

ADMINISTRATIVE REPORT

TO:	Planning Committee
FROM:	Administration
DATE:	June 1, 2020
RE:	Public Hearing Report – OCP Amendment (Tank Farm Phase 1)

ISSUE

A report on the public hearing for an amendment to the 2010 Official Community Plan (OCP) to allow for commercial and industrial development on a portion of 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*
- *Yukon Environmental and Socio-Economic Assessment Act (2015)*
- Commercial & Industrial Land Demand Study (draft, 2020)

HISTORY

In 2011, Environment Yukon designated the 56-hectare Tank Farm site as a contaminated site which means it is subject to the Yukon Contaminated Sites Regulations under the *Environment Act*. In May 2012, public engagement was undertaken on the future of the Tank Farm by the property owner. This work culminated 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.

In December 2012, Council approved an OCP amendment to allow for remediation and quarrying activities in order to clean up the site for future development. During the remediation process, the site has undergone significant re-contouring.

3 Pikas, acting on behalf of the owner of the Tank Farm site, has applied to amend the OCP to facilitate industrial/commercial development on the south-eastern portion of the site. 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.

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. 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.

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. This material would be moved to another area of the Tank Farm site and stockpiled for use in future phases (e.g., road construction). According to the applicant, the timeframe for the relocation of the material to another area of the Tank Farm would

be relatively short (approximately 3-4 months). 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.

If the proposal is approved there would also be a significant grade change of approximately 12 m between proposed Phase 1 and the future residential area, which would help to mitigate impacts resulting from a change in land use.

Bylaw 2020-10 received first reading on March 30, 2020. Notices were published in the newspapers on April 3 and 9 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 mail.

A public hearing was held on April 27, 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. Sixty-nine written submissions were received (3 in support/58 opposed/8 expressing concerns). The following issues were raised:

- Proposed OCP designation is inappropriate
- Impact to greenspace, buffers, and recreation
- Concerns with quarrying-type activities on-site
- Issues with regulations and legislation
- Other concerns and considerations
- Support for development

ALTERNATIVES

- 1) Proceed with second reading under the bylaw process.
- 2) Amend the bylaw to address public concerns with quarrying-type activities.
- 3) Do not proceed with second reading.

ANALYSIS

OCP Designation is Inappropriate

Incompatible Land Use

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 MacDonald Road.

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 Phase 2 (residential, 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 Phase 2, which should limit impacts of the proposed amendment to Phase 1 on any future residential development.

Due to soil instability, proximity to slope and absence of a buffer from Wasson Place, the subject area is not suitable for residential land development. Further, it would be difficult to extend servicing to this area from the west without impacting the proposed buffer area. Re-grading this area to lower it and match the current development pattern on Burns Road and Wasson Place is the most appropriate development option for the subject area.

Natural resource extraction, such as quarrying, is not clearly distinguished from site preparation and re-grading in the existing OCP. This issue is being addressed through the OCP review process. 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.

Previous Planning Work

Concerns were raised that the previous planning work is not appropriately represented in this amendment application.

The previous development planning work for the Tank Farm completed by Golder showed the subject area as 'mixed-commercial', and was intended to be the same as the mix of uses already established on Burns Road. 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.

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.

If the current Phase 1 area was retained for residential use and left at its current grade, it would be west of the proposed vegetated buffer, on top of an escarpment that regularly experiences high winds and is subject to noise from the Alaska Highway, airport, and existing uses on Wasson Place and Burns Road.

In addition, the area is quite small once appropriate setbacks have been established from the escarpment, leaving very little development area, which is 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 buffer. Replacing the excavated material 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 results that facilitate residential development.

Land Demand

Some residents stated that this area should remain designated as Residential as there is high demand for that type of land use within the City. Further, there was concern that this amendment would set a precedent of changing residential designations to industrial designations elsewhere in the City and that there were other areas of the city that could accommodate industrial/commercial activity.

It is correct to state that there is significant demand for residential development within Whitehorse. City and YG resources have continually been allocated to meeting this demand through work on Whistle Bend, infill development, and rezoning and subdivision applications.

However, there needs to be a balance in land use allocation throughout the municipal land base. Commercial and industrial land development help support the economy and provide jobs for residents. As part of the ongoing OCP review process, Administration is accommodating the demand for different land uses. Some shifting of designations and land quantum may be appropriate. Approving a designation change for the subject area would not set a precedent for future OCP amendments. Administration examines each amendment on its own merits, impacts, and mitigation measures, and provides a recommendation to Council.

