

DATE OF MEETING | August 29, 2022

AUTHORED BY | CALEB HORN, PLANNER, CURRENT PLANNING

SUBJECT | **REZONING APPLICATION NO. RA475 – 444, 450, 500 COMOX ROAD, 55 MILL STREET, and 1 TERMINAL AVENUE**

OVERVIEW

Purpose of Report

To present Council with an application to rezone 444, 450, and 500 Comox Road; 55 Mill Street; and, 1 Terminal Avenue from Medium Density Residential (R8) and Gateway (DT12) to Comprehensive Development District Zone Seven (CD7); and to amend the CD7 zone with new zoning regulations, to facilitate a mixed-use development and subdivision. |

Recommendation

That:

1. "Land Use Contract Discharge Bylaw 2022 No. 7355" (to discharge an existing Land Use Contract from the property title of 500 Comox Road) pass first reading;
2. "Land Use Contract Discharge Bylaw 2022 No. 7355" pass second reading;
3. "Zoning Amendment Bylaw 2022 No. 4500.204" (to rezone 444, 450, 500 Comox Road, 55 Mill Street, and 1 Terminal Avenue from Medium Density Residential [R8] and Gateway [DT12] to Comprehensive Development District Zone Seven [CD7] and to amend the CD7 zone with new zoning regulations, to facilitate a mixed-use development and subdivision) pass first reading;
4. "Zoning Amendment Bylaw 2022 No. 4500.204" pass second reading; and,
5. Council direct Staff to secure the conditions related to "Zoning Amendment Bylaw 2022 No. 4500.204" as outlined in the "Conditions of Rezoning" section of the Staff report dated 2022-AUG-29, should Council support the bylaws at third reading. |

BACKGROUND

A rezoning application, RA475, was received from Strongitharm Consulting Ltd. on behalf of 490892 BC Ltd (444, 450, 500 Comox Road and 1 Terminal Avenue) and Brad Martin and Ralston Alexander (55 Mill Street) to rezone the subject properties and amend the City of Nanaimo "Zoning Bylaw 2011 No. 4500" (the "Zoning Bylaw") to revise Comprehensive Development District Zone Seven (CD7). The proposed rezoning will facilitate a mixed-use residential, commercial, and hotel development and subdivision.

Subject Properties and Site Context

<i>Location</i>	The subject properties border the Millstone River to the northeast, Mill Street to the northwest, Comox Road to the south, and Terminal Avenue to the east.
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<i>Lot Areas</i>	563m ² – 444 Comox Road 611m ² – 450 Comox Road 1,223m ² – 500 Comox Road 1,046m ² – 55 Mill Street 2.59ha – 1 Terminal Avenue
<i>Current Zoning</i>	Comprehensive Development District Zone Seven (CD7) – 1 Terminal Avenue (portions) Medium Density Residential (R8) – 444 and 450 Comox Road, 55 Mill Street, and 1 Terminal Avenue (portions) Gateway (DT12) – 500 Comox Road
<i>Proposed Zoning</i>	Comprehensive Development District Zone Seven (CD7)
<i>City Plan – Future Land Use Designation</i>	Primary Urban Centre (Downtown)
<i>Neighbourhood Plan – Land Use Designation</i>	Nanaimo Downtown Plan – Future Study Area 1

The subject properties are located at the northern edge of Downtown Nanaimo, next to the mouth of the Millstone River. The site is immediately adjacent to Terminal Avenue which is a Provincial Ministry of Transportation and Infrastructure (MoTI) highway that crosses the Millstone River via the Pearson Bridge. Comox Road runs along the southern edge of the site where it intersects with Wallace Street and Terminal Avenue. Mill Street, in the northwest portion of the site, is a no-exit street that acts as an extension of Prideaux Street.

