

ADMINISTRATIVE REPORT

TO: City Planning Committee
FROM: Administration
DATE: April 15, 2024
RE: Public Hearing Report – Zoning Amendment – Mining Activities

ISSUE

Public Hearing Report on text amendments to the Zoning Bylaw to ensure that there is a public process and Council decision on all mineral exploration and mineral development activities within city limits.

REFERENCES

- [Whitehorse 2040 Official Community Plan](#)
- [Zoning Bylaw 2012-20](#)
- [Municipal Act SY 2022, c. 2](#)
- [Quartz Mining Act SY 2003, c. 14](#)
- [Yukon Environmental and Socio-economic Assessment Act S.C. 2003, c. 7](#)
- [2021 Yukon Mineral Development Strategy and Recommendations](#)
- [The Canadian Critical Minerals Strategy](#)
- [2015-2050 Sustainability Plan](#)
- [Maintenance Bylaw 2017-09](#)
- [2021 The Significance Of Cumulative Effects As a Matter to be Considered in YESAB Assessments](#)
- [Bylaw 2014-36 Fees and Charges Manual](#)
- [Council Procedures Bylaw 2021-12](#)
- [Prohibition of Entry on Certain Lands \(City of Whitehorse\) Order O.I.C 2012/145](#)
- Initial Proposed Zoning Amendment Bylaw 2024-23 (Attachment 1)
- Amended Proposed Zoning Amendment Bylaw 2024-23 (Attachment 2)

HISTORY

The current City process for issuing permits for mineral exploration does not include a public input process. If the proposal is compliant with the OCP and/or Zoning Bylaw a permit must be issued by a Development Officer. Conditions of approval can be applied; however, the *Municipal Act* requires that the City issue the permit. City Council currently has no role in reviewing these applications.

The City received an application to amend the text of the Official Community Plan and Zoning Bylaw to prohibit mineral exploration and mining within city limits. Administration provided an alternative option that included the following amendments to the Zoning Bylaw:

- New definitions for “mineral development” and “mineral exploration”;
- Adding “mineral development” and “mineral exploration” as conditional uses in the IQ-Quarries and IH-Heavy Industrial zones; and
- A new section added to the Temporary Use Development Permit regulation to require temporary use permits for mineral exploration follow conditional use procedures and be issued by Council.

Bylaw 2024-23, Administration’s alternative option, received First Reading on February 12, 2024. Public Hearing notifications were sent out in accordance with the Zoning Bylaw 2012-20, including:

- Newspaper advertisements were posted in the Whitehorse Star and Yukon News on February 16 and February 23, 2024;
- Email notifications were sent to Kwanlin Dün First Nation (KDFN), Ta’an Kwäch’än Council, Government of Yukon (YG) Land Management Branch, Whitehorse Chamber of Commerce, Yukon Chamber of Commerce, and the Yukon Chamber of Mines; and
- Property owners in the IQ-Quarries and IH-Heavy Industrial zones were notified by mail.

A public hearing for this item was held on March 11, 2024. Seven written submissions were received, all voicing concerns or opposition, and fifteen members of the public spoke to the item at the Public Hearing. Two delegations on behalf of local mineral exploration companies were made at a February 5, 2024 Council Standing Committee meeting.

The City also received a letter from KDFN on March 8, 2024 requesting a meeting to discuss KDFN’s jurisdiction, rights, and responsibilities with respect to its lands and mining activities.

ALTERNATIVES

1. Proceed to second hearing under the bylaw process; or
2. Amend the bylaw, defer consideration of second reading, and direct that a second public hearing be held.

ANALYSIS

The following matters were raised at the Public Hearing:

- Legislation;
- Water contamination;
- Impacts to wildlife and nuisance impacts;
- Recreational impacts;
- Green economy;
- Mineral exploration versus mining;
- Additional costs and delays;
- Abandoned mines;
- Compensation;
- City capacity and expertise;
- Impacts to local economy;
- Return of fee; and
- Other

Legislation

Some members of the public expressed concerns that the City does not have the legislative authority to decline a development permit for mining activities under

proposed Bylaw 2024-23 if a YESAA decision document permits a project. Therefore, they prefer a ban on mining activities within city limits and oppose proposed Bylaw 2024-23.

