

OFFICIAL COMMUNITY PLANS

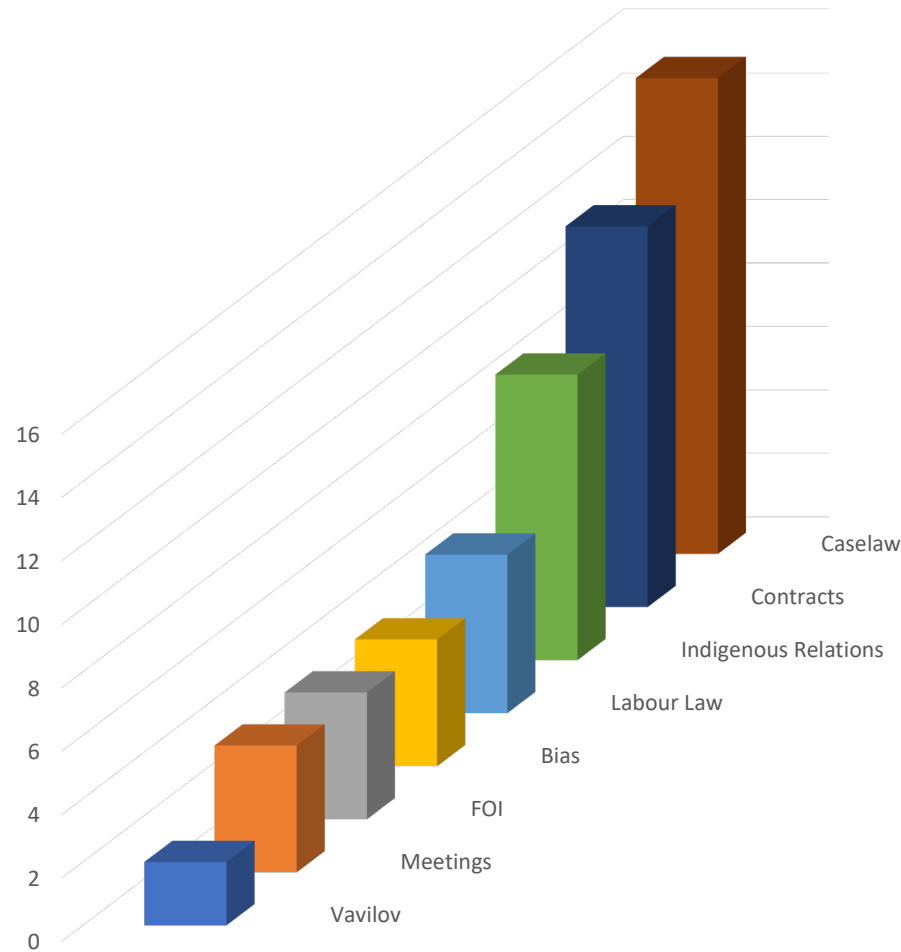
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“Been there, done that” (just sayin’)



OCPs – What’s the Big Idea?

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

work towards the purpose and goals referred to in section 428 [*Regional Growth Strategies*]

Required Content

473(1) Statements and map designations:

- Location, amount, type and density of residential development to meet anticipated housing needs
- Location, amount and type;
 - Present and proposed
 - commercial, industrial, institutional, agricultural, recreational and public utility land uses
- Sand and gravel deposits
- Hazard land restrictions
- Location and type
 - Present and proposed
 - public facilities, including schools, parks and waste treatment and disposal

473(2) Affordable, rental and special needs housing policies

473(2.1) Consider housing needs report

Consultation Opportunities

- “considers appropriate”
- “considers affected”
- In addition to public hearing
- Agricultural Land Commission
- School Board

Adoption Procedures

- Majority of all council members for each reading
- After first reading, consider in conjunction with:
 - Financial plan
 - Waste management plan
- ALC referral
- Public hearing
- Alter and adopt, or not

Legal Effect

- Consistency
 - bylaws (vs. resolutions)
 - works undertaken
 - subdivision
- Public hearings
 - “may waive” vs. “not required to hold”

III. DEVELOPMENT PERMITS

Development Permits: What are they?

- Tools that a local government may use to manage or restrict development.
 - Vary or supplement land use regulations;
 - Guidelines which can provide requirements or conditions (see s.491);
 - Impose conditions on the sequence and timing of construction.
- Issued by resolution (possible staff delegation)

III. DEVELOPMENT PERMITS

- Certain activities may not occur within the DPA unless a DP has been obtained.
 - Subdivision of land within the DPA;
 - Beginning construction of, addition to, or alteration of a building or other structure;
 - Altering the land within DPA designated for protection of the environment or hazardous
 - Altering land, building, or structure with a DPA designated for revitalization, or conservation of energy, water, or greenhouse gas reduction.

III. DEVELOPMENT PERMITS

Establishing a DPA

- Step 1(kind of): Define the area in the OCP. This becomes the Development Permit Area (DPA).
- Step 2: Designate the purpose(s) of the DPA.
 - Ex) establishment of objectives to promote energy conservation or revitalization of an area in which a commercial use is permitted.

III. DEVELOPMENT PERMITS

Establishing a DPA

- Step 3: Describe the special conditions or objectives that justify the designation
- Step 4: specify guidelines respecting the manner by which the special conditions or objectives will be addressed.

