

# Review of Local Government Act

## Official Community Plan Implications

September 2009



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## **1. Introduction**

This purpose of this paper is to outline and detail the legal obligations and powers of Provincial legislation that are provided to local governments in preparing their *Official Community Plans* (OCP). In British Columbia, the *Local Government Act* (LGA) provides the principal legal tools to enable local governments to undertake community planning. This paper will summarize the relevant LGA provisions with respect to OCPs, specifically detailing:

- the purpose and intent of the LGA and OCPs
- OCP content requirements and allowances
- OCP consultation requirements and allowances
- Adoption mechanisms and procedures
- Application, implementation, and amendment information

## **2. Purpose and Intent of Local Government Act / Official Community Plans**

### **2.1. Purposes of Local Government**

Collectively the LGA and *Community Charter* delineate the powers and responsibilities of local government. This section highlights the location and content of sections of these two documents that outline the purposes of the legislation, the purposes of a municipality, the role of local government with respect to planning, and limitations of the legislation.

The overall purposes of the LGA, as laid out in section 1, are:

- (a) to provide a legal framework and foundation for the establishment and continuation of local governments to represent the interests and respond to the needs of their communities,
- (b) to provide local governments with the powers, duties and functions necessary for fulfilling their purposes, and
- (c) to provide local governments with the flexibility to respond to the different needs and changing circumstances of their communities.

The purposes of a municipality, such as the City of Victoria, are identified in section 7 of the *Community Charter* as follows:

- (a) providing for good government of its community,
- (b) providing for services, laws and other matters for community benefit,

- (c) providing for stewardship of the public assets of its community, and
- (d) fostering the economic, social and environmental well-being of its community

A major element of the LGA is the delineation of the roles and responsibilities of local governments with respect to planning. In particular, Part 25 - Regional Growth Strategies, Part 26 - Planning and Land Use Management, and Part 27 - Heritage Conservation of the LGA contain information to guide local government planning.

With respect to planning matters, the powers in the *Community Charter* are limited in areas that intersect with the LGA. Section 8(7)(c) of the *Community Charter* states:

8(7) The powers under subsections (3) to (6) [*Fundamental Powers*] to regulate, prohibit and impose requirements, as applicable, in relation to a matter

...(c) may not be used to do anything that a council is specifically authorized to do under Part 26 [*Planning and Land Use Management*] or Part 27 [*Heritage Conservation*] of the *Local Government Act*.

## **2.2. Authority to Adopt an Official Community Plans**

Section 876 of the LGA provides local government with the authority to adopt an OCP:

- (1) A local government may, by bylaw, adopt one or more official community plans.

## **2.3. Purpose of Official Community Plans**

Broadly, the legal parameters that govern the creation, implementation, and application of OCPs are contained in LGA, Part 26, Division 2. Specifically, section 875 of the LGA outlines the purposes of an OCP as:

- (1) An official community plan is a statement of objectives and policies to guide decisions on planning and land use management, within the area covered by the plan, respecting the purposes of local government.
- (2) To the extent that it deals with these matters, an official community plan should work towards the purpose and goals referred to in section 849 [*regional growth strategy goals*], which are:

- 1. Avoid urban sprawl;

2. Minimize automobile use and encourage walking, cycling and efficient public transit;
3. Move goods and people efficiently, making effective use of transportation and utility corridors;
4. Protect environmentally sensitive areas;
5. Maintain a secure and productive resource base, including the agricultural land and the forest land reserves;
6. Encourage economic development that supports the unique character of communities;
7. Reduce and prevent air, land and water pollution;
8. Ensure adequate, affordable and appropriate housing;
9. Ensure adequate inventories of suitable land and resources for future settlement;
10. Protect the quality and quantity of ground and surface water;
11. Minimize the risks to settlement associated with natural hazards;
12. Preserve, create and link urban and rural open space including parks and recreation areas;
13. Promote efficient use, conservation and alternative sources of energy; and,
14. Ensure good stewardship of land, sites and structures with cultural heritage value.

### 3. OCP Content Requirements

#### 3.1. Overview

The OCP is legally required to contain a number of items, through written statements and, in some cases, also map designations. The requirements of an OCP can be categorized into the four main areas of land use requirements, housing policy requirements, greenhouse gas emission requirements, and Regional Context Statements. Table 1 contains a summary of the items that are required in an OCP.