Some expressed that they believe the City does have the legislative authority to decline a development permit for mining activities. Another wanted clarification on the City's legal authority related to mining activities.

Quartz Mining Act

A member of the public raised concerns that Section 50 of the *Quartz Mining Act*, which states that the holder of a mineral claim is entitled to all minerals within the boundaries of their claim, would require that the City issue a development permit for mineral exploration or extraction, regardless of whether it wanted to or not.

Although the *Quartz Mining Act* is one of the principal documents that regulates mining and exploration activities in the Yukon, the *Municipal Act* 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* states that municipalities are permitted to “prohibit, regulate, and control the use and development of land and buildings in a municipality.” Neither Act takes priority and each of them simultaneously applies.

Yukon Environmental and Socio-economic Assessment Act (YESAA)

A delegate raised concerns that section 83(2) under YESAA would require that the City issue a development permit for mining activities, whether it wanted to or not, if a decision document issued by the territorial minister through a Yukon Environmental and Socio-economic Assessment determined that a project should proceed.

Section 83(2) of YESAA states that “to the extent of its authority under the *Yukon Act*, territorial laws or municipal by-laws, every territorial agency and every municipal government undertaking a project, requiring it to be undertaken or taking any action that enables it to be undertaken shall implement a decision document issued by the territorial minister in respect of the project.”

The decision document is not a licence or permit for a project to be undertaken but rather a document allowing a project to proceed to the licensing and permitting stages. The City is bound to follow the decision document under YESAA, but only where the required permits or approvals are being provided for the project. The effect of the decision document is not to supersede the regulatory authority of municipalities or to otherwise bind municipalities to approve a project. In other words, the City is not obligated to enable or issue permits for a project approved through a YESAA decision document.

The *Municipal Act* 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* states that municipalities are permitted to “prohibit, regulate, and control the use and development of land and buildings in a municipality.”

New Mining Legislation

Delegates expressed a desire for the new territorial mineral resource legislation, which will replace the *Quartz Mining Act*, to come into effect prior to the City making any

decisions on mining or exploration projects within municipal boundaries. Delegates voiced discontent with the outdated *Quartz Mining Act* and encouraged the City to call on YG to enact the new legislation in a timely manner.

A Yukon Mineral Development Strategy was released by YG in 2021 which recommended new mineral legislation for quartz and placer mining be enacted by the end of 2025. Administration is supportive of YG enacting new mineral legislation that is more reflective of current circumstances and best practices. However, Administration received a complete Zoning Bylaw text amendment application and the applicable application fee in December 2023. Therefore, the City is required to proceed through the review process under section 15.3 of the Zoning Bylaw and cannot rely on legislation that may be enacted in the future, but rather legislation that is currently in place.

Water contamination

Several members of the public expressed concerns that mining activities within city limits could lead to the contamination of drinking water and expose residents to radon gas. Drill holes allow a path for radon gas to migrate through groundwater or aquifers, up private water wells, and into dwellings exposing residents to it. A delegate representing a mineral exploration company stated that they have been working with the Government of Yukon to expand water monitoring and the testing of wells.

A resident highlighted that the University of Calgary has published a research paper that concluded that rural areas have higher radon concentrations. They noted that the research found that any private water well within 600 m of drill holes could provide a pathway for radon to enter dwellings. They also stated that Yukon University is conducting research on radon contamination in the city and that it may provide valuable information.

Most residents in the city rely on groundwater for drinking water. Buildings connected to the municipal water system rely on the Riverdale Aquifer where water is pumped to the Selkirk Pumphouse. The water quality is continuously monitored at the Selkirk Pumphouse and weekly at 25 locations throughout the system. Some dwellings are connected to a private well and others have water delivered to holding tanks. Since the water quality of private wells is not monitored, unless by individual property owners, potential water contamination and radon gas exposure from mining activities is of a higher concern.

