

Attachment 4: Supplemental Document



Dunvegan Gardens circa 2005

The Canadian Institute of Planners (CIP) states:

“Planning means the scientific, aesthetic, and orderly disposition of land, resources, facilities and services with a view to securing the physical, economic and social efficiency, health and well-being of urban and rural communities.”¹

Safe and orderly development is at the centre of planning in the Regional Municipality of Wood Buffalo. As a profession, a planner seeks to ensure land uses are compatible with one another and that they do not negatively impact adjacent and surrounding properties. When considering future development, a planner must follow the Municipal Government Act (MGA) and be consistent with Provincial Policies.

The purpose of this *Supplemental Document* is to provide the reader with information regarding:

1. a description of relevant planning concepts;
2. a background of the Land Use Bylaw 99/059 and Highway 69/Clearwater River Valley Area Structure Plan amendments;
3. a history of the properties that are the subject of this application;
4. an in-depth analysis of the application; and,
5. the rationale for recommending refusal of the application.

The recommendations and rationale contained here-within are based on; an objective review of the application submitted by the applicant, the existing Land Use Bylaw (LUB) and Highway 69/Clearwater River Valley Area Structure Plan (ASP), the public open house conducted by the applicant, and results of the survey conducted by Administration to receive feedback from the residents of Draper. The history of the property was not taken into account when reviewing this application. It has been included in this document to provide the reader with an understanding of the context of the site. This document is intended to provide a detailed, objective and factual picture of how the Municipality reached the recommendations and conclusions presented in this report.

¹ Canadian Institute of Planners, *About Planning* (2018).

1 Planning 101

The following section provides an overview of relevant planning terms and documents to help the reader better understand the content and rationale contained in this report. It also covers some key terms included in the application itself, and arms the reader to look at the application from a land use planning perspective.

1.1 The Land Use Bylaw

Under section 639 of the Municipal Government Act (MGA), every municipality must pass a Land Use Bylaw. The role of a land use bylaw is to regulate and control the use and development of land and buildings in a municipality². In accordance with section 640(2)(a) of the MGA, a Land Use Bylaw must divide the entire municipality into land use districts. There are two types of districts; the first are “conventional” districts and the second “direct control” districts³.

1.1.1 Conventional Districts

In the Regional Municipality of Wood Buffalo’s Land Use Bylaw, conventional districts are the most common. These districts contain a Purpose section, Permitted Uses, Discretionary Uses, and Site Provisions that apply to all development in that district.

1.1.2 Direct Control Districts

Generally stated, the purpose of a Direct Control District (DC) is twofold; firstly, to provide maximum flexibility in terms of land use and development proposals, and secondly, provide Council with a high level of control over the proposed development. Flexibility is especially beneficial when factors such as economic conditions, technology, societal values and trends are constantly changing. Specific to this application, flexibility is valuable when the industry the applicant wishes to participate in is constantly changing. In contemporary land use districts, where the land uses are static, it becomes difficult to respond to changes in operation and business models as the owner is limited to the uses contemplated in the applicable land use district.

1.1.3 Permitted and Discretionary Uses

Permitted uses generally meet the purpose statement of a land use district. They are perceived to have minimal impact on adjacent and surrounding properties, since they reflect the intent and character of the area. Additionally, the Development Authority **must** approve a permitted use, with or without conditions, if the proposed use or development meets all additional provisions of the LUB, such as setbacks from property lines and the height of a proposed development. An example of a permitted use would be a Single-Detached Dwelling in a residential district where the purpose of that district is to allow for low density residential development.

Discretionary uses, in contrast, are additional uses contemplated in a

² Section 640(1) of the Municipal Government Act

³ Frederick A. Laux, Q.C., *Planning Law* (Edmonton, Alberta: Juriliber Limited, 2010), 6-3.

land use district which still respects the character of the area, but may impact adjacent and surrounding properties if not properly mitigated. When reviewing applications for discretionary uses, development officers must ensure the proposed development will not adversely affect the **use, enjoyment** and **amenity** of the neighbourhood. Discretionary uses can be approved by the Development Authority, with conditions, and can be appealed by concerned neighbours. An example of a discretionary use would be a home business in a low density residential neighbourhood. In this instance the Development Authority must be satisfied the proposed business will not have a detrimental impact on the area.