The City has received a draft of the Commercial & Industrial Land Demand Study. Findings indicate that in addition to future projected land supply needs, there is a current shortage of mixed-use commercial/industrial lots within Whitehorse. Engagement summaries indicate there is interest to see options for both serviced and un-serviced lots to be brought to market to suit differing needs. Additionally, several recent land applications show anecdotal market demand for new commercial/industrial land. This site is suitable for providing new serviced commercial/industrial development lots in the short-term. There are very few other locations with this potential.

Ongoing OCP Process

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. Additionally, concern was expressed that the OCP amendment should be delayed until the master planning work is completed so that development is not completed in a piecemeal approach. Residents also expressed interest in seeing the 2012 planning work.

The previous design work for this area divided the Tank Farm into two sections, in which the upper portion would be residential development and the lower portion would be non-residential development. The OCP amendment that was brought forward at the time was focused on remediation and did not propose any designation change.

The latest design shows Phase 1 as being independent from the remainder of the Tank Farm. Therefore, development and planning in this area is being considered separately from an overall master plan.

Per information from the applicant, the 2012 planning work is somewhat out of date and no longer represents a preferred residential design for the area. However, the 2012 work

was provided to the public through directing them to the YESAB Registry, where the documentation could be downloaded.

Impact to Greenspace, Buffers, and Recreation

Impact to Existing and Future Areas

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. It should be noted that much of the area that has been impacted 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.

Land Swap

One submission proposed a land swap between the City and proponent that would potentially reduce the amount of area that needs regrading.

The submission stated that there is a City owned 30 metre buffer strip located between the existing lots on Wasson Place and the Tank Farm property line. This buffer previously followed the embankment and contained an informal trail. A land swap would allow the proposed commercial/industrial lots to abut the lots on Wasson Place, and ensure that the overall quantity of publicly-accessible lands is not impacted.

This is a valid design suggestion that Administration is already reviewing with the proponent at a high level. If this suggestion is deemed viable and acceptable by both parties, the boundaries could be adjusted during the zoning amendment phase of this project.

Importance of Green Connections

Some submissions stated that greenspace and active transportation links are very important to this area and should be included in planning prior to approval of this OCP amendment.

Section 12.1 of the OCP promotes and requires active transportation routes as part of development throughout the City. Administration would require that trail and active transportation connections to nearby destinations be factored into any master planning for the Tank Farm and surrounding area. The intent of planning work to-date is to provide the main north-south pedestrian connection through the greenspace buffer area at the top of the escarpment. The final location of the trail would be confirmed through future detailed planning work. Providing an active transportation linkage to the rear of lots in a mixed-commercial/industrial area on Wasson Place is not required. Appropriate east-west linkages will be examined through the master planning work.

Concerns with Quarrying-Type Activities On-Site

General Quarrying Activity

The majority of public input submissions were focused around movement of granular material from the subject area. Concerns were related to quarrying-type activities that could be disruptive to residents in surrounding areas for a variety of reasons.

Per the proponent's amendment application, 750,000 cubic metres of material would be moved from the subject area to another area of the Tank Farm property using an onsite haul road. Council could regulate that no material is to be removed from the site through OCP and Zoning Bylaw amendments, thus limiting impacts on local roads, such as Sumanik Drive, and surrounding properties. The material stockpile would be used for the residential development of the remainder of the property. Per information from the proponent, the timeline for relocation of material would be approximately 3 to 4 months. As additional information is provided through a future zoning amendment process, Council could set timelines for material movement that expire by a specific date. This could be enforced through zoning and/or a development agreement.

There was specific concern regarding how the proposed 750,000 cubic metres of material would be moved, how long it would take, and where it would be stored. There were also concerns raised regarding traffic, noise, and dust impacts, as well as impacts on infrastructure, such as heavy traffic and debris on roads.

The proponent has stated in their public hearing submission that there will be no quarrying of the site to remove material for use in other locations, but that excess material may need to be moved off-site in the future. However, re-grading is required. Re-grading is necessary as the remediation work has required extensive removal of vegetation, topsoil, and underlying till and sand (to a depth of 11 m in some cases), which has destabilized the existing slopes. The existing slopes are not engineered and are actively eroding due to exposed materials. Re-grading the site to an elevation similar to Wasson Place will address these issues and create a stable buffer slope between the subject area and the remainder of the Tank Farm property.

