

THE CITY OF DAWSON

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NOTICE OF SPECIAL COUNCIL MEETING #C21-26

This is to inform you a special meeting of City Council will be held as follows:

Join Zoom Meeting

<https://us02web.zoom.us/j/82544749440?pwd=a2V0dDNURnNRK3JjZG5oK2dGUVRhQT09>

Meeting ID: 825 4474 9440

Passcode: 514840

DATE OF MEETING: WEDNESDAY, FEBRUARY 23, 2022

PLACE OF MEETING: COUNCIL CHAMBERS, CITY OFFICE

TIME OF MEETING: 7:00 PM

PURPOSE OF MEETING:

- 1) Official Community Plan Amendment No. 6 Bylaw (2022-05)

DATE MEETING REQUESTED:

February 16, 2022

MEETING REQUESTED BY:

WILLIAM KENDRICK, MAYOR

Cory Bellmore, CAO

February 18, 2022
Date

Report to Council



For Council Decision For Council Direction For Council Information

In Camera

AGENDA ITEM:	OCP Bylaw amendment No. 6 (Bylaw #2022-05) -Direct Control Districts	
PREPARED BY:	Stephanie Pawluk, CDO	ATTACHMENTS: - Draft Bylaw #2022-05
DATE:	February 18, 2022	
RELEVANT BYLAWS / POLICY / LEGISLATION:	Municipal Act Official Community Plan Zoning Bylaw	

RECOMMENDATION

That Council give first reading to OCP Bylaw amendment No. 6 (Bylaw #2022-05).

ISSUE / PURPOSE

This OCP Bylaw amendment that enables the potential for the establishment of Direct Control Districts in the Zoning Bylaw is being forwarded to Council for consideration following Council direction.

BACKGROUND SUMMARY

Mining Area

- East Bench and Lower Klondike Bench as two separate projects through YESAB/Water Board.
- Mining Approval/ Water Licence #2017-086 for the East Bench project was issued in 2019, and expires June 5, 2024.
- Lower Klondike Bench sluicing operation: YESAB issued a recommendation (#2020-0001) that the project not proceed in 2020. Awaiting YG decision (Placer Land Use Approval and Water License).
- Administration recommends addressing both the East Bench and Lower Bench projects simultaneously for the purpose of efficiency.

Development Permit #21-025

Issue: The applicant had previously applied for six development permits for the East Bench (2017-2019), all of which were denied. Each time a permit was denied, the options were outlined, including the option to pursue a ZBL/OCP amendment, which the applicant never pursued. Mr. Carey applied for this application on the grounds that a legal nonconforming use exists, as per s. 301 of the Municipal Act.

Outcome: Development permit #21-025 was denied on April 22, 2021 for the following reasons:

1. The proposed use is not a permitted use within the Future Residential Planning (FRP), Future Planning (FP), or Parks and Natural Space (P) designations of the Official Community Plan Bylaw

#2018-18 (OCP). Nor is it a permitted use in the Future Planning (FP) or Parks and Natural Space (P1) zones in the Zoning Bylaw #2018-19 (ZBL).

2. The City of Dawson was not able to confirm using the documentation provided with your application that the proposed uses constitute a legal non-conforming use as laid out in the Municipal Act. Although your application included a statement that your proposed mining operation is a legal non-conforming activity, you included no particulars to support this statement. The City of Dawson requires particulars of mining activity along with supporting documentation as they relate to the locations identified in the map attached to your application. This information will allow the City to determine whether there was a legal non-conforming use and whether or not this legal non-conforming use was discontinued for a period of twelve months or longer. Although it was not included with your application, the unsworn affidavit of Darrell Wayne Carey that was provided by your lawyer was also reviewed. The unsworn affidavit and its attachments do not appear to provide this information.

The applicant was advised, as written in the denial letter, on possible next steps:

1. Appeal the decision to Council within 30 days of the date of the decision, as per s. 4.4.2 of the Zoning Bylaw.
2. Apply to amend the Official Community Plan and Zoning Bylaw.
3. Submit a new development permit application accompanied by detailed particulars of mining activity and supporting documentation as they relate to the locations identified in the map attached to your application to definitively support the statement that the use is legal non-conforming, to the satisfaction of Council based on the Municipal Act s. 301.

Following the denial of Development Permit #21-025, the applicant elected to pursue an appeal to Council.

Development Permit #21-025 Appeal

C21-18-04 Moved by Mayor Potoroka, seconded by Councilor Shore that Council denies Mr. Carey's appeal regarding Development Permit #21-025 and communicates this decision to Mr. Carey and directs administration to provide reasons for the decision.

