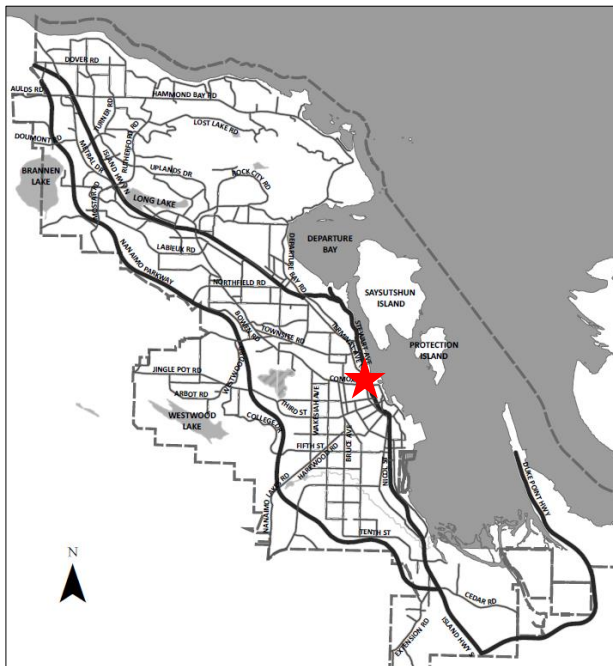


DATE OF MEETING | February 27, 2023

AUTHORED BY | LAINYA ROWETT, MANAGER, CURRENT PLANNING

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



**Current Zoning:**

CD7 – Comprehensive Development District Zone Seven;  
R8 – Medium Density Residential; and  
DT12 - Gateway



**Proposed Zoning:**

CD7 – Comprehensive Development District Zone Seven

**City Plan Land Use Designation:**

Primary Urban Centre (Downtown)

**Lot Area:**

563m<sup>2</sup> – 444 Comox Road  
611m<sup>2</sup> – 450 Comox Road  
1,223m<sup>2</sup> – 500 Comox Road  
1,046m<sup>2</sup> – 55 Mill Street  
2.59ha – 1 Terminal Avenue



## **OVERVIEW**

### **Purpose of Report**

To seek Council direction regarding Rezoning Application No. RA475 (for 444, 450, 500 Comox Road, 55 Mill Street, and 1 Terminal Avenue) and its associated bylaws.]

### **Recommendation**

That Council:

1. rescind Third Reading of “Land Use Contract Discharge Bylaw 2022 No. 7355” (to discharge an existing Land Use Contract from the property title of 500 Comox Road); and,
2. rescind Third Reading of “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).]

## **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.

On 2022-AUG-29, Council passed First and Second Readings of the associated Land Use Contract Discharge and Zoning Amendment Bylaws. A Public Hearing was held on 2022-SEP-29 and Third Reading of the bylaws was passed on 2022-OCT-24. At the In Camera Meeting of 2023-FEB-06, Council directed Staff to:

1. Prepare a report outlining how the proposed rezoning amendment bylaw complies with the policies contained in Section C4.1 Truth and Reconciliation of *City Plan: Nanaimo Reimagined*; and,
2. To place associated “Zoning Bylaw Amendment Bylaw 2022 No. 4500.204” and “Land Use Contract Discharge Bylaw No. 7355” on an upcoming open Council meeting agenda for consideration of rescinding third reading.

This report is in response to Council’s direction. As this report is following a public hearing, Staff recommend rescinding Third Reading of both bylaws and scheduling the application to return to an upcoming Public Hearing in order to preserve the integrity of the rezoning process. |

## **DISCUSSION**

### **Proposed Development**

The existing zoning (CD7/DT12/R8) permits a wide variety of uses and significant re-development potential on the lands. The owner could at any time apply for a development permit and building permit for uses currently permitted.

