

ADMINISTRATIVE REPORT

TO: Planning Committee
FROM: Administration
DATE: February 5, 2024
RE: Official Community Plan and Zoning Bylaw Amendments – Mining Activities

ISSUE

An application to amend the text of the Official Community Plan (OCP) and the Zoning Bylaw, to prohibit mineral exploration and extraction within city limits.

REFERENCE

- [Zoning Bylaw 2012-20](#)
- [Whitehorse 2040 Official Community Plan](#)
- [Municipal Act SY 2022, c. 2](#)
- [Quartz Mining Act SY 2003, c. 14](#)
- [Prohibition of Entry on Certain Lands \(City of Whitehorse\) Order O.I.C 2012/145](#)
- Appendix A: Definition of “mineral” in Quartz Mining Act SY 2003, c. 14
- Proposed Text Amendments – Official Community Plan (Attachment 1)
- Proposed Text Amendments – Zoning Bylaw (Attachment 2)
- Alternative Text Amendments – Zoning Bylaw (Attachment 3)
- Active Quartz Claims Map (Attachment 4)
- Proposed Official Community Plan Amendment Bylaw 2024-14 (Attachment 5)
- Proposed Zoning Amendment Bylaw 2024-15 (Attachment 6)
- Alternative Zoning Amendment Bylaw 2024-XX (Attachment 7)

HISTORY

An application was received to amend text in the OCP and the Zoning Bylaw to prevent mineral exploration and extraction within city limits. The intent of the proposed amendments is to protect against adverse effects on groundwater resources and minimize disturbances to residential areas and areas used for recreational purposes.

Quartz Mining Act and Municipal Act

The *Quartz Mining Act* is one of the principal documents which regulate mining and exploration activities in the Yukon. The *Municipal Act* (MA) grants municipalities the powers, duties, and functions necessary to represent and respond to the needs of the community. Neither act takes priority and each simultaneously applies. The MA grants municipalities jurisdiction over land uses, including mining and exploration, within their boundaries, which includes the ability to prohibit such activities. Section 289 of the *Municipal Act, R.S.Y. 2002, c. 154*, states that municipalities are permitted to “prohibit, regulate, and control the use and development of land and buildings in a municipality”.

Official Community Plan

The proposed text amendments to the OCP include replacing section 13.3 to prohibit mineral exploration and mine development as well as removing “mineral potential” from OCP section 15.12 (Attachment 1).

Currently, the only OCP designations that permit mineral exploration or mine development are the Natural Resource Extraction designation and the Industrial designation as an interim land use. There are several OCP policies that attempt to mitigate risk and nuisance factors associated with Natural Resource Extraction.

In addition to attempting to mitigate potential risk and nuisance factors from natural resource extraction, the OCP designates a significant portion of the city as Greenspace. Greenspace areas are designated to among other things, protect and maintain the integrity of sensitive ecosystems and provide outdoor recreational opportunities. Included in the Greenspace designation are five regional parks have been identified which represent over 30 per cent of the total area of the city.

Zoning Bylaw

Since the OCP is the highest level policy and planning document for the City, the Zoning Bylaw must comply with it and therefore text amendments to the Zoning Bylaw are being brought forward concurrently.

The applicant seeks to modify the definition of “Natural Resource Extraction” in the Zoning Bylaw to prohibit the extraction of minerals, as defined in the *Quartz Mining Act* (Appendix A), as well as remove “mineral extraction” from section 6.15.1 (Attachment 2).

The Zoning Bylaw currently permits natural resource extraction as a principal use in the IQ – Quarries zone and as a conditional use in the IH – Heavy Industrial zone. Natural resource extraction is further regulated as a specific use in section 6.15. Section 6.15.1 requires that prior to any gravel or mineral extraction, a development permit application, timing of phases, a restoration plan, and a Yukon Environmental and Socio-Economic Assessment Board (YESAB) decision document (if applicable) be submitted.

Schedule

On December 13, 2023, the application was reviewed by the Development Review Committee (DRC). The DRC recommended that Administration work with the applicant to modify their application so that it achieves their intended purpose. Administration worked with the applicant to adjust their proposed text amendments to better achieve their desired outcome.

At the Standing Committee meeting on January 8, 2024, the applicant spoke as a delegate briefly describing their requested OCP and Zoning Bylaw amendments. They also requested that the application fee be returned per section 15.2.7 of the Zoning Bylaw as they believe the proposed amendments are for the benefit of the city at large.

The proposed schedule for the OCP amendment and Zoning Bylaw amendment is as follows:

Planning Committee:	February 5, 2024
First Reading:	February 12, 2024
Newspaper Ads:	February 16 and February 23, 2024
Public Hearing:	March 11, 2024
Report to Committee:	April 2, 2024
Second Reading:	April 8, 2024
*Ministerial Review:	May 31, 2024 (assuming full 45-day review period)
Third Reading:	June 10, 2024

* Zoning Bylaw amendment will not undergo ministerial review

Notifications

Sections 280 and 294 of the MA provide details on the notification procedures for OCP amendments and Zoning Bylaw amendments respectively. Subsection 294(3) requires that notice be given to all persons affected by a Zoning Bylaw amendment by a method determined reasonable by Council.