A YESAA assessment is required for a Class 2, 3, or 4 exploration program. As part of the assessment, drainage, distances of proposed activities to waterbodies, erosion, and sedimentation among other items are reviewed. The YESAA review can provide recommendations and the subsequent decision document can provide conditions of approval such as monitoring plans. Additionally, a water licence from the Yukon Water Board is required for the use of water or deposit of waste and is typically required for production-level projects.

Furthermore, the OCP requires a 30 m riparian setback per policy 7.7. Mineral activities are only permitted in areas designated as Natural Resource Extraction or Industrial in the OCP. There is an approximate 300 m buffer required between Natural Resource Extraction activities and areas designated as Residential and Heavy Industrial uses are

subject to a 500 m buffer from areas designated as Residential. Additionally, the City will not support uses or activities that will have a significant negative impact on surface or groundwater quality per OCP policy 7.17.

The proposed amendments allow Council to have oversight over all mining activities within the city and evaluate each proposed project on a case-by-case basis. If new data shows that larger separations between mining activities and residential areas are recommended to prevent water contamination or exposure to radon gas, Council has the ability to reject proposed projects that do not meet those separations. Council also has the ability to require conditions to mitigate or monitor potential impacts.

Impacts to wildlife and nuisance impacts

Residents expressed concerns that mining activities within city limits would negatively impact wildlife. They also raised concerns with noise and dust impacts that mining activities could have on nearby residents.

The OCP Map 1 - Greenspace Network Plan and Parks, shows environmentally sensitive areas which includes high value habitat areas and wildlife corridors. Per OCP policy 7.1.2, development will be limited in environmentally sensitive areas. Additionally, per OCP policy 7.3, natural area fragmentation will be limited to support wildlife and ecosystem health.

As stated previously, mining activities are limited to the Natural Resource Extraction and Industrial designations in the OCP and are required to maintain separation distances for development separation, visual barrier, and noise buffering. OCP policy 15.12.3 requires mitigations to address traffic, dust, noise, and wildlife impacts. Additionally, any mining activities within city limits will need to comply with the Maintenance Bylaw in regard to noise and air pollution.

Recreational impacts

Members of the public were concerned that trails and the enjoyment of recreational activities would be negatively impacted if mining activities were permitted within city limits. The Whitehorse Cross Country Ski Club expressed a desire for the establishment of Chasàn Chuà/McIntyre Creek Park as an official park and that mining should be prohibited within the park boundaries.

The City is committed to working with Kwanlin Dün First Nation, Ta'an Kwäch'än Council, Yukon University, Parks Canada, and YG to formally establish the Chasàn Chuà/McIntyre Creek Park per OCP policy 14.3. As part of this process, a comprehensive management plan for Chasàn Chuà/McIntyre Creek Park will be completed to confirm the Park's boundary, vision, and level of protection. The Park is designated as Greenspace where mineral exploration or development activities are not permitted.

Green economy

Some members of the public and a delegate representing a local mineral exploration company claimed that mining activities are required in order to transition to the green economy. A delegate representing a local mineral exploration company also noted the benefits of exploring and mining closer to existing infrastructure, which would result in a

reduction of travel and shipping time and their associated carbon costs. In 2022, the federal government released the Canadian Critical Minerals Strategy which aims to increase the supply of responsibly sourced critical minerals and support the development of domestic and global value chains for the green and digital economy. The Strategy identifies 31 critical minerals that are required for the transition to a low-carbon economy. The Yukon Chamber of Mines stated that the Yukon is known to have 26 of these 31 critical minerals.

Members of the public expressed that copper is identified as a critical mineral, which has historically been found in the city, and is an essential element in renewable energy technologies, such as solar panels, wind turbines, and electric vehicles. Whitehorse can benefit economically while also contributing to the ongoing green energy transition by allowing mining activities within city limits.

Administration recognizes that critical minerals are required for the production of renewable energy resources and indirectly required in order to meet the City's greenhouse gas reduction targets described in the Sustainability Plan. Proposed Bylaw 2024-23, would allow Council to make site-specific decisions after hearing from interested parties. This will allow Council to consider the costs and benefits of a proposed project and balance competing interests and values.

