the vision for long range land uses through engagement with local residents and broader community. In order to achieve that vision, land preparation or site work may be required to make the land suitable for the desired use. This is becoming more typical in Whitehorse as our topography is increasingly challenging due to a scarcity of flat, dry, easily developable land. Natural Resource designation and associated OCP policy is not applicable in this case as the amendment is not proposing a land use to allow a long term quarry and instead is focused on enabling other uses on the site.

Further, the movement (volume/location) of material would be regulated by the City through zoning and development agreements, as well as the amended OCP policy

proposed under Bylaw 2020-10. Under a Mixed-Use –Industrial/Commercial designation, the developer would be required to demonstrate proposed subdivision design and final site conditions prior to any grading work.

Approximate nearby properties and neighbourhoods designated for residential uses include (distances measured to closest points):

- Hillcrest (Sunset Drive North) – 120 m
- McIntyre – 560 m
- Tank Farm (residential) – 65 m
- Alacrity parcel – 650 m
- Kwanlin Dün First Nation (KDFN) parcel on Sumanik Drive – 860 m
- Valleyview – 1000 m

Project Will Create Noise Pollution

Several submissions expressed concerns that the regrading process, as well as future industrial/commercial development, would create significant noise pollution for nearby residents.

The proponent stated that the noise and operation would likely be similar to past remediation and hauling activities. It is important to note that the development of a residential subdivision, though both infrastructure development and housing construction, could create significantly more noise disturbance than is currently occurring on the site.

Similarity to Other Proposals and Timeframe for Site Regrading

One submission stated that this proposal is similar to the amendment for a nearby Ta'an Kwäch'än Council (TKC) parcel that was withdrawn from consideration.

The proposal by TKC was for a long term gravel quarry. Information provided to the City suggested that the proposed quarry would have a life span of up to 25 years. A 25-year quarry is significantly different than the proposed relocation of material by the owner of the Tank Farm.

The proponent has stated that current estimates for the regrading process would be approximately 140 days and is feasible based on best available information at this stage of conceptual design, completed by their engineering team. The original proposal submitted as part of this OCP amendment had stated that the work could be completed in 60 days. The timelines associated with the regrading of the site would be established through a development agreement between the Tank Farm owner and the City.

According to the proponent, the increase in timeline for regrading is a result of the delays in processing the amendments and obtaining the required permitting, pushing the original intended start date of the project back from early summer to late fall / early winter. As a result, the work is now likely to occur in cold weather, which can pose a number of challenges and affect timelines. Additionally, essential work equipment and resources have now been committed to other projects and are no longer available for work at the Tank Farm. According to the proponent, the estimated length of the

regrading process is presented as a ‘worst-case’ scenario and assumes additional delays.

Volume of Material

One submission included a photo of the proposed material stockpile superimposed on an image of Downtown. This image was intended to demonstrate the visual impact of the stockpile, showing it as a cone 215 m in diameter and 62 m in height.

Based on information provided by the proponent, the stockpile area created from the regrading process would be approximately seven hectares in area, eight metres in height, 200 m in width, and 400 m in length. It would be located approximately 180 m north of Phase 1 and 380 m east of Hamilton Boulevard. This location represents roughly 13% of the total Tank Farm area (56 ha).

It should be noted that while the stockpile would generally be the same volume of material that will be relocated from the Phase 1 area, it will not be the same size. The stockpile area will be wider and longer than the excavation area, which will keep the height lower (approximate 4 m difference).

The material contained in the stockpile would be useful for land development (lot grading, fill of existing excavations, surface drainage, pipe/road bedding, road access, concrete, asphalt). This size of stockpile would contain more than enough material for this purpose for Phase 1 as well as future phases.

Royalties on gravel

One submission expressed concern that no royalties were being paid on the gravel that was removed from the site, similar to other quarries.

The majority of other gravel quarries in Whitehorse are operated through a lease of land from either YG or the City, which require royalty payments to the owner, per relevant legislation. The material removed from the Tank Farm was created through site remediation on private land, so no royalty payments would be required.

Remediation

Full Site Has Not Received Certificate of Compliance

Public input expressed that a current YG Ministerial Order restricts soils and material from being moved from one area of the Tank Farm and stockpiled on another.