The property at 1 Terminal Avenue currently contains a former hotel building that closed in 2018 (Howard Johnson, previously the Tally-Ho Hotel) and was most recently used as a fitness gym. Other previous uses on the site have included a night club, long-distance bus terminal, a place of worship, and a liquor store. A secondary retail building on the site was most recently utilized as a home heating supply store and showroom. The entire property has been previously disturbed and is primarily a surface parking lot.

The properties at 444 and 450 Comox Road both contain small residential apartment buildings built in the 1950s. The property at 500 Comox Road previously contained an office building that was partially demolished after fire damage in 1995, leaving the exposed foundation and parkade walls that exist to this day. The property at 55 Mill Street contains a single residential dwelling. The overall site slopes downhill by approximately 20m from Comox Road in the south to the Millstone River in the north.

The surrounding neighbourhood is a transitional neighbourhood between the Old City neighbourhood to the south, a mix of commercial and former industrial uses to the southeast, and residential uses to the west. Adjacent land uses include: three- and four-storey residential apartment buildings fronting Prideaux Street to the west; a 14-unit townhouse development on Mill Street to the northwest; Maffeo Sutton Park across Terminal Avenue to the east (connected by a multi-use trail under the Pearson Bridge); and Comox Park, a fast food restaurant, Pioneer Cemetery Park, and a vehicle storage yard across Comox Road to the south. The subject site's street frontages are interrupted by a City-owned property at 5 Terminal Avenue at the intersection with Comox Road, and MoTI-owned properties at 300 Comox Street to the south.

Notable nearby services and amenities within walking distance include Pauline Haarer Elementary School, Bowen Park and the Nanaimo Curling Centre, the Old City Quarter shopping

district, and downtown shopping services along Commercial Street. Some recent nearby developments include a 57-unit seniors housing development at 77 Mill Street (completed 2020), a 90-unit multi-family residential building at 20 Barsby Avenue (completed 2021), and a 163-unit rental residential building at 340 Campbell Street (development permit approved 2022).

DISCUSSION

Proposed Development

The applicant proposes to rezone the subject properties not currently zoned CD7 in addition to a text amendment to revise the CD7 zone. The proposed rezoning will facilitate a six lot subdivision and mixed-use (commercial and residential) development. A proposed lot layout submitted with the rezoning application (see Attachment F) illustrates how development parcels will be created through a boundary adjustment subdivision, along with road dedication and park dedication. A new public road will connect the end of Mill Street with the intersection of Comox Road and Wallace Street, and a private road (publicly accessible) will connect to Comox Road between proposed Lots 1 and 2. A multi-use trail will traverse the proposed park and connect to the existing Waterfront Walkway below the Pearson Bridge. Another public trail will connect the park with Comox Road through proposed Lot 3.

A conceptual site plan (see Attachment C) was also submitted that illustrates how the lots could be developed under the proposed CD7 zone. The concept plan envisions a potential for 760 dwelling units on the overall site, in addition to a hotel, and more than 1,000m² of commercial retail space. The proposed development lots are listed below along with a description of the conceptual plan for each lot.

Proposed Lot	Location	Proposed Buildings in Concept Plan
Lot 1	At the western edge of the site, adjacent to existing residential uses.	Two 5- and 6-storey residential buildings.
Lot 2	Adjacent to Comox Road in the western portion of the site.	One 16-storey building.
Lot 3	In the centre of the site, flanked by the proposed road dedication	Two 6- to 8-storey buildings
Lot 4	At the eastern edge of the site, closest to Pearson Bridge.	One 16-storey building.
Lot 5	At the north edge of the site on Mill Street, adjacent to an existing townhouse development.	A 3-storey residential townhouse building.
Lot 6	In the southeast corner of the site at the intersection of Terminal Avenue and Comox Road.	A 6-storey hotel and conference centre.

Through future development permits, Development Permit Area (DPA) guidelines for form & character, watercourse protection, and sea level rise will be reviewed in more detail, and for the purposes of rezoning the applicant has demonstrated the suitability of the conceptual site plan as it relates to relevant DPAs.