The applicant proposes to rezone the subject properties to a revised CD7 zone to facilitate a six lot subdivision and mixed-use (commercial and residential) development. The conceptual development plans include a mix of townhouses, mixed-use buildings ranging from 5 to 16 storeys in height, and a hotel. The proposed revised CD7 zone narrows the permitted uses to better align with City Plan policies and further restricts the use of the land by removing some uses that are currently permitted including, auto-oriented and land intensive uses permitted under existing zoning for the site (e.g. auto sales and repair, transportation terminal, car wash, gas station, recycling depot, wholesale). The proposed zoning is informed by a functional parcel layout and road network to guide future build-out. The proposed zoning also provides for riparian restoration and enhanced riparian area protection and public access improvements through park dedication.

As part of the rezoning application, a number of conditions will be secured including road and park dedication and the provision of amenities and habitat restoration within the dedicated park. A complete description of the proposed zone and conceptual development can be found in the Staff Report to Council dated 2022-AUG-29 (Attachment A).

### **Site Context**

The subject properties are located at the northern edge of Downtown Nanaimo, next to the mouth of the Millstone River. The Snuneymuxw First Nation traditionally inhabited the mouth of the Millstone River where a significant ancestral village site known as Sxwayxum was located.

The *Heritage Conservation Act* (HCA) provides protection to sites designation as “Provincial heritage sites”, as well as, automatic protection to sites of particular historic or archaeological value as defined by the *Act*. Protected archaeological sites may not be altered, without a permit issued by the Province. An Archaeological Impact Assessment (AIA) in support of the rezoning application to assess potential impacts to archaeological resources resulting from the proposed development was conducted. The study recommends monitoring of ground disturbing construction activities and identifies that a further HCA alteration permit must be obtained to authorize any ground disturbance within the recorded area of a registered archaeological site (DhRx-1).

The property at 1 Terminal Avenue contains a former hotel building that closed in 2018 (Howard Johnson Harbourside Hotel, previously Tally-Ho Travelodge). 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 by prior development and is substantially covered with buildings and paved surfaces.

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 to the north.

## Policy Context

### *Protocol Agreement*

The Protocol Agreement between the City of Nanaimo and Snuneymuxw First Nation (Attachment B) was most recently renewed in 2019. This agreement includes guiding principles for collaboration between both parties. While neither provincial legislation nor the Protocol Agreement requires referral of rezoning applications, in the spirit of information-sharing as described by the agreement, the rezoning application was presented at a joint Technical Working Group meeting on 2022-MAR-22 in advance of being referred to Snuneymuxw First Nation for information on 2022-APR-07.

### *City Plan*

The Staff Report to Council dated 2022-AUG-29 (Attachment A) speaks to the consistency of the proposed bylaws with the City Plan and broadly to land use policies.

With respect to Council’s specific direction, Staff have prepared a summary of the relevant objectives and policies of Section C4.1 of City Plan, adopted 2022-JUL-04 relating to truth and reconciliation (Attachment C). Section C4.1 also contains the following preamble:

*“We respectfully acknowledge that the city boundary lies within the Traditional Territory of Snuneymuxw First Nation who have many significant ancestral village sites throughout the city including Stilnup (Departure Bay) and Sxwuyum (Millstone River). We recognize the Snuneymuxw Treaty of 1854, a trade and commerce treaty that forever and always preserves and protects Snuneymuxw villages, waters, enclosed fields, harvesting and gathering sites, and the right to hunt and fish as formerly.”*

This preamble is intended to be read in view of the specific City Plan policies including those related to land use designation (in this case “Primary Urban Centre”) and truth and reconciliation (such as policy C4.1.9, which also addresses the topic of traditional Snuneymuxw village sites).

The policies of Section C4.1 speak to the significance of government-to-government relations with First Nations and working collaboratively. Staff have summarized some of the key policies in C4.1 and outlined how, in Staff’s opinion, the proposed bylaws and rezoning process are consistent with these policies. The summary also includes comment on key connected policies in related Sections of City Plan.

### **City Plan Policy Review**

Policy	RA475 – Consistency with City Plan
C4.1.6 Engage government-to-government with Snuneymuxw First Nation in accordance with	<ul style="list-style-type: none"> <li>The City has engaged with the Snuneymuxw First Nation in a respectful government-to-government manner respecting the proposed bylaws, and in</li> </ul>



protocol agreements as well as guidance for local governments under the Truth and Reconciliation Commission's (TRC) 94 Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Government of British Columbia's Declaration on the Rights of Indigenous Peoples Act (DRIPA). This includes upholding the following guiding principles committed to by the City of Nanaimo and Snuneymuxw First Nation in the 2019 Renewed Protocol Agreement. (See Attachment C guiding principles).

