

PEARLMAN LINDHOLM

Barristers & Solicitors

DONALD A. FARQUHAR, Q.C.
TIMOTHY A.C. SCHÖBER †
SCOTT W. FARQUHAR †
DAVID T. JUTEAU †
T.J. SENKO

GORDON W. BENN
GORDON M. LIDSTONE
WENDY E. BERNT
ALEXANDER J. MCCRAE †
KERRI L. CRAWFORD

PATRICK M. SWEENEY †
MONTE W. PRIOR
MASSIMO D. DURANDO †
DAVID A. BUSCH
JESSICA TARA

W. DALE MURRAY
MICHAEL R. SCHERR †
SHELLEY A.V. QUINTE**
PARVEEN K. NIJJAR

PLEASE REPLY
✓ VICTORIA OFFICE
___ SIDNEY OFFICE

www.pearlmanlindholm.com

ATTENTION OF: **DAVID A. BUSCH (Local 272)**
E-mail: dbusch@pearlmanlindholm.com
Our File: 75-01-02/ 18-546

September 04, 2018

Mary Doody Jones
435 Kipling Street
Victoria, BC
V8S 3J9

Dear Ms. Jones:

RE: Mr. Alec Johnston's Email of June 21, 2018 to Mr. Christopher Petter about Large Urban Village Designation for 1303 Fairfield Road

Thank you for your request to provide an opinion regarding Mr. Johnston's email to Mr. Petter of June 21, 2018 regarding a Large Urban Village designation for 1303 Fairfield Road.

At issue is the use of the term LUV. A Large Urban Village (LUV) designations carries with a radius effect that generally radiates out 400 meters, as council and the city planners deem appropriate. This radius effect is meant to allow for the more certainty for developers. They know in advance what the long-term vision is for those areas, and an understanding of what building permits may be obtained. It also allows an area to develop as a whole so one does not have conflicting or incompatible uses. This is the purpose of the Official Community Plan (OCP), a document which repeatedly demonstrates the above definition of a LUV.

A traditional reading of Policies 6.20 and 6.21 indicates that an LUV's 400 meter effect will certainly increase the likelihood of densification since properties within it can be easily rezoned to allow for 4 to 6 stories with no setbacks. This densification is both desirable and necessary to create the necessary 'urban village populations' to support vision of services, businesses and transit in the LUV Hub. It is also needed by municipalities to increase their tax base, and provide housing for new residents. Not surprisingly, resignation for increased density is often a concern to those who foresee developments which will fundamentally change the existing character of their streets.

Based upon Mr. Johnson's email, the city of Victoria appears to be suggesting a LUV designation for the property with a 0 meter radius effect. As such the only property on the street which would be able to be built up to four stories would be 1303 Fairfield Road. All the other properties would maintain their existing designations in the OCP. Consequently, no permits could be issued for those properties which was not in keeping with their existing designation in the OCP.

While unusual, it is within the power of the municipality to make a 0m radius designation. The question is "Will the new development be in keeping with the existing character and the future vision of the neighborhood?" Once there is a LUV designation on one property, it will be easier for interested parties to begin an incremental creeping of the radius over neighboring properties.

Mr. Johnson is correct that amending the OCP is the only way that a permit allowing a four-story construction can be issued by the municipality as they cannot adopt zoning bylaws that are inconsistent with the OCP. While such an amendment would only affect the one property, it will none the less begin to change the 'nature and character of the neighborhood' since the new building will be significantly larger than it neighbors.

Mr. Johnston's comment that the "OCP needs to be amended for this site" is correct in that a municipality cannot adopt zoning bylaw which is inconsistent with the OCP", it is also quite disconcerting as it overlooks the fact that the system is meant to function the other way around. Rather than amending the OCP to fit their desired building, the municipality should be ensuring that zoning bylaws remain consistent with the OCP. Council appears to be approving a project, and only then looking to see if it is in keeping with the OCP, and trying to change the OCP retroactively to allow for the needed zoning bylaws. This approach may lead to a patchwork of series of buildings, which may not be in keeping with any long-term plan or vision as the OCP is that long term vision.

Being an election year, I am sure Council understands the anxiety this process is having on the neighborhood which wants to protect its unique characteristics, and will search for a collaborative solution acceptable to all the residents in the neighborhood.