The Zoning Bylaw requires a 30m watercourse setback from the top-of-bank above the Millstone River which is the typical setback that has been applied to major rivers to address the requirements of the Provincial Riparian Areas Regulation (RAPR). However, this portion of the

Millstone River is an estuary with marine and riparian characteristics; and, the RAPR is not applicable to this section of the river.

At the time of subdivision, a development permit application and variance to the watercourse setback is anticipated for the siting of the proposed street and multi-use trail based on the plans provided (approximately 15m and 10m from top-of-bank, respectively). The applicant has demonstrated that the siting of the street is required in order meet the grades between the end of Mill Street and the existing intersection on Comox Road. The location of the public multi-use trail is also fixed as it will connect to the existing trail below the Pearson Bridge. The proposed conceptual park plan (Attachment E) provides a significant net environmental improvement from the current condition and reflects an appropriate transition from an urban coastal environment to a more sensitive riparian environment further upstream.

A number of supporting technical studies to demonstrate the feasibility of the conceptual site plan have been provided, including; an environmental assessment, a traffic impact assessment, an archaeological impact assessment, and a civil servicing report. Staff support the general concept based on the information provided and the applicant’s demonstration that the site can be used for the intended use and density, with detailed design to address DPA guidelines through subsequent development permit and subdivision processes.

Comprehensive Development Zone

The existing Comprehensive Development District Zone Seven (CD7) allows for medium- to high-density mixed-use development, with a maximum permitted Floor Area Ratio (FAR) of 1.50 and the opportunity for bonus density up to 1.75 where underground parking is provided. Variable maximum building heights are permitted in the CD7 which make it difficult to subdivide. In the portions of the site not currently zoned CD7 (see Attachment B): the R8 zone allows multi-family residential with a maximum potential FAR of 1.85 and a maximum building height of 14m; and the DT12 zone allows for a variety of downtown-oriented uses (commercial and residential) with a maximum potential FAR of 2.00 and a maximum building height of 19.8m.

To support the proposed concept plan and better align with the Zoning Bylaw, “Zoning Amendment Bylaw 2022 No. 4500.204” will revise the CD7 and introduce new sub-zones to correspond with the lot layout plan. The proposed zoning will support the concept plan but will not secure building design or details which will be determined through subsequent development permits and subdivision approvals. Each sub-zone will have its own provisions for permitted uses, density, and building height, which will provide each development parcel with flexibility in how it may develop. The proposed CD7 zone can be found attached to the amendment bylaw, and a summary of the proposed zoning regulations is shown in the table below.

Regulation	Existing CD7 zone	Proposed CD7 zone
<i>Uses</i>	A number of uses inherited from the former C-11 zone.	Majority of existing uses retained, with those uses that do not align with the City Plan removed (e.g. automobile sales, car wash, etc.).
<i>Density</i>	FAR of 1.50 with the opportunity for up to 1.75 with underground parking.	Base density will range from 0.45 for sub-zone 5 (the same as the Low Density Residential R6 zone), to 1.50 for sub-zones 1, 3, and 6, and up to 3.20 and 4.05 for sub-zones 2 and 4, respectively.

<i>Building Height</i>	Calculated as twice the distance of a building from any street frontage, which could be up to 65m with current street frontages.	Proposed maximum building heights range from 13m for sub-zone 5 (3 storeys), 21m for sub-zone 1 (6 storeys), and to 58m for sub-zone 4 (16 storeys) adjacent to Terminal Avenue.
<i>Lot Coverage</i>	A maximum lot coverage of 100%.	Maximum lot coverage based on sub-zones, ranging between 40% and 52%.
<i>Setbacks</i>	No required setbacks except for multi-family residential buildings and in proximity to intersections.	Variable setbacks for each sub-zone and each street. Setbacks from Comox Road and Mill Street will include additional setbacks above the street-level to produce variable building forms.