**Table 1: Summary of OCP Content Requirements**

<b>LGA Section</b>	<b>Topic</b>	<b>Requirements</b>
877(1)(a)	Residential Development	Location, amount, type & density (meet anticipated demand over 5 years) Both Statements and Map Designations
877(1)(b)	Commercial, Industrial, Institutional, Agricultural, Recreational and Public Utility Land Uses	Location, amount, and type – both present and proposed Both Statements and Map Designations
877(1)(c)	Sand and gravel deposits	Location and area suitable for future extraction Both Statements and Map Designations
877(1)(d)	Land subject to hazardous conditions /environmentally sensitive to development	Restrictions on use Both Statements and Map Designations
877(1)(e)	Major road, sewer, and water systems	Approximate location and phasing Both Statements and Map Designations
877(1)(f)	Public facilities, including schools, parks, and waste treatment and disposal sites	Location and type – present and proposed Both Statements and Map Designations
877(1)(g)	Other matter that may be required by Minister	Both Statements and Map Designations
877 (2)	Affordable housing, rental housing, special needs housing	Housing policies
877(3)	Greenhouse gas emissions	Policies, actions, and targets
866 875(2)	Regional Context Statement	Description of relationship between OCP and Regional Growth Strategy; OCP should work towards the purpose and goals referred to in section 849 [regional growth strategy goals]

### 3.2. Land Use Requirements

An OCP's primary purpose is to articulate direction for planning and land use management. Section 877(1) of the LGA requires both statements and map designations that address the following:

- (a) the approximate location, amount, type and density of **residential development** required to meet anticipated housing needs over a period of at least 5 years;
- (b) the approximate location, amount and type of present and proposed **commercial, industrial, institutional, agricultural, recreational and public utility land uses**;
- (c) the approximate location and area of **sand and gravel deposits** that are suitable for future sand and gravel extraction;
- (d) restrictions on the use of land that is **subject to hazardous conditions or that is environmentally sensitive to development**;
- (e) the approximate location and phasing of any **major road, sewer and water systems**;
- (f) the approximate location and type of present and proposed **public facilities, including schools, parks and waste treatment and disposal sites**; and
- (g) other matters that may, in respect of any plan, be required or authorized by the Minister.<sup>1</sup>

The main subject areas have been highlighted above, but note that:

- The level of detail varies (e.g. paragraph (a) says "location, amount, type and density" whereas (b) says "location, amount and type"; (c) says "location and area"; (e) says "location and phasing" and finally (f) says "location and type"; and
- Some speak in the present tense, some of the "future" (see s.877(1)(e)) and some require both "present" and "proposed" (see 877(1)(b) and (f)).

### 3.3. Housing Policy Requirements

Section 877(2) of the LGA requires an OCP to include housing policies with respect to the following:

- affordable housing,
- rental housing, and
- special needs housing.

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<sup>1</sup> None are presently required by the Minister.

### **3.4. Greenhouse Gas Emissions Requirements**

Section 877 (3) requires that local governments address greenhouse gas emissions through the inclusion of:

- targets for the reduction of greenhouse gas emissions in the area covered by the plan, and
- policies and actions of the local government proposed to achieve those greenhouse gas emission reduction targets.

Note that local governments have until May 31<sup>st</sup>, 2010 to include such targets, policies and actions in their existing Official Community Plans.<sup>2</sup>

### **3.5. Regional Context Statements**

The Capital Regional District adopted a *Regional Growth Strategy* on August 13, 2003. Under section 866 of the LGA, OCPs must include a regional context statement that is accepted by the Board of the Regional District. The regional context statement must describe the relationship between the official community plan and the regional growth strategy. Additionally, the regional context statement needs to be consistent with the direction contained in the remainder of the OCP.

Council is required to submit a regional context statement and any subsequent amendments to the regional board for acceptance. Council is also required to review the regional context statement once every five years.

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<sup>2</sup> Per Section 39 of Bill 27—2008 Local Government (Green Communities) Statutes Amendment Act, 2008

## 4. Additional Matters that May be Included in an OCP

### 4.1. Overview

In addition to the requirements outlined in the previous section, the LGA also provides local governments with the ability to create additional policies and objectives, designate areas for special control, and require information. Examples of these items include the development of policy statements, heritage conservation areas, and development permit areas. Table 2 summarizes the topic areas and tools that are available to local governments.