Yours truly,

PEARLMAN LINDHOLM

Per:

DAVID A. BUSCH

*mc

**EMAIL ANSWER OF ALEX JOHNSTON TO CHRIS PETTER AS BASIS OF PAPER:
STATEMENTS ON ONLY ONE BUILDING AFFECTED BY LUV CHANGE**

On Thu, Jun 21, 2018 at 11:25 AM, Alec Johnston <ajohnston@victoria.ca> wrote:
Hello Chris,

Thank you for your continued interest in the proposed development of 1303 Fairfield Road and the Official Community Plan (OCP) policies related to Urban Villages.

Further to the Mayor's comments, staff hope that the information below helps to clarify the proposed development and address your concerns regarding the potential policy implications of changing the land use designation for the property. Should you have any further questions, please feel free to contact me directly.

Best regards,

Alec

Development Application for 1303 Fairfield Road:

Key Point:

The proposed Official Community Plan (OCP) amendment does not mean that the entire Five Points Village will be classified as a "large urban village". The amendment would only apply to 1303 Fairfield to facilitate the proposed development and would not impact other properties in the village or the surrounding area.

Background:

The City is considering a site-specific rezoning for 1303 Fairfield which proposes a four storey building at a density of 1.84:1 floor space ratio (FSR). Currently, the property is designated in the OCP as a "small urban village", which permits only a certain level of density and building height. As this proposal exceeds those levels, the OCP needs to be amended for this site because a municipality cannot adopt zoning bylaws that are inconsistent with the OCP. The only other land use designation category in the OCP that would accommodate a proposal such as this is the "large urban village" designation.

That does not mean that the entire 5-Points Village will be reclassified as a "large urban village", nor does it change the long-term vision for the rest of the village. This amendment would only facilitate a particular development proposal on a specific site. The public will have an opportunity to provide comments to Council on this specific development proposal, if Council decides to advance it for further consideration at a public hearing. If approved, it would only apply to 1303 Fairfield Road.

Note: on May 10th, Council referred the application back to staff and the applicant to address height and massing concerns identified by the neighbourhood and to more adequately address the transition to surrounding properties and to bring a revised application back to a future Committee of the Whole meeting. The applicant is currently working on revisions to address the motion.

We have also heard that there are concerns in the community that the outcomes of this proposal would have consequences due to other policies in the OCP, notably policy 6.20.

Official Community Plan, 2012:

Key Point: Higher density developments are not automatically permitted on all lands within 400m of a village.

Background:

Policy 6.20: Prepare local area plans for James Bay Village, Cook Street Village, Five Points Village, Moss Street Village, Ross Bay Village, Fairfield at Irving Village, Fernwood Village, Haultain Corners Village, Selkirk Village, Burnside at Harriet Village and Quadra at Tolmie Village to support the development of complete Urban Villages, generally focusing on the lands within 400 metres of Village Centres [SEE ALSO SECTION 20 – LOCAL AREA PLANNING AND SECTION 21 – NEIGHBOURHOOD DIRECTIONS].

We understand that some have interpreted this policy to mean that higher density developments will automatically be permitted on all lands within 400m of a village. That is not correct, to clarify, this policy means:

When the OCP was created, it was envisioned that the City would undertake local area planning as a priority in areas anticipated for future growth and change, such as villages and transit corridors, to support sustainable, walkable communities. The intent of policy 6.20 was to define the scope for local area planning processes. For example, instead of creating one neighbourhood plan for all of Burnside, it was envisioned that the City would instead create separate plans for Selkirk Village and the village at Burnside and Harriet, and in each of the plans, future housing needs adjacent to those villages (within 400m) would be considered and be part of those planning process discussions.

Since the OCP was adopted, the City heard the community's desire to continue with the model of having one plan for entire neighbourhoods rather than a series of village or corridor plans. In the Burnside example, one neighbourhood plan was created that includes policies for all of the neighbourhood's villages and adjacent lands. In the case of Fairfield, the draft neighbourhood plan is still underway, so the outcomes of those planning processes have yet to be determined.

Draft Fairfield Neighbourhood Plan:

Key Point:

The draft Fairfield Neighbourhood Plan does not propose to re-classify small urban villages into large urban villages, and it continues to identify the 5 Points Village as a small urban village. The draft plan is not proposing a blanket radius for more intensive development within 400 metres of large or small urban villages.