All CD7 regulations have been refined to provide a suitable transition from existing residential properties in the west to the higher density Downtown zones in the south and east. Under the revised CD7 zone, incompatible uses and building heights will no longer be permitted adjacent to existing 3- and 4-storey residential uses.

Land Use Contract

In addition to the proposed Zoning Bylaw amendments, the rezoning application includes “Land Use Contract Discharge Bylaw 2022 No. 7355” which will authorize Staff to discharge a Land Use Contract (LUC) from the property title at 500 Comox Road. LUCs are agreements between property owners and local governments that stipulate use, density, and other regulations more commonly found in Zoning Bylaws. These were only authorized in British Columbia between 1971 and 1978, but where they have been registered they remain in effect and supersede zoning. All LUCs across the province will be terminated in 2024, but affected property owners have the option until then to request discharge of LUCs through a public rezoning process.

The existing LUC at 500 Comox Road was registered in 1977 and includes specific requirements related to the previous use on the lot for a retail and office building with an accessory dwelling unit (see Attachment H). Termination of the LUC is necessary for the proposed CD7 zoning to come into effect at 500 Comox Road, and Staff support the LUC Discharge Bylaw.

Policy Context

City Plan – Future Land Use

The City Plan identifies the subject properties as within the Downtown Primary Urban Centre future land designation which is recognized as the City’s cultural, economic, and mobility hub with the highest density and mix of uses. Building forms contemplated in this land use designation include a mix of low-rise, mid-rise, and high-rise buildings typically in mixed-use form with ground-floor commercial and residential / office above.

The proposed rezoning meets the intent of the City Plan policies by facilitating a medium- to high-density mixed-use development concept, including the provision of public park space and trail improvements, in close proximity to existing services and amenities within the City’s core. The proposed CD7 regulations for density, building height, and lot coverage will encourage more compact building forms than the current zoning while maintaining outdoor amenity space and natural space. This supports a number of City Plan objectives to create complete, compact communities while supporting the local economy and protecting ecologically valuable lands.

Nanaimo Downtown Plan

The subject properties are identified within “Future Study Area 1” in the Nanaimo Downtown Plan. The Plan recognizes the area’s importance as a gateway site to the Downtown and recommends further land use and building form study for the area between Comox Road and the Millstone River, east of the Island Rail Corridor and west of Terminal Avenue. The concept plan proposed with this rezoning application addresses this policy for most of the undeveloped portions in Future Study Area 1. The Downtown Plan also recognizes the importance of the walkway linkage below the Pearson Bridge to enhance the connectivity from the neighbourhood to the City’s Waterfront Walkway and adjoining park amenities.

City Plan – Mobility Network

The subject properties are located within an urban centre as identified in Figure 36 of the City Plan where there is the greatest opportunity for mobility options given the concentration of trip destinations and origins. In Figure 37 of the City Plan, Comox Road is designated as a Mobility Arterial, Mill Street as an Urban Local, and Terminal Avenue as a Highway. The new street constructed through the site will be expected to meet the Mobility Local standard. In order to achieve the desired road cross-section widths, road dedication from the north side of Comox Road and the south side of Mill Street will be secured through rezoning. A no-build covenant will also be secured until such time as the lots are subdivided and the new road through the site is dedicated.

The City Plan identifies a primary active mobility route through the subject site connecting the E&N Rail Trail with Downtown. There is currently an unprotected paved path that connects the end of Mill Street with the Waterfront Walkway below the Pearson Bridge. In the future, it is expected that the walkway will continue along the Millstone River, and a Statutory Right-of-Way (SRW) for a future multi-use trail was previously secured across the neighbouring property at 50 Mill Street. As part of the subject site’s redevelopment, a new multi-use trail will be constructed through the dedicated park and an SRW will be secured through rezoning for future extension to properties further west.