**Table 2: Summary of Items that may be included in an OCP**

LGA Section	Item	Allowance
878(1)(a)	Social needs, social well-being, and social development	Policies if within City's regulation authority or broad objectives
878(1)(c)	Farming on land in farming area / area designated for agriculture	Policies respecting maintenance and enhancement if within regulation authority, other broad objectives
878(1)(d)	The natural environment, its ecosystems and biological diversity	Policies relating to preservation, protection, restoration, and enhancement if within regulation authority, other broad objectives
970.1 971  Part 27 generally	Heritage conservation areas designation to require heritage alteration permit for certain subdivision, construction and alterations to land/building/feature	Specify features or characteristics that justify designation; specify the objectives of the designation
919.1 920	Development permit areas designation to require development permit for certain subdivision, building and alterations to land/buildings	Protection of the natural environment, its ecosystems and biological diversity
		Protection of development from hazardous conditions
		Protection of farming
	Describe special conditions or objectives to justify all	Revitalization of an area in which a commercial use is permitted
		Establishment of objectives for the form and character of intensive residential development
		Establishment of objectives for the form and character of commercial, industrial or multi-family residential development

		Establishment of objectives to promote energy conservation
		Establishment of objectives to promote water conservation
		Establishment of objectives to promote the reduction of greenhouse gas emissions
Additional Powers Reg. 69/97 920(8)	Intensive Residential Development	Designate areas and define “intensive residential development”
920.01 920.1	Development Approval Information	Specify circumstances/ Designate Areas for DAI Describe special conditions or objectives to justify
920.2 921	Temporary Commercial and Industrial Use Permits	Designate Areas/ Specify general conditions for issuance
941	Provision of Park Land on Subdivision	Policies and designations respecting the location and type of future parks

#### 4.2. Optional Policy Statements & Broad Objectives

Section 878 (1) of the LGA outlines a number of items that may be included as a policy statements in an OCP. These are:

- policies of the local government relating to ***social needs, social well-being and social development***;
- an [expanded] ***regional context statement***, [in addition to the requirements further to section 866];
- policies of the local government respecting the maintenance and enhancement of ***farming*** on land in a farming area or in an area designated for agricultural use in the community plan;
- policies of the local government relating to the preservation, protection, restoration and enhancement of the ***natural environment, its ecosystems and biological diversity***.

Section 878(2) requires that OCPs can only provide the broad objectives of the local government with respect to issues that are not within the jurisdiction of local government. Therefore, the distinction between a policy statement and broad objective is important in the preparation of an OCP.

### **4.3. Heritage Conservation Area**

In Section 970.1 of the LGA, it states an OCP may designate an area as a heritage conservation area. If a heritage conservation area is designated, the OCP must:

- describe the special features or characteristics that justify the designation, and
- state the objectives of the designation.

Guidelines respecting the manner by which objectives are to be achieved must also be specified but that can be done in either the OCP or a zoning bylaw. If an area is a designated heritage conservation area, then certain subdivision, construction and alterations must not be done without a Heritage Alteration Permit (HAP). The OCP may also do one or more of the following:

- specify conditions under which heritage alteration permit requirements (section 971) do not apply to property within the area, which may be different for different properties or classes of properties;
- include a schedule listing buildings, structures, land or features within the area that are to be protected heritage property under this Act;
- identify features or characteristics that contribute to the heritage value or heritage character of the area.

### **4.4. Development Permit Areas**

A development permit area is a designation which imposes a set of regulations pertaining to a specific area. The development permit area may be small or cover the entire City. Development permit areas can be used to achieve a variety of design, revitalization and environmental objectives and require the issuance of a development permit prior to subdivision, building and/or alterations of land and/or buildings.

Section 919.1 of the LGA provides the authority of an OCP to designate development permit areas for one or more of the following purposes:

- (a) protection of the natural environment, its ecosystems and biological diversity;
- (b) protection of development from hazardous conditions;
- (c) protection of farming;
- (d) revitalization of an area in which a commercial use is permitted;
- (e) establishment of objectives for the form and character of intensive residential development;

- (f) establishment of objectives for the form and character of commercial, industrial or multi-family residential development;
- (g) ...[*only relevant to resort regions*]...
- (h) establishment of objectives to promote energy conservation;
- (i) establishment of objectives to promote water conservation;
- (j) establishment of objectives to promote the reduction of greenhouse gas emissions.