- that effort has acted in accordance with the guidance in the TRC Calls to Action as well as UNDRIP, DRIPA and the Protocol Agreement.
- In March 2022, the City presented the proposed rezoning to the working group that has been established in accordance with the Protocol Agreement. In addition to the usual public hearing opportunities, the City also specifically invited the First Nation to participate in the rezoning process by notifying of the rezoning by letter dated 2022-APR-07. These communications reflect the guidance of the Protocol Agreement, as well as Article 18 of UNDRIP. That Article speaks of the right of indigenous peoples to participate in decision making that affects them through representatives of their own choosing.
  - The City appreciates that the land that is the subject of the rezoning may have been part of the Sxwayxum village site, that the site is important to the Snuneymuxw First Nation and that the First Nation may be seeking compensation for the loss of the village site. The adoption of the proposed bylaws will not prevent the City from supporting that effort or from being guided by Article 28 of UNDRIP when doing so. Article 28 acknowledges that there may be cases in which a State should compensate an indigenous people for the loss of their traditional territory. The acknowledgement in Article 28 that traditional territory might not be returned to a First Nation but instead the subject of compensation is consistent with the recognition by a local government that such land may be now owned and used by others and thus subject to regulation by it.
  - The instruments referenced in C4.1.6 do not limit the City's authority to consider a rezoning application under Section 460 of the *Local Government Act*. The City is bound by the *Local Government Act* to consider applications from fee simple owners of properties, irrespective of claims of title and rights in relation to those properties by First Nations.
  - DRIPA is legislation adopted by the Province that is aimed at aligning provincial laws with UNDRIP. Since the proposed bylaws are not contrary to UNDRIP they are also not contrary to the commitment made by the Province in DRIPA to ensure that provincial laws are consistent with UNDRIP.

	<ul style="list-style-type: none"> <li>• DRIPA creates a scheme in which the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to the exercise of a statutory power. There is no DRIPA agreement in effect in relation to the City's zoning power.</li> <li>• The TRC 94 Calls to Action, produced to redress the legacy of residential schools and advance the process of reconciliation, do not contain anything that would, in the context of the OCP and the proposed rezoning, create substantive inconsistency between the proposed bylaws and the OCP.</li> <li>• That the references to UNDRIP, DRIPA, and the TRC 94 Calls to Action in the City Plan were not intended to limit Council's authority to adopt the proposed bylaws is reflected in the fact that the site at issue is identified in the Plan as suitable for the type of development contemplated by those bylaws.</li> <li>• Nothing in C4.1.6 speaks directly to the substance of the proposed bylaws in a manner that would render them inconsistent with the OCP.</li> </ul>
<b>Policy</b>	<b>RA475 – Consistency with City Plan</b>
<p><u>C4.1.7</u> Continue to collaborate on referral processes with Snuneymuxw First Nation to more efficiently and effectively address City land use planning decisions that impact Snuneymuxw interests, including treaty rights.</p>	<ul style="list-style-type: none"> <li>• The rezoning application was presented at the Staff-to-Staff Technical Working Group on 2022-MAR-22 with minutes from that meeting received by the Protocol Agreement Working Group on 2022-JUN-15.</li> <li>• The rezoning application was forwarded for information to Snuneymuxw First Nation 2022-APR-07 with the opportunity for Staff to provide additional information.</li> <li>• The City and SFN have been actively collaborating on a referral policy as referenced in the policy. Work has been ongoing prior to adoption of City Plan.</li> </ul>
<b>Policy</b>	<b>RA475 – Consistency with City Plan</b>
<p><u>C4.1.9</u> Recognize the importance of Snuneymuxw village sites as identified in the Treaty of 1854 and encourage efforts by the Crown to return land or compensate for losses.</p>	<ul style="list-style-type: none"> <li>• The Crown can be encouraged to compensate for losses relating to the Treaty of 1854 regardless of the adoption of the proposed bylaws.</li> <li>• An amendment to the rezoning of the property is separate and unrelated to the process and in no way precludes or diminishes potential Crown compensation.</li> </ul>