Adjacent to the site, Terminal Avenue is identified in the City Plan as the City’s primary future Bus Rapid Transit (BRT) Line which will provide another mobility option for the residents in the area. Comox Road is identified as a Bus Frequent Transit (BFT) Line.

A Traffic Impact Assessment (TIA) was submitted in support of the rezoning application and the analysis therein has been reviewed and accepted by Staff. In order to accommodate potential changes to the Comox Road and Wallace Street intersection (e.g. signalling and lane alignment), off-site works beyond the frontage of the site will be secured as a condition of rezoning.

Community Consultation

The subject properties are not located within the area of any recognized community association; however, the rezoning application was forwarded for information to the neighbouring Newcastle Community Association (across Millstone River to the north) and the Nanaimo Old City Community Association (across Comox Road to the south), and no comments have been received.

The applicant hosted a Public Information Meeting via Zoom on 2022-MAR-16 and invited immediate neighbours as well as representatives from both adjacent community associations. Approximately 33 members of the public attended the meeting electronically. Comments from the public generally focused on building height, parking, and public trail connections. Responses to these comments are summarized below.

1. *Building Height.* Building heights in the proposed CD7 zone will not be greater than under the existing CD7 zone and will reduce permitted building heights in some portions of the site. For example, building heights in sub-zone 1 will be limited to 21m (six-storeys) to provide a transition between taller buildings in the east to existing four-storey residential buildings in the west. The two sub-zones (2 and 4) where taller buildings are proposed have been sited to minimize impacts on the surrounding neighbourhood and are lower than the 65m building height that could be constructed under the current zoning.
2. *Parking.* The applicant has demonstrated that all required parking could be provided onsite with underground parking, under-the-building parking, or private garages in the case of the townhouse lot. There are existing parking concerns in the neighbourhood related to on-street parking availability along Mill Street. The City has modified on-street parking regulations on Mill Street which has added capacity. This change has also narrowed the travel lane creating a “queuing street” which has the added benefit of traffic calming. Additional opportunities for increased on-street parking will become available with road dedication through the proposed rezoning and subdivision. An existing parking lot at Maffeo Sutton Park will continue to provide parking for park users.
3. *Trail Connections.* Public trail connections will be secured through the site via the proposed park to connect with the existing trail under the Pearson Bridge. The multi-use trail will be 4m-wide to provide adequate space for all trail users while maintaining as much of a riparian buffer adjacent to the Millstone River as possible. An additional multi-use trail will connect north-south through the site between the proposed park and Comox Road. Further design review for both trails will occur at the detailed design stage.

Community Amenity Contribution

As the application was received prior to Council’s *Community Amenity Contribution Policy* coming into effect on 2022-JAN-01, the applicant is providing a Community Amenity Contribution (CAC) under the previous rate of \$1,000 for each residential unit. The applicant has provided an economic analysis and independent appraisal that found the proposed rezoning could result in 142 more dwelling units than what could be achieved under the existing zoning for the whole site. As such, the minimum expected CAC value would be \$142,000.

Recognizing the scale of the development, the applicant has proposed a significant in-kind CAC with voluntary park dedication valued at \$1,698,300 and parks improvements within the dedication as shown in Attachment E valued at \$584,478 (including a public walkway, seating, lighting, etc., but not including riparian restoration that will otherwise be required), for a total CAC value of \$2,282,778. Staff support the proposed CAC as it will provide a desired park amenity in the neighbourhood and exceeds what would typically be expected through rezoning.

BC Energy Step Code Rezoning Policy

As per Council's BC Energy Step Code Rezoning Policy, a Section 219 Covenant will be registered on the subject properties as a condition of rezoning to secure a commitment to either a) exceed the required BC Energy Step Code by one step; or, b) provide a low-carbon energy system, to be determined at Building Permit issuance.

Conditions of Rezoning

Should Council support this application and pass third reading of "Zoning Amendment Bylaw 2022 No. 4500.204", Staff recommend the following items be secured prior to final adoption of the bylaw.