With respect to each development permit area created, the OCP must:

- describe the special conditions or objectives that justify the designation, and
- specify guidelines respecting the manner by which the special conditions or objectives will be addressed (though these guidelines may be included in the zoning bylaw instead).

The OCP may also specify conditions under which a development permit would not be required.

Section 920 of the LGA dictates what a development permit may or may not do and it prevents a development permit from varying the use or density of permitted development (except with respect to a designation under s.919.1(b) "protection of development from hazardous conditions", and only with respect to "health, safety or protection of property from damage"). A review of this section is necessary to inform the drafting of the guidelines.

#### **4.5. Areas for Intensive Residential Development**

The City of Victoria is granted additional powers through the *City of Victoria Additional Powers Regulation (B.C. Reg. 69/67)*. This legislation allows the City to designate areas for intensive residential development in its OCP; unlike LGA s.919.1 it also specifically authorizes the City to define the meaning of the term "intensive residential development". Nevertheless, section 920(8) of the LGA applies so that a development permit under this designation "may include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and other structures".

#### **4.6. Development Approval Information**

The LGA gives local government the authority to require the provision of development approval information identifying the "anticipated impact of the proposed activity or development on the community" (per s.920.1). The first step

in requiring such information is that the OCP, in accordance with section 920.01 of the LGA, may do one or more of the following:

- (a) specify circumstances in which development approval information may be required,
- (b) designate areas for which development approval information may be required,
- (c) designate areas for which, in specified circumstances, development approval information may be required.

The second step is a separate procedures and policies bylaw further to s.920.1(2), which may be done after or concurrently with the OCP.

#### **4.7. Temporary commercial and industrial use permit areas**

The LGA gives local government the authority to issue temporary commercial or industrial use permits which could permit uses not otherwise permitted in the zoning bylaw.

In order to be able to do so, the OCP or the zoning bylaw may designate areas where temporary commercial and industrial uses may be allowed and may specify general conditions regarding the issue of temporary commercial and industrial use permits in those areas (as described in section 920.2).

#### **4.8. Provision of Parkland**

Under section 941 of the LGA, an owner subdividing land must either provide parkland or cash-in-lieu. This is at their option unless the OCP contains "policies and designations respecting the location and type of future parks", in which case the City will then have the option to require parkland or accept cash-in-lieu (s.941(2)).

## 5. Consultation Requirements

### 5.1. Overview

The process of developing an OCP involves coordination and collaboration with a variety of stakeholders. These stakeholder groups include regional government, other government agencies, and the general public. Additionally, further to LGA s.876, the local government must consider any applicable Provincial guidelines. Table 3 provides an overview of the stakeholder groups and associated consultation requirements in creating an OCP, as identified in the LGA.

**Table 3: Summary of OCP Consultation Requirements**

<b>LGA Section</b>	<b>Stakeholder</b>	<b>Requirements</b>
879	Persons, organizations and authorities generally	Council consideration of appropriateness of one or more opportunities, whether early and ongoing and who to be consulted
879(2)(b)(i)&(ii)	Board of regional districts	Council consideration of whether consultation required
879(2)(b)(iii)	Council of adjacent municipalities	Council consideration of whether consultation required
879(2)(b)(iv)	First nations	Council consideration of whether consultation required
879(2)(b)(v)	School district boards, greater boards, and improvement district boards generally	Council consideration of whether consultation required
879(2)(b)(vi)	Provincial and federal governments and their agencies	Council consideration of whether consultation required and with whom
881	School District #61	Consultation required with Board
890	The Public	Public hearing required – held before adopting OCP. All people who believe their interest in property is affected must be given a reasonable opportunity to be heard or present a written submission
970(4)	Property owners in newly proposed heritage conservation areas	Must be notified at least 10 days prior to an OCP public hearing

## **5.2. Council's Consideration of Consultation Opportunities, Persons, Organization and Authorities and Whether Early and Ongoing**

In addition to the formal public hearing, section 879(1) states that the local government "must provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected."

Section 879(2) also requires that a local government must

- (a) consider whether the opportunities for consultation with one or more persons, organization and authorities should be early and ongoing, and
- (b) specifically consider whether consultation is required with the following bodies:
  - the board of the regional district and adjacent regional districts,
  - the Council of adjacent municipalities,
  - first nations,
  - school district boards, greater boards, and improvement district boards,
  - provincial and federal governments and their agencies.