Administration recommends that in addition to advertising the amendments in the newspapers for two successive weeks that notifications be mailed directly to all property owners in the IQ zone, Yukon Chamber of Mines, Yukon Chamber of Commerce, and the Whitehorse Chamber of Commerce.

Per section 15.5.3 of the Zoning Bylaw, after First Reading, Council can direct that the proponent of an amendment hold one or more public meetings to provide information on the proposed rezoning.

ALTERNATIVES

1. Proceed with the proponent's OCP amendment and Zoning Bylaw amendment under the bylaw process; or
2. Proceed with Administration's alternative Zoning Bylaw amendment under the bylaw process; or
3. Do not proceed with any of the proposed amendments; or
4. Refer the matter back to Administration and direct Administration to draft an alternative policy to regulate mining and exploration activities.

ANALYSIS

The proposed text amendments to the OCP and Zoning Bylaw would prohibit mineral exploration and extraction within city limits. Currently mineral exploration and extraction is permitted in limited areas of the city.

Since 2012, entering municipal lands for the purpose of locating a claim, prospecting, or mining for minerals was prohibited on a large portion of the city through the approval of the *Prohibition of Entry on Certain Lands (City of Whitehorse) Order*. No new claims can be staked in the prohibited area however there are many stakes that were claimed in the prohibited area prior to the *Order* coming into effect (Attachment 4). These stakes are grandfathered in and do not expire so long as they are kept in good standing.

The proposed text amendments to the OCP and Zoning Bylaw would prohibit mineral exploration and mineral development on all claims within the City. Additionally, any existing mineral claim holder would have to apply for an amendment to the OCP in order to conduct exploration activities as well as apply for an amendment to the Zoning Bylaw in order to get approval for the development of a mine.

It is important to note that gravel extraction and its related quarry operations would not be impacted by the proposed OCP and Zoning Bylaw text amendments. Gravel extraction provides raw material for new construction in the city and is fundamental to the local economy.

Alternative Option

If Council does not wish to proceed with amendments that would result in a complete prohibition of mining and exploration within the city, Administration has provided an alternative for consideration (Attachment 3). The alternative option does not require an amendment to the OCP but does propose amendments to the Zoning Bylaw.

The alternative Zoning Bylaw amendment includes new definitions for “mineral development” and “mineral exploration” that will be listed as conditional uses in the IQ and IH zones. Additionally, a new section (4.11.2) will be added to the Temporary Use Development Permit regulation to require that temporary use permits for mineral exploration be issued by Council. These alternatives will ensure that there is a public process, through a conditional use public input session, and a Council decision on all mineral exploration and development activities within city limits. This would allow for greater public involvement and Council oversight on mining activities within the city without imposing an outright ban.

The timeline for this alternative Zoning Bylaw amendment would follow the same as proposed bylaw 2024-25, with 2nd and 3rd reading tentatively being decided April 8, 2024.

Conclusion

The applicant has concerns that mineral exploration and extraction negatively impacts residential areas, areas used for recreational purposes, and ground water resources.

There are currently several policies and regulations in both the OCP and Zoning Bylaw that restrict mineral extraction in order to attempt to minimize risk and nuisance impacts to nearby residences. Areas designated as Greenspace in the OCP are appropriate areas to pursue recreational activities. Mineral claims do exist in some areas designated as Greenspace which is potentially an incompatible use.

Mineral exploration and extraction is currently restricted to areas designated as Natural Resource Extraction or Industrial in the OCP that are also outside of the prohibited area identified in the *Prohibition of Entry on Certain Lands (City of Whitehorse) Order*. The exception is mineral claims that are grandfathered in. The proposed text amendments would now prohibit mineral exploration and mineral development everywhere within city limits. There is a path for a mineral claim holder to pursue exploration activities and the development of a mine but it includes applying for both an OCP and Zoning Bylaw amendment.

Administration has prepared a set of alternative amendments for Council’s consideration. The alternative amendments would create defined uses for both “mineral exploration” and “mineral development”. These uses would be listed as conditional uses in the IH and IQ zones. This would allow for a more transparent public process and Council would be the final decision making body on mining activities within the city.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Administration’s alternative bylaw (Attachment 7), a bylaw to amend text within the Zoning Bylaw, be brought forward for consideration under the bylaw process.

Appendix A:

Definition of “mineral” in Quartz Mining Act SY 2003, c. 14

“mineral” means gold, silver, platinum, iridium or any of the platinum group of metals, mercury, lead, copper, iron, tin, zinc, nickel, aluminum, antimony, arsenic, barium, bismuth, boron, bromide, cadmium, chromium, cobalt, iodine, magnesium, molybdenum, manganese, phosphorus, plumbago, potassium, sodium, strontium, sulfur, or any combination of those elements with themselves or with any other elements, quartz, metallic oxides and silicates, and the ores of radium, tungsten, titanium and zirconium, asbestos, emery, mica, mineral pigments, corundum and diamonds, but does not include limestone, marble, clay, gypsum, or any building stone when mined for building purposes, earth, ash, marl, gravel, sand, or any element that may, in the opinion of the Minister, form a portion of the agricultural surface of the land”