1. *Community Amenity Contribution / No-Build* – A Section 219 covenant with no-build and no-independent-sale restrictions until:
 - a. the subject site is subdivided in general accordance with the proposed lot layout as shown in Attachment F, or, the subject properties are consolidated and the new street through the site (to connect the end of Mill Street with the intersection of Comox Road and Wallace Street) and park (with an area of approximately 1,753m² as shown in Attachment F) are dedicated; and
 - b. the parks improvements within the proposed park dedication, generally as shown in Attachment E, are secured.
2. *BC Energy Step Code Commitment* – Registration of a Section 219 covenant to secure a commitment under the BC Energy Step Code Rezoning Policy.
3. *Road Dedication* – Road dedication with widths of:
 - a. Approximately 5.0m from the Comox Road frontage to allow for a future 'Mobility Arterial' cross-section width of 30m; and,
 - b. Approximately 3.9m from the Mill Street frontage on the south side of the street to allow for a future 'Urban Local' cross-section with a width of 20m.
4. *Public Access* – Blanket Statutory rights-of-way, to be reduced to specific SRWs at the time of subdivision, to secure:
 - a. Public access along the street not being dedicated as public road, south from the end of Mill Street to Comox Road; and,
 - b. Public access for a future multi-use trail adjacent to the Millstone River through the rear of proposed Lot 5.
5. *SRW Replacement* – Discharge of all existing charges related to servicing and road dedication, and replacement with new City standard charge documents and reference plans.
6. *Fire Flows Covenant* – A Section 219 covenant to require that fire flows be limited to maximum of 300 litres per second unless otherwise accepted by the City through a subsequent subdivision, development permit, or building permit process.
7. *Off-site Works*. Registration of a Section 219 covenant to secure construction of off-site works beyond the subject property frontage, to ensure the functionality of the Comox Road / Wallace Street intersection (including but not limited to: re-laning, curbs,

sidewalks, street lighting, traffic signaling, etc.), to be determined at the time of Design Stage Acceptance.

SUMMARY POINTS

- The application is to rezone 444, 450, 500 Comox Road, 55 Mill Street, and 1 Terminal Avenue from Medium Density Residential (R8) and Gateway (DT12) to Comprehensive Development District Zone Seven (CD7) and to amend the CD7 zone with new zoning regulations, to facilitate a mixed-use development and subdivision.
- To support the proposed concept plan and better align with the Zoning Bylaw, “Zoning Amendment Bylaw 2022 No. 4500.204” will revised the CD7 and introduced new sub-zones that match the lot layout plan.
- The rezoning application includes “Land Use Contract Discharge Bylaw 2022 No. 7355” which will authorize Staff to discharge a Land Use Contract (LUC) from the property title at 500 Comox Road.
- Staff support the general concept in principle given the information provided and the applicant’s demonstration that the site can be used for the intended use and density, with detailed design to address DPA guidelines through subsequent development permit and subdivision processes.
- The proposed rezoning meets the intent of the City Plan policies by facilitating a medium- to high-density mixed-use development concept, including the provision of public park space and trail improvements, in close proximity to existing services and amenities within the City’s core.
- Staff support the proposed CAC (park dedication and parks improvements) as it will provide a desired park amenity in the neighbourhood and exceeds what would typically be expected through rezoning.

ATTACHMENTS

ATTACHMENT A: Context Map
ATTACHMENT B: Location Plan
ATTACHMENT C: Conceptual Site Plan
ATTACHMENT D: Conceptual Building Renderings and Massing
ATTACHMENT E: Conceptual Park Plan
ATTACHMENT F: Proposed Lot Layout
ATTACHMENT G: Aerial Photo
ATTACHMENT H: Land Use Contract No. F90666
“Land Use Contract Discharge Bylaw 2022 No. 7355”
“Zoning Amendment Bylaw 2022 No. 4500.204”

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