1.1.4 Definition of Development

It is important to understanding that development is not limited to constructing a new building, but also includes how a building or land is used and the intensity of that use. Land Use Bylaw 99/059 defines Development as:

*“(a) an excavation or stockpile and the creation of either of them;
(b) a **building** or an **addition** to or replacement or repair of a building and the construction or placing of any of them in, on, over or under land;
(c) **change of use of land or a building** or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building; or
(d) a **change in intensity of use of land or a building** that results in or is likely to result in a change in the intensity of use of the land or building.”*

Emphasis Added

Unless stated otherwise in the Land Use Bylaw, all development, as defined by the Land Use Bylaw, requires a Development Permit.

1.2 Area Structure Plans

Section 633(1) of the Municipal Government Act states:

“633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.”

In the RMWB, an Area Structure Plan (ASP) also includes a vision for an area of land and is developed based on extensive engagement and discussions with the community. Section 633(2) of the MGA also requires:

*“(2) An area structure plan
(a) must describe
(i) the **sequence of development** proposed for the area,
(ii) the **land uses proposed** for the area, either generally or with respect to specific parts of the area,
(iii) the **density of population** proposed for the area either generally or with respect to specific parts of the area, and
(iv) the general location of **major transportation routes** and*

public utilities,
and
(b) may contain **any other matters**, including matters relating to reserves, as the council considers necessary.”

Emphasis added

1.3 Planning Principles

When the Development Authority is evaluating a development application, the provisions of the Land Use Bylaw and principles of statutory documents (for example, Area Structure Plans) guide how and where development takes place. In some instances, these documents do not provide sufficient guidance. The Development Authority then needs to use their discretion and planning expertise to inform their decision or recommendation. Some key principles for decision making are:

1. Development should not:
 - a. Unduly interfere with the amenities of the neighbourhood; and,
 - b. Interfere with the use, enjoyment, or value of neighbouring properties,
- and
2. Decisions should be in the public interest and respect the diversity, needs, values, and aspiration of the public.⁴

Some of these principles are incorporated into the Municipal Government Act (MGA) itself. For example, section 640(6) reads as follows:

“A land use bylaw may authorize a development authority to decide on an application for a development permit even though the proposed development does not comply with the land use bylaw or is a non-conforming building if, in the opinion of the development authority,

- (a) the proposed development would not
 - (i) unduly interfere with the **amenities of the neighbourhood**, or
 - (ii) materially interfere with or affect the **use, enjoyment or value** of neighbouring parcels of land,
- ...

Emphasis added

These same principles are repeated in section 28.1 of Land Use Bylaw 99/059, which reads as follows:

“28.1 Variance to Regulations (Bylaw No. 02/081)

The Development Authority may, subject to Section 28.2, allow a variance and approve a development permit for a permitted or discretionary use, with or without conditions, which does not comply with the regulations to this Bylaw provided that the Development Authority determines that:

- (a) the proposed variance would not result in a development that will:
 - (i) unduly interfere with the **amenities of the neighbourhood**;

4 Canadian Institute of Planners, *Codes of Professional Conduct* (2018).

*(ii) materially interfere with or affect the **use, enjoyment** or **value** of neighbouring parcels of land.*
...

Emphasis added

Similarly, section 120.6 of Land Use Bylaw 99/059 contains additional provisions for the Small Holdings District that state:

“120.6 Additional Provisions

Small Holdings development shall only be allowed if the Development Authority is satisfied that:

- (a) adequate access exists to a public road;*
- (b) no conflict will result with adjacent land owners;*
- (c) the developer will be responsible for constructing all internal roads...”*

Emphasis added

The above principles were used as a lens when examining the amendment application. Looking at what impact the proposal may have on adjacent properties was a basis of the analysis.

2 Historical Context

Please note, the historical context of the property was **not** a basis for Administration's recommendation regarding this application. An understanding of the history of the property and operations is helpful to understand why an amendment application was necessary, and to some degree, the application itself.