Policy	RA475 – Consistency with City Plan
<p><u>C4.1.16</u> Partner with First Nations to increase their visible presence and recognize their Traditional Territories through a variety of projects, including signage, place-naming, art, incorporation of Hul’qumi’num language into public spaces, communications materials, and other ideas.</p>	<ul style="list-style-type: none"> <li>• The dedication of public park as proposed through rezoning will provide greater opportunities for achieving multiple objectives than if that portion of land were to remain privately-owned (e.g., collaboration on park amenities, signage, creation of greenspace, riparian restoration, trail connections, public gathering spaces, etc.).</li> <li>• The applicant has indicated to Staff and Council their intent to incorporate recognition of the site’s cultural significance in future site design.</li> </ul>
Policy	RA475 – Consistency with City Plan
<p>C4.6.1 Protect archaeological features located on lands owned by the City by avoiding archaeological features wherever feasible, or through appropriate mitigation measures if avoidance is not possible.</p> <p>C4.6.3 Work with Snuneymuxw First Nation to identify and understand sites of special cultural and traditional significance in order to support future designation of heritage conservation areas.</p>	<ul style="list-style-type: none"> <li>• As part of the application submission, the applicant had an Archaeological Impact Assessment (AIA) prepared by a qualified professional that recommends monitoring of ground disturbing construction activities and identifies that an HCA alteration permit must be obtained to authorize any ground disturbance within the recorded area of site DhRx-1. Staff note that additional archaeological approvals may be required in accordance with Provincial regulations. The AIA was forwarded to the Provincial Archaeology Branch, and also forwarded to Snuneymuxw First Nation for information.</li> <li>• The rezoning provides for the dedication of river front parkland, which provides opportunities for the City and Snuneymuxw First Nation to work on initiatives that would support these policy objectives.</li> </ul>

In addition to consistency with respect to key policies in Section C4.1 of City Plan, the proposed rezoning also meets the intent of Section C5 (“A Prospering Nanaimo: Thriving & Resilient Economy”), by facilitating a mixed-use development to revitalize an under-utilized site, as well as the land use policies in section D4 (“Future Land Use Designations”) as outlined in the Staff Report of 2022-AUG-29. Staff of are the opinion that the proposed rezoning and associated land use bylaws are consistent with City Plan policies, including Section C4.1 Truth and Reconciliation.

### Next Steps

Staff recommend rescinding Third Reading of the associated Land Use Contract Discharge and Zoning Amendment Bylaws. Rescinding the Third Reading of these bylaws will allow Council to consider additional information regarding City Plan compliance as outlined in this report. Should both bylaws be rescinded, the application will be scheduled for an upcoming Public Hearing. |

### **SUMMARY POINTS**

- The application is to rezone 444, 450, 450 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.
- A Public Hearing was held on 2022-SEP-29 and Third Reading of the two bylaws was passed on 2022-OCT-24.
- The proposed rezoning and associated land use bylaws are consistent with City Plan policies, including Section C4.1 Truth and Reconciliation.
- Staff recommend rescinding Third Reading of the associated Land Use Contract Discharge and Zoning Amendment Bylaws and scheduling the application to return to an upcoming Public Hearing.
- Rescinding these bylaws will allow Council to consider additional information regarding City Plan compliance as outlined in this report.

### **ATTACHMENTS**

- ATTACHMENT A: RA475 Staff Report for Decision – 2022-AUG-29  
ATTACHMENT B: Protocol Agreement between the City of Nanaimo and Snuneymuxw First Nation  
ATTACHMENT C: City Plan section C4.1 – Truth & Reconciliation  
ATTACHMENT D: “Land Use Contract Discharge Bylaw 2022 No. 7355”  
ATTACHMENT E: “Zoning Amendment Bylaw 2022 No. 4500.204”

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