Motion Carried 3-2

Excerpt from Council decision letter:

"YG has been working on the Dome Road Master Plan for future development in the City, which does overlap claims in this section of town. It makes sense for both the landowner and claim holder to line up development so that both parties have the opportunity for maximum benefit for future settlement of this area."

Coyne v Whitehorse (2017)

- In this case, Coyne proposed that the OCP and ZBL were invalid with respect to subsurface mineral interests. The ruling did not support this, determining that Coyne was required to obtain City approval as per the Municipal Act.
- The ruling recognized mining is a form of development and is therefore required to adhere to the relevant legislation.

Lobo del Norte v. Whitehorse (2017)

- In this case, Lobo claimed that the OCP and ZBL amounted to expropriation of their mineral rights.

- The ruling recognized that the City had no intention of prohibiting or frustrating all mining activities within City boundaries, and that Lobo was required to comply with all zoning bylaws in exercising their mineral rights.

Recent case law examples show that municipalities have the right to enact an OCP and ZBL, and to plan areas for future development, regardless of subsurface rights that may exist. It also shows that municipalities have the right to require the permitting process for mineral extraction activities, and that this requirement is not considered expropriation.

There is no further direction from YG on the matter of mining within the municipality. As a result, the municipality is doing the best it can with limited resources and antiquated legislation to address mining applications on a one-by-one basis, given the individual complexities, in a fair and equitable way. It is believed that Direct Control Districts provide a path forward in addressing many mineral extraction activities in the municipality as this form of development does not fit well within the framework of the Zoning Bylaw.

ANALYSIS

Administration has been investigating the feasibility of different options to implement the above noted Council direction. Direct control districts have been identified as the most viable and appropriate tool.

Direct Control Districts

S. 291 of the Municipal Act (M.A) under Division 2: 'Zoning Bylaws' provides a zoning tool that enables municipalities to create direct control districts in both the OCP and ZBL to directly regulate land use and development of selected area(s). Direct control districts are intended to provide for development that may be outside of the land uses and regulations of standard zoning. It is a short section with three clauses:

- 1) *The council of a municipality may designate direct control districts in its official community plan if it wants to directly control the use and development of land or buildings in the area individually rather than establish rules common to all buildings and land in the area.*
- 2) *If a direct control district is designated in a zoning bylaw, the council may, subject to the official community plan, regulate the use or development of land or buildings in the district in any manner it considers necessary.*
- 3) *In respect of a direct control district, the council may decide on a development permit application itself, or may delegate the decision to a development authority that may be created under section 191 with directions that it considers appropriate.*

The implementation of DCDs is unprecedented in the Yukon. The only known instance of a municipality exercising S. 291 is the City of Whitehorse. CoWH has designated a DCD in the OCP, but never designated the DCD in the ZBL and therefore has not yet implemented this tool.

Albertan and Saskatchewan legislation also permits Direct Control Districts. Both Alberta and Saskatchewan legislation enacts Direct Control Districts through the equivalent of the Zoning Bylaw, although Saskatchewan requires OCPs to provide *guidelines* that enables the designation of DCDs in the ZBLs.

Municipalities in Saskatchewan provide a useful model for Dawson, as Yukon and Saskatchewan legislation are similar in that DCDs must be *designated* (Yukon) / have *guidelines* provided (Sask) in the OCP in order to designate a DCD in the ZBL. For example, the City of Regina outlines a series of general guidelines in the OCP (attached), which enables the ZBL to specifically implement DCDs. The locations and development regulations of DCDs are not detailed and mapped in the OCP. The City of Regina uses DCDs like a regular zone, but the difference is the level of regulation that DCDs allows the municipality. Having a DCD for a specific area allows a City to specifically regulate activities, setbacks, building materials etc. in a way that regular zones do not allow for.

The powers granted to municipalities under the Yukon M.A to create direct control districts are broad and, once created, Council has significant discretion in how a development in a direct control district is regulated. The Yukon M.A requires both the designation of direct control districts in the OCP and the designation of direct control districts in the ZBL. Administration is working to determine the logistics and requirements for designating DCDs in the ZBL.

DCD Pros

- Increased public transparency as decisions on development permits for Direct Control Districts are approved by Council.
- Allows Council to more closely regulate development on this land. For example, Council may impose conditions on permits that do not exist in Bylaws (this is not possible for regular development permits as per. S. 298 (2) of the M.A).

DCD Cons


- Efficiency:
 - Each application would have to be considered on its own merits by Council.
 - Time required for Administration to recommend conditions of approval outside of the regular review process.
- Unclear regulations that are open to interpretation (e.g. “in any manner it considers necessary”).
- Cons for applicants:
 - Longer review and approval times than regular development permits.
 - Uncertainty of approvals (as a result of unclear regulations) from the applicants’ perspective.