Volume of Material

Several submissions expressed concern that the expected volume of material required for the residential phases of the development was significantly less than 750,000 cubic metres, as well as potential impacts (noise/dust) from on-site processing of material and what would be happening with excess material.

A 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. The proponent stated that the noise and operation would likely be similar to past remediation and hauling activities. Additionally, the master planning process (to projected to commence summer 2020) will 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. However, removal of this material from the larger Tank Farm area (Lot 429) could be restricted until detailed information is provided to the City.

Without detailed design work for the residential portion of the Tank Farm, it is very difficult to get an accurate estimate of the volume and type of material required for infrastructure development. If Council approves the OCP amendment, there is still a public process (zoning amendment) that could entrench 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.

Similar restrictions could also be included in the OCP by amending the proposed bylaw at second reading. That amendment could address material leaving the site and on-site processing, unless authorized by Council through future amendment. This would allow for potential use of stockpiled materials on-site once master planning and detailed infrastructure design are complete.

Regardless of where regulations are established, no regrading of the site would occur until zoning and subdivision had been approved and a development permit was issued, which contained reference to all regulations and conditions.

Quarry Designation and/or Regulations Should Apply

It was suggested that the proposed amendment should be for a Natural Resource designation, so that this process would be more transparent. It was suggested that this alternative amendment would allow the regrading work to be completed and then a more comprehensive plan could be provided as part of the future OCP amendment for the entire site. It was also separately expressed that as the regrading work is similar to a quarry, OCP quarry buffer distance of 300 metres (Section 8.2) should apply.

OCP designations set the vision for long range land uses through engagement with local residents and broader community. In order to achieve that vision, interim uses and 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. OCP policy, zoning regulations and development agreements should be written to ensure the vision, as set out through engagement, is achieved.

Natural Resource designation and associated policy is not applicable in this case as the proposed amendment is not considered a quarry. It is worth noting that this level of regrading is more significant than other developments, but is not considered quarrying

as it is focused on enabling development of the site as a whole, and is not intended to result in removal of material from the site. Further, the movement (volume/location) of material could be regulated by the City through zoning and development agreements. A Natural Resource designation would allow the developer to quarry the site without any plans for future uses. 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

OCP Policy Amendments

Under policy 8.4.4 and 8.4.5, the work completed at the Tank Farm to date is considered within the scope of the remediation work proposed in 2012. These policies allow for clearing, excavating, crushing, land treatment facilities, and removal of soil and natural materials from the site. Further, the policy allows for temporary quarry activities, including removal and off-site sale of materials, while remediation is occurring. This policy specifically states that the 300 m buffer is not applicable to this site.

As part of this amendment, Policy 8.4.4 and 8.4.5 could be removed from the OCP, as the remediation work is now complete and the policy is no longer applicable. Council may choose to remove this policy from the OCP as part of this amendment to clarify that crushing, land treatment facilities and removal of gravel from the Tank Farm site for the purpose of land remediation is no longer permitted.

Additionally, it is recommended that Council amend Policy 10.7.9. This policy currently establishes the Tank Farm area a Direct Control District, pursuant to Section 291 of the *Municipal Act*. This allows Council to directly control the use and development of land buildings within the area. This policy also refers to remediation work, which is now out of date.

Amendments to this policy would add restrictions for granular material movement and on-site processing at the Tank Farm, as well as remove any reference to remediation.

Precedent for other Quarrying-Type Activities

Some residents were concerned that allowing site regrading would set the precedent that quarrying should be permitted on other parcels in the area, including the Kwanlin Dün and Ta'an Kwäch'än Council parcels along the Alaska Highway.

Approval of this amendment would not set a precedent for future amendments as each is considered on its own merits, such as context, viability, and technical considerations.

Issues with Regulations and Legislation

YESAB Process

Residents raised concern that the Yukon Environmental and Socio-Economic Assessment Board (YESAB) review was not required for the current project. Concern was also expressed concern that the previous YESAB recommendations had not been followed for the remediation work.

Section 47(2) of the *Yukon Environmental and Socio-Economic Assessment Act* establishes which projects are eligible for assessment. The proponent will need to discuss eligibility criteria with YESAB to determine if a review is required for this project.