A Certificate of Compliance was issued by YG for Phase 1 in 2019 and the Ministerial authorization is no longer required for activities on that site. Stockpiling of uncontaminated materials does not require Ministerial authorization. Construction of an internal haul road does require authorization, which YG Standards and Approvals Branch granted on March 31, 2020.

Per the proponent’s submission, all major remediation is complete on this site. The Department of Environment reports that hydrocarbon concentrations continue to exist below the current ground surface, at a depth greater than three metres. The area is not considered contaminated for residential development as long as a three metre vertical buffer can be maintained between the residential land use and the remaining

contamination. Through the direct control district designation for the Tank Farm in the OCP, the City can ensure that a three metre vertical buffer will be maintained on the residential portion of the Tank Farm.

The designation as a direct control district in the OCP also gives the City the ability to control remediation activities if any new remediation is found to be needed. The amending bylaw specifies that no material would be removed from the site and no processing would be permitted, unless authorized through a future amendment to the Zoning Bylaw and/or a development agreement.

Bylaw Removes Reference to Remediation

There was concern that the proposed bylaw removes the specific reference to remediation at the Tank Farm, which could create an issue if additional contamination is discovered.

Whitehorse has numerous locations where historical contamination has been discovered and remediation has occurred. Section 8.4 of the OCP includes general policies related to land remediation. As the intrusive on-site remediation work, such as excavation, is complete for the entire Tank Farm lot, the specific policy relating to site remediation is no longer necessary. Any minor contamination discovered through site development could be supported by other OCP policies.

Planning and Sustainability

Comprehensive Planning Process Should Occur Prior to Amendment

Concerns were raised that there should be a comprehensive planning process prior to proceeding with this amendment.

In 2012, an initial concept for the redevelopment of the Tank Farm was developed. Engagement was undertaken on the future of the Tank Farm, which included meetings with YG, City of Whitehorse, Kwanlin Dün First Nation, Ta'an Kwäch'än Council, the general public, and nearby community associations. This work cumulated in the creation of the preferred concept which divides the Tank Farm into an urban residential neighbourhood on the western (upper) portion of the site and a mixed use industrial/commercial area on the eastern (lower) portion of the site. The appropriate OCP designation is Mixed-Use Industrial/Commercial, as proposed. A limitation of uses could be examined through zoning to mitigate concerns over industrial uses.

The City also has been working with the property owner to undertake a comprehensive plan for the area surrounding the Tank Farm. Budget for this project was approved by Council and staff are preparing the scope of this project.

Volume of Fill Material Still Not Confirmed

One submission expressed concern that the expected volume of material required for the residential phases of the development was unknown and that detailed planning should occur to confirm volumes prior to proceeding with the amendment.

A previous public input submission from the proponent states that this detailed information is not currently available, but could be provided as part of a zoning amendment application. Additionally, the master planning process could provide more

accurate volumes for material required, as well as detailed information regarding haul routes, hours of operation, and onsite processing restrictions that could reduce impacts on the surrounding area.

It is unlikely that the full 750,000 cubic metres of material would be required for residential development. Note that this is new information; previous reports stated information, received from the proponent, that all material would be used in future development. Removal of any un-needed material from the larger Tank Farm area (Lot 429) could be restricted until detailed information is provided to the City.

Proposal Does Not Promote Sustainable Growth

One submission stated that the work completed under the OCP review states that Whitehorse should grow in a responsible and sustainable manner and that this amendment is not consistent with that vision.

The three pillars of sustainable development are often described as social equity, environmental protection, and economic viability. This amendment would promote sustainable development in Whitehorse by providing new employment opportunities and facilitating future residential growth near the core of the city, helping to reduce the sprawl of residential and commercial/industrial activity into the hinterland.

The Commercial and Industrial Land Study shows that there is already a latent demand for this type of land use that exceeds the seven-hectare parcel that is proposed as Phase 1 of development of the Tank Farm.

OCP Review Process is Ongoing

Some members of the public expressed concern that this amendment is coming forward during the ongoing OCP review and that it should be considered as part of that process.

The subject land is private property and the owner is proposing to advance the implementation of previous planning work for this area. The owner has also updated that plan through further design work which shows that the area under consideration for amendment should be considered independent from the remainder of the Tank Farm in regards to access and infrastructure, largely due to the physical alterations resulting from remediation activities. This private property may be able to provide a supply of commercial/industrial land as early as 2021, whereas the timeframe for final adoption of the OCP is uncertain.