The public will be notified as per S. 280 of the Municipal Act, allowing opportunity for comment and/or attendance at the public hearing on the proposed amendment.

OPTIONS

Council may:

1. Give first reading to OCP Bylaw amendment No. 6 (Bylaw #2022-05)
2. Request additional information and forward to Committee of the Whole
3. Not give first reading to OCP Bylaw amendment No. 6 (Bylaw #2022-05)

APPROVAL		
NAME:	Cory Bellmore, CAO	SIGNATURE: 
DATE:	Feb 18, 2022	



THE CITY OF DAWSON

Official Community Plan Amendment No. 6 Bylaw

Bylaw No. 2022-05

WHEREAS section 265 of the Municipal Act, RSY 2002, c. 154, and amendments thereto, provides that a council may pass bylaws for municipal purposes.

WHEREAS section 278 of the Municipal Act, RSY 2002, c. 154, and amendments thereto, provides that a council must, within three years of formation or alteration of municipal boundaries, adopt or amend by bylaw an official community plan.

WHEREAS section 285 of the Municipal Act, RSY 2002, c. 154, and amendments thereto, provides that an official community plan may be amended, so long as the amendment is made in accordance with the same procedure established for adoption of an official community plan.

THEREFORE, pursuant to the provisions of the *Municipal Act* of the Yukon, the council of the City of Dawson, in open meeting assembled, **ENACT AS FOLLOWS**:

PART I - INTERPRETATION

1.00 Short Title

This bylaw may be cited as the ***Official Community Plan Amendment No. 6 Bylaw***

2.00 Purpose

2.01 The purpose of this bylaw is to provide for

- (a) The provision of Direct Control Districts.
- (b) The designation of the Klondike East Bench Direct Control District and Lower Klondike Bench Direct Control District.



THE CITY OF DAWSON

Official Community Plan Amendment No. 6 Bylaw

Bylaw No. 2022-05

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THE CITY OF DAWSON

Official Community Plan Amendment No. 6 Bylaw

Bylaw No. 2022-05

3.00 Definitions

3.01 In this Bylaw:

- (a) Unless expressly provided for elsewhere within this bylaw the provisions of the *Interpretations Act*, RSY 2002, c. 125, shall apply;
- (b) "Bylaw Enforcement Officer" means a person employed by the City of Dawson to enforce bylaws;
- (c) "CAO" means the Chief Administrative Officer for the City of Dawson;
- (d) "city" means the City of Dawson;
- (e) "council" means the Council of the City of Dawson;

PART II – APPLICATION

4.00 Amendment

4.01 Insert a new subsection 6.3 'Implementation Approaches'. The new subsection 6.3.3 titled 'Direct Control Districts' shall read as follows:

"A Direct control district may be considered at Council's discretion in an area where, in the opinion of Council, development may require a more specific, sensitive, and flexible means of land use and development control, including, but not limited to, time limited uses.

Direct Control Districts shall be designated and implemented under the Zoning Bylaw and regulated as per section 291 of the Municipal Act. For greater certainty, if Council designates time limited Direct Control Districts in the Zoning Bylaw, upon expiry of the time limited Direct Control District, no legal non-conforming uses are thereby created as per section 301 of the Municipal Act.



THE CITY OF DAWSON

Official Community Plan Amendment No. 6 Bylaw

Bylaw No. 2022-05

Council Designates the following Direct Control Districts:

Klondike East Bench; the area with mining land use approval for mineral extraction activity on the Klondike East Bench, as designated in the Zoning Bylaw. The purpose of this Direct Control District is for Council to directly control land use and development within the area to enable time limited mineral extraction activity and subsequently, the intended future residential development.

Lower Klondike Bench; the area with mining land use approval for sluicing activity on the Lower Klondike Bench as designated in the Zoning Bylaw. The purpose of this Direct Control District will allow Council to directly control land use and development within the area to enable time limited sluicing activity and subsequently, the intended land development.”

PART III – FORCE AND EFFECT

5.00 Severability

5.01 If any section, subsection, sentence, clause or phrase of this bylaw is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the part that is invalid shall not affect the validity of the remainder unless the court makes an order to the contrary.

6.00 Enactment

6.01 This bylaw shall come into force on the day of the passing by Council of the third and final reading.



THE CITY OF DAWSON

Official Community Plan Amendment No. 6 Bylaw

Bylaw No. 2022-05

6.02

7.00 Bylaw Readings

Readings	Date of Reading
FIRST	
MINISTERIAL NOTICE	
PUBLIC HEARING	
SECOND	
MINISTERIAL APPROVAL	
THIRD and FINAL	

Original signed by

William Kendrick, Mayor

Presiding Officer

Cory Bellmore, CAO

Chief Administrative Officer