Mineral exploration versus mining

Several members of the public expressed that there is a difference between mineral exploration and mining. Mining cannot occur without mineral exploration but mineral exploration can and does occur the majority of the time without any further mineral development. They questioned how Council could make sound decisions on mining activities if it does not know if, how much, or where minerals are located within city limits; mineral exploration answers these questions.

A representative of the Canadian Parks and Wilderness Society Yukon Chapter voiced concerns that a Class 1 quartz exploration project has relatively little disturbance but they have concerns that it can progress to Class 3 or 4 project and they question whether the City would deny a project from proceeding to a Class 3 or 4 if it has already approved a Class 1 project. They were also worried about the cumulative effects of mining activities.

The City will continue to consider mineral exploration and mining on a case by case basis. If a proponent would like to proceed from a City-approved Class 1 project to a Class 2, 3, or 4 project, the project would be first subject to a YESAA assessment. Cumulative effects are considered as part of YESAA assessments and any findings or recommendations are provided in the publically-available Yukon Environmental and Socio-economic Assessment Board (YESAB) evaluation report. The Decision Body then either accepts, rejects, or varies the YESAB recommendation. If a proposed project, of which cumulative effects will be considered, is rejected, it will not proceed to the City for approvals.

The proposed zoning amendments 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 will allow for greater public

involvement, transparency, and Council oversight on all mining activities within the city limits.

Additional costs and delays

Some members of the public noted that the mining industry is already heavily regulated and that the proposed amendments will add additional costs and delays.

The proposed amendments will add some costs and delays. The processes prior to the City approvals, such as YESAA assessments, will however remain the same. With the proposed zoning amendments, a proposed project related to mining activities will be required to proceed through a Council process when it may not currently be required to. This will add approximately three months to the timeline, and possibly a bit more if Council requests a public meeting per section 15.5.3 of the Zoning Bylaw, for a proponent to receive a decision. The cost associated with a rezoning application is \$2,000 and the cost associated with a conditional use application is \$1,250. Additional consultant costs may also apply in order to support an application.

Administration believes that the additional time and costs are relatively minimal to ensure a transparent process that includes the ability for the public to provide input and for Council to have oversight over mining activities. The City is responsible for coordinating land use planning and infrastructure expansion and maintenance, and mining in particular can have significant impacts on the implementation of City plans.

Abandoned Mines

Some members of the public stated that other mining projects in the Yukon resulted in abandoned mines that tax payers must now pay to remediate. They argued prohibiting mining activities in the city is a small area in comparison to the total area where mining activities are permitted in the Yukon and would prevent a situation where a mine could be abandoned near residential areas.

Administration acknowledges that there have been several abandoned mines in the Yukon that have caused contamination and costly remediation efforts. However, YG can collect a security, per section 139 of the *Quartz Mining Act*, for a mine or mineral exploration projects to address the reclamation and closure liability of a site. The total value of financial securities held by YG for mining projects in the Yukon is approximately \$196 million and approximately \$4 million for exploration projects.

Administration believes that the ability of YG to require a security will ensure that financial resources are available to remediate and close a mine. Under the proposed bylaw, Council can also require a development permit agreement or add conditions to a development permit if it were to approve a proposed project to mitigate concerns.

Compensation

Concerns were raised regarding the potential for an increase in stakes being claimed with the intention of seeking compensation in the future when or if mining activities are prohibited in the city. The Peel Watershed Planning Region was provided as an example where an increase in stakes occurred when a prohibition on mining activities was being contemplated in certain areas.

The proposed amendments will not ban mining activities within city limits. There is a path for a proponent to undertake mining activities within the city. It is not anticipated that significant increases in staking nor compensation will be sought if the proposed amendments are approved. The YG led mineral staking ban, *Prohibition of Entry on Certain Lands (City of Whitehorse) Order*, has already limited the available areas that remain open for staking.

City capacity and expertise

A member of the public expressed concern that the City does not have the capacity or expertise to evaluate proposed mining activity projects.