The key here is that City Council (as the "local government") be the body that specifically considers who will be consulted and how often, and to that end there should be Council Resolution at the commencement of and throughout the OCP preparation process; Council is often assisted with reports from Staff.

## **5.3. School District Consultation Mandatory**

Section 881 of the LGA states that the local government must consult with boards of education for those schools districts within its jurisdiction. The only school district within the City of Victoria is School District #61. Consultation is required to be undertaken at the time of preparing or amending the community plan, and at least once per calendar year. The items where the City is required to seek input are as follows:

- (a) Actual and anticipated needs for school facilities and support services in the school district,
- (b) Size, number, and location of sites anticipated to be required for school facilities,
- (c) Types of school(s) anticipated to be required,

- (d) Timing of when anticipated school facilities and support services will be required, and
- (e) how existing and proposed school facilities relate to existing or proposed community facilities in the area.

#### **5.4. Public Hearing Mandatory**

As described in section 890 of the LGA, a local government must hold a public hearing before adopting an OCP bylaw for the purpose of allowing the public to make representations to the local government. The public hearing must be held after first reading of the bylaw and before third reading, and all people who believe their interest in property is affected must be afforded a reasonable opportunity to be heard or to present written submissions.

A written report of each public hearing, containing a summary of the nature of the representations respecting the bylaw that were made at the hearing, must be prepared and maintained as a public record. Other requirements of public hearings are detailed in sections 891, 892, and 893 of the LGA. A council may adopt an official community plan at the same meeting at which the plan passed third reading.

#### **5.5. Consultation for Optional OCP Topics**

The inclusion of optional items in an OCP (as detailed in Chapter 4 of this paper) does not require additional consultation measures, except with respect to the designation of Heritage Conservation Areas. If the OCP is to designate Heritage Conservation Areas, then under section 970 (4) of the LGA, the local government must give notice in accordance with section 974 to the owner of each property that is to be included in the schedule listing buildings, structures, land or features within the area that are to be protected heritage property under this Act, unless the property was already included in the schedule. This notification is required at least 10 days before the public hearing on an OCP.

## **6. Adoption**

### **6.1. Bylaw and Schedule Required**

Section 876 of the LGA gives a local government authority to, by bylaw, adopt one or more OCPs. An OCP must be included in the adopting bylaw as a schedule, and must designate the area covered by the plan.

### **6.2. Adoption Procedures**

Section 882 of the LGA requires the OCP to be adopted by bylaw and it dictates the order of a number of considerations. Each reading of a bylaw must receive an affirmative vote of a majority of all council members present.

After first reading of the OCP bylaw, the local government must follow this sequence:

- first consider the OCP in conjunction with its financial plan, and any waste management plan that is applicable in the municipality
- if any of the lands are in the ALR, then refer the OCP to the Agricultural Land Commission, and
- then hold a public hearing on the proposed OCP.

It is important to note that if amendments are made while the OCP Bylaw is in process, then the above procedure must be repeated.

A local government may consider a proposed OCP in conjunction with any other land use planning and with any social, economic, environmental or other community planning and policies that the local government considers relevant.

## **7. Application and Implementation**

### **7.1. Broad Implications**

The adoption of an OCP has a number of implications for the City, including as identified in section 884 of the LGA:

- An official community plan does not commit or authorize a municipality to proceed with any project that is specified in the plan.
- All bylaws enacted or works undertaken by Council must be consistent with the official community plan.

Furthermore, LGA s.914 provides that "compensation is not payable to any person for any reduction in the value of that person's interest in land, or for any loss or damages that result from the adoption of an official community plan" unless that property is designated for public use only.

### **7.2. Implementation**

The OCP serves as a guiding document, informing other regulations and bylaws, in particular the zoning bylaw. For some tools that are available for inclusion in the OCP (e.g. development approval information), the OCP is but the first step for implementation and further guidelines and bylaws would be required.

### **7.3. Amendment Procedures**

Under section 895 of the LGA a local government that has adopted an official community plan bylaw must, by bylaw, define procedures under which an owner of land may apply for an amendment to the plan. The local government must consider every application for an amendment to the plan and follow the above consultation requirements and procedures.

The City of Victoria's current bylaw is No.05-93 "Land Use Procedures Bylaw, 2005".

**Appendix A: *Local Government Act* Sections relevant to OCP**