Other Concerns

Concern Regarding Direct Control District Designation

Several submissions expressing support for the amendment also expressed concern with the designation of the Tank Farm as a direct control district as it would limit the ability to develop the property.

The regulations for direct control districts are found in Section 291 of the *Municipal Act*. The *Act* states that Council may implement direct control districts through the OCP. This allows Council to directly control the use and development of land or buildings in the area.

The Tank Farm property has been designated as a direct control district in the OCP since 2002. The change being contemplated in this bylaw would not create a new direct control district but amend the existing OCP policy to further clarify that Council may directly control any future management of granular material on the site.

At this time, Administration doesn't expect any restrictions will be needed on Phase One of the Tank Farm development, outside of material management during the regrading process. It may be desirable to limit more intense industrial uses as part of the future zoning amendment, which would be subject to a public hearing.

Proposed Bylaw Allows for Circumvention of Public Review

There was concern that the wording of the proposed bylaw allows for removal and processing of material subject to issuance of a development permit. It was stated that this could circumvent the public process as development permits are not open to public review.

If Council approves the OCP amendment, there is still a public process (zoning amendment) that could entrench further regulation/restrictions to mitigate public concerns regarding noise, traffic, and dust. These type of mitigation measures, such as limiting hours of operation and restricting material from being hauled off-site, are more easily and appropriately enforceable through zoning regulations than OCP policy. A development agreement (condition of subdivision), could also be used to regulate the volume of material and final grades for development in Phase 1.

No development permit allowing site regrading activities would be permitted prior to approval of a zoning amendment, subdivision of Phase 1, and potential negotiation of a development agreement.

Petition from proponent not valid

One resident was concerned about the validity of the informal petition provided by the proponent. It was stated that a letter provided in the previous public hearing was only considered as one submission, even though it had numerous signatures.

The informal petition submitted by the proponent has been considered as one submission in support of the amendment. Similar to the previous public hearing, the number of signatures has been noted.

Property now for sale

Several submissions noted that the property is now for sale and that this should result in the amendment being delayed indefinitely.

Amendments to the OCP are considered based on land use decisions, not ownership. Any regulations or approvals for the Tank Farm would carry forward, regardless of transfer of title.

Government Should Purchase Property

One submission stated that the City should purchase and develop the Tank Farm property.

The City does not have the financial resources to purchase and develop a parcel of this size. The City is rarely a land developer. Rather, the City is responsible for setting the planning framework within City boundary to support land development by industry and other players. Although not common in Yukon, the private industry is a key player in land development in most jurisdictions.

Support for Development

Numerous submissions, including an informal petition, were submitted in support of this amendment stating that new commercial and industrial lots are needed in Whitehorse.

Conclusion

It is important to note that this is the first step of the public approval process for this project and that if Council approves the OCP amendment, the proponent would still need to proceed through public zoning amendment and subdivision processes.

The current application is reviewing an OCP land designation change. The OCP is a high level document that guides future decisions. As such, the amendment is considering if this land designation change from Residential – Urban to Mixed-Use – Industrial/Commercial is appropriate given the surrounding land uses.

If Council agrees that commercial/industrial type uses are acceptable in this location, the details of how this is achieved could be implemented through a Zoning Bylaw amendment, as well as a development agreement registered through subdivision approval. However, basic restrictions have also been added to the OCP through an amendment to Bylaw 2020-10.

Any future zoning amendment or development agreement through subdivision should include regulations to mitigate concerns raised by the public. This could include:

- regulating the volume of material being relocated;
- restricting any material from being hauled off-site;
- limiting on-site processing of material;
- regulated hours of operation; and
- restricting uses allowed in the proposed Mixed-Use – Industrial/Commercial area, e.g. to match restrictions currently applied in the Wasson Place/Burns Road area.

ADMINISTRATIVE RECOMMENDATION

THAT Bylaw 2020-10, a bylaw to amend the Official Community Plan designation of a portion of Lot 429, Group 804, Plan 26170 LTO (Tank Farm) from Residential – Urban to Mixed-Use – Industrial/Commercial be brought forward for 2nd Reading under the Bylaw process.