III. DEVELOPMENT PERMITS

DPs can do 3 essential things

1. DPs can vary or supplement a land use regulation, though not in relation to use or density (except in relation to health and safety as it related to hazardous conditions) or a zoning bylaw in relation to rental tenure.
 - Flood plain specifications (s.524(3)) are also off limits.

III. DEVELOPMENT PERMITS

DPs can do 3 essential things

2. Include requirements and conditions or set standards (the guidelines proper).
3. Impose conditions respecting the sequencing and timing of construction.

III. DEVELOPMENT PERMITS

Guidelines

- Each designation under s.488(1) has its own authorities. It is important to make sure that the restrictions and requirements within the guidelines are authorized by the specific designation authorities.
- When drafting guidelines, remember that strict language will result in strict requirements.

IV. TEMPORARY USE PERMITS

Temporary Use Permits – What are they?

- TUPs allow a use which is not otherwise permitted to be carried on within an area for a temporary period.
- TUPs can also specify conditions under which the use may be carried on, and allow/regulate the construction of buildings related to the temporary use.
- Unique as they can alter land use without a public hearing and are not subject to OCP consistency.

IV. TEMPORARY USE PERMITS

Temporary Use Permit Notice Requirements

- Section 494 requires public notice when a TUP is being proposed. The requirements differ depending on whether the TUP will be adopted by resolution or by bylaw.

IV. TEMPORARY USE PERMITS

Temporary By Design

- TUPs are limited to a maximum of three years.
- Upon application, an owner may request a TUP be renewed. This renewal may be for up to another maximum of three years.
- The local government may stipulate any length of time under 3 years for either the initial permit or the renewal.

IV. TEMPORARY USE PERMITS

Temporary By Design

- Local governments may specify conditions to issuance. Section 495 and 496 relate to the temporary nature of a TUP.
- 495 may require an owner to give an undertaking to demolish or remove buildings related to the temporary use, and/or restore the land once the permit has expired.
- TUPs may also require a deposit in relation to restoring the land.
- Additional conditions under ss.492(b) and 493(2)(b) can be of a more general nature related to the temporary use.

IV. TEMPORARY USE PERMITS

- **Do not forget**, section 503 requires that the local government provide notice to the Land Titles Office upon the issuance, amendment, and/or cancellation of a temporary use permit.
- The terms of the permit then become binding on anyone that acquires an interest in the land (i.e., not just an owner).

V. CASE LAW



OCP Consultation Obligations

Gardner v. Williams Lake (City), 2006 BCCA 307

The appellant argued that the City had not met its consultation obligation when the City enacted a bylaw to accommodate a large retail shopping centre

How and how often to consult under s.475?

- Discretion of the local government council or board



Gardner v. Williams Lake (City)

Local government's duty as to the consultation under s.475:

- involves “bi-lateral communication in which the person that is being consulted has the opportunity to question, to receive explanation and to provide comment to the local government upon the proposal”
- includes informal communications, meetings, open houses, delegations, and correspondence
- must be meaningful

Gardner v. Williams Lake (City)

Crown's duty
to consult

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Local government's
duty to consult

- Local government's decisions affect aboriginal title and rights in the context of land use planning?
- The ***Gardner*** case suggests that the Crown's duty to consult does not extend to municipalities

Guidelines for Development Permit Areas

Washi Beam Holdings Corp. v. West Vancouver (District), 1999 CanLII 6503 (BCSC)

- challenged the quality of development permit guidelines in an OCP
- a guideline may exist without specifically being referenced by usage of that term
- the words used in the OCP must provide some guidance
- council has discretion to allow or deny a DP application on a case-by-case basis, but the discretion must only be exercised according to previously-adopted guidelines

OCP Consistency Requirements

Central Saanich Society v. Central Saanich (District), 2011 BCCA 484



- “Whether the DP by the bylaw was inconsistent with the concept of rural, as set out in the District’s OCP, is a matter of interpretation. An OCP is not drafted in the terms of a statute but rather, in terms of objectives and policies, which are necessarily much less specific than statutory terms. It is obviously not possible to promote each of the many objectives of the OCP equally in a single instance, therefore decisions applying that plan must involve the exercise of judgment in balancing various objectives in each case.”

Central Saanich Society v. Central Saanich (District)

- “The Court in considering a bylaw passed by a municipal council is not dealing with an adjudicative tribunal, but a decision by elected council members, who have concluded in the exercise of their judgment, how best to accommodate the various policies and objectives they must serve.”
- This suggests that the court ought not to interfere with any reasonable interpretation consistent with the OCP.

O'Shea/Oceanmount Community Association v. Gibsons (Town), 2020 BCSC 698

The court formulated some important principles on the question of whether a particular zoning bylaw is consistent with an OCP:

- an OCP is a policy document which is not to be given the same level of scrutiny “as would-be acts of Parliament”
- an OCP is meant to capture a long-term vision or philosophy and cannot be construed with the scrutiny afforded a statute
- inconsistency with an OCP is only established if there is a clear or specific contradiction between the OCP and the bylaw in question
- when judged on a standard of reasonableness, consistency is considered holistically, and in conjunction with other considerations that may have factored into the making of the decision by the municipality
- “consistent” as used in the LGA is not an exacting standard and it must take into account the wide variety of factors that are identified in what is fundamentally a policy document meant to guide planning decisions.

QUESTIONS AND ANSWERS