As stated previously, a YESAA assessment is required for any Class 2, 3, or 4 quartz exploration project which occurs prior to any City decisions or approvals. A water license from the Yukon Water Board may also be required.

Administration is unlikely to duplicate processes or assessments that have already occurred in regards to a proposed project. If the evaluation of a proposed project, or an aspect of a proposed project, is outside of the expertise or capacity of Administration, a third party review can be sought.

Impacts to local economy

A member of the public, and representatives of local mineral exploration companies spoke to the positive benefits that mineral exploration and mining provide to the local Whitehorse economy, particularly economic diversification, job creation, direct investment, and indirect support of local businesses. The delegates expressed additional concerns, suggesting that the proposed amendments could undermine the operations of legitimate businesses that adhere to established legislative frameworks.

OCP Policy 10.3 states the City will continue to work with partners to support the resource development and mining industry. As stated previously, the proposed amendments will not ban mining activities within city limits and the proposed amendments will allow for this work to continue, with additional oversight by Council and opportunities for public input.

Per Sections 277 through 297 of the *Municipal Act*, the City has the right to prepare OCPs and Zoning Bylaws that may restrict land uses to the extent that is necessary for the overall greater public interest. The proposed amendments still allow for mining activities to occur within city limits and will allow Council to better understand the greater public interest through a public input process.

Return of fee

The applicant of the initial OCP and Zoning Bylaw amendment proposals has requested that the fee they paid in the amount of \$3,000 for their proposed amendments be returned.

If it appears that the proposed amendment is one which is applicable to, and for the benefit of the city at large, or most of the persons affected in the area, then Council may direct that the application fee be returned to the applicant per section 15.2.7 of the Zoning Bylaw. Administration believes that the applicant's proposed amendment was for the benefit of the city at large and the fee should be returned.

Other

Since the closure of the public hearing on March 11, 2024, Administration received a substantial number of additional public input submissions. Since they were received after the closure of the public hearing, they cannot be considered under the *Council Procedures Bylaw*.

Administration is of the opinion that these submissions have the potential to raise significant new information which Council may want to receive for further consideration. Council may pass a resolution authorizing a second public hearing to be held as per section 89(4) of the *Council Procedures Bylaw* which would allow for receipt of significant new information after the closure of the public hearing held on March 11, 2024. If Council proceeds with a second public hearing, Administration recommends that the proposed Bylaw 2024-23 be amended to modify the definition of “Natural Resource Extraction.” Proposed Bylaw 2024-23 amendments were designed to remove “mining” from the definition of “Natural Resource Extraction”, and create a separate definition for “Mineral Development”. Unfortunately, the change to the “Natural Resource Extraction” definition was not included within the zoning amendment Bylaw 2024-23 due to an error.

Administration received an Official Community Plan and Zoning Bylaw text amendment application from a member of the public which initiated this process. Administration is required to adhere to the bylaw process which has resulted in less engagement than if it would have been a City-initiated project. There are some factors that were not fully considered when Administration initially responded to the application. These factors include engagement with First Nation governments with special attention to their Type 1 lands, tiers of mineral exploration such as those with low impact or short duration activities on previously disturbed sites, and public and industry engagement.

Administration is therefore recommending that Council not proceed with second and third reading so that Administration can conduct meaningful engagement with First Nation governments, industry, and the public as well as conduct further research and jurisdictional reviews prior to bringing proposed amendments to Council for consideration. A consultant would likely be hired to conduct this work with updates anticipated to be available in early 2025.

In the meantime, mineral exploration and mining would continue to be regulated as per the status quo. Development permits for mining activities compliant with the Zoning Bylaw and temporary use development permits for mining activities that are compliant with the OCP will be issued by Development Officers. Council will continue to make decisions regarding mining activities if an OCP amendment, Zoning Bylaw amendment, or conditional use is required.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2024-23, a bylaw to ensure that there is a public process and Council decision on all mineral exploration and mineral development activities within city limits, be brought forward to second reading and defeated; and

THAT Council direct that the application fee be returned to the applicant per section 15.2.7 of the Zoning Bylaw