The YESAB Decision Document was focused more towards the land treatment facility, remediation activities, and contamination than ongoing earthworks. Remediation work for the Tank Farm property complied with the Contaminated Sites Regulations. Regulatory oversight of this work was undertaken by the YG Standards and Approvals Branch. Enforcement of compliance fell under the Environment Act, through development restrictions, reporting, and remediation standards. Subsequent City OCP policy and permits, which have since expired as remediation activity is complete, also allowed for processing and hauling.

Ministerial Order

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 the Government of Yukon 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 and an application was submitted to YG Standards and Approvals Branch. This authorization was granted on March 31, 2020.

Remediation Process

There were concerns that the site is not fully remediated and ready for further development. Remediation work on the Tank Farm has been ongoing in conjunction with the National Energy Board (NEB) and Environment Yukon. In 2009 the property was released by the NEB for industrial usage based on the contamination level at that time. However, further remediation was needed to allow for residential and commercial uses.

Certificates of Compliance have since been issued for the northwest corner of the site (2015), as well as the subject area (2019). As such, these areas have been released from the Contaminated Sites registry and are considered developable properties.

Ongoing remediation efforts are related to monitoring in areas where contamination exceeds the aquatic life groundwater standards. According to the proponent, monitoring indicates hydrocarbon concentrations are decreasing. Once two years of groundwater sampling results show contamination levels below aquatic life standards an application for a Certificate of Compliance will be made to Environment Yukon.

Intrusive on-site remediation work, such as excavation, is considered complete for the entire Tank Farm area, as the groundwater contamination does not pose a risk to human health or the environment and there are no wells in the vicinity.

Other Concerns and Considerations

COVID-19

There was concern expressed that due to the COVID-19 pandemic, the timeframe between the notification and public hearing submission deadline was too short and that the Public Hearing should be delayed.

The timeline for the public to comment was consistent with requirements in the *Municipal Act*, which mandates a minimum seven days between the notification and public hearing. There is no requirement for delaying a public hearing in the *Municipal Act* or City policies and bylaws due to the ongoing health emergency.

Excuse to Delay Residential Development

There was concern raised that the current proposal is an excuse for the proponent to delay residential development on the remainder of the site. The timing for residential development is out of the scope of this amendment. However, sale or lease of property along Wasson Place, as well as a stockpile of granular material relocated from Phase 1 will assist in facilitating future residential development.

Tax Revenue Versus Citizen Health

A concern was raised that the tax revenue received by the City should not be put ahead of the health and well-being of residents in the area and that land development within Whitehorse needs to balance development rights on private property, with concerns of nearby residents, as well as quiet enjoyment of property.

Mitigation of health concerns related to noise and dust caused by development of the subject area can be implemented through City policy and bylaws. It should be noted that residential development is supported in this area, which will likely have significant impact on nearby residents. Infrastructure development and building construction, which could last a decade or more, will create noise and possibly vibration impacts in the area. Additionally, hundreds and possibly thousands of new residents will have a significant impact on trail usage, greenspace and local traffic.

Conflict of Interest

Public input stated that there would be a conflict of interest for the City in approving the proposed amendment as the proponent has been awarded numerous infrastructure contracts by the City. The City has a procurement and contract award process in place that is separate from amendments such as the one currently being considered by Council.

Support for Development

Two property owners, one residential and one commercial, expressed general support for the proposed amendment. The proponent also provided a submission that contained further information related to regrading, remediation, and future planning work.

Conclusion

It is important to note that this is the first piece of the public approval process for the Tank Farm 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 a subdivision approval. However, basic restrictions could also be added to the OCP through policy amendments.

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.

Submission from Proponent

One of the submissions received at the public hearing was from the proponent's agent which stated that they intend to haul and stockpile material on-site only. However, following the public hearing the proponent started hauling granular material from the site contrary to their public hearing submission. This hauling was done without authorization from the City and enforcement action is proceeding. A Notice of Violation was issued and hauling ceased as of May 24th.

Administration proposes that until this matter is explored further and addressed, the advancement of the proposed amendment through the bylaw process should be paused.

Nevertheless, Administration remains of the view that from a planning perspective the OCP amendment proposal is sound and is the best land use designation for the subject area.

ADMINISTRATIVE RECOMMENDATION

THAT Council direct that Bylaw 2020-10, a bylaw to amend the Official Community Plan designation of a portion of the Tank Farm from Residential–Urban to Mixed-Use–Industrial/Commercial, be referred back to Administration for further review and analysis.