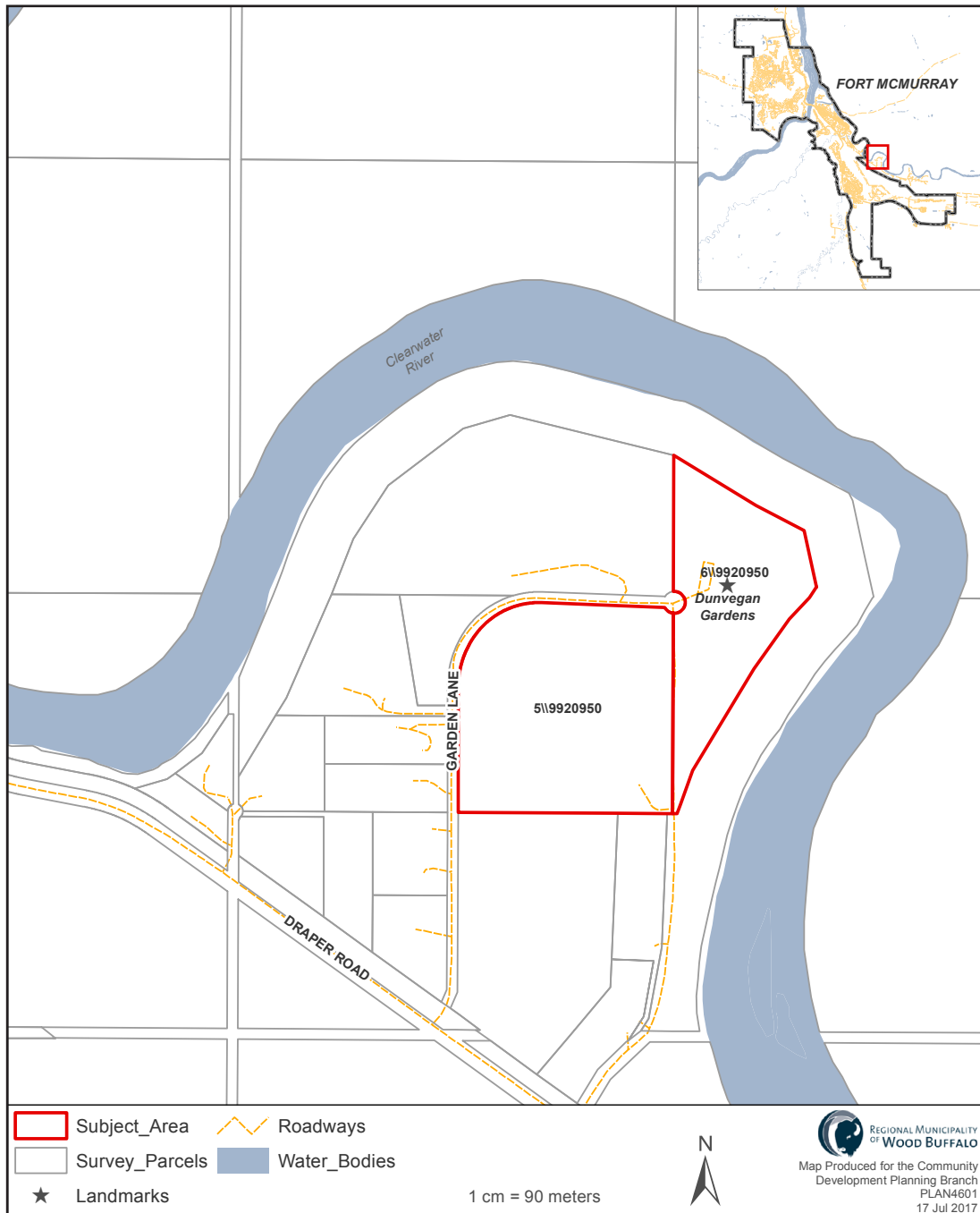


Figure 1 - Subject Area Map

128 Garden Lane, legally described as Lot 6, Plan 992 0950 and Lot 5, Plan 002 0950 is in Draper on the riverside of Draper Road (Figure 1). Originally owned by the Province of Alberta, the properties were purchased by Robert and Bernice Grey in 1999. The Greys operated a popular market garden, known as Grey's Gardens, which consisted of selling produce grown on-site, that could be purchased either



Figure 2 - Grey's Garden

through a U-pick system, or from a small stand (Figure 2). The market garden continued operation by the Greys until the property was purchased by Dunvegan Gardens (Fort McMurray) Ltd. in 2005. Later, Lot 5, Plan 992 0950 was purchased by Grandma's Attic Ltd. The timeline showing property ownership is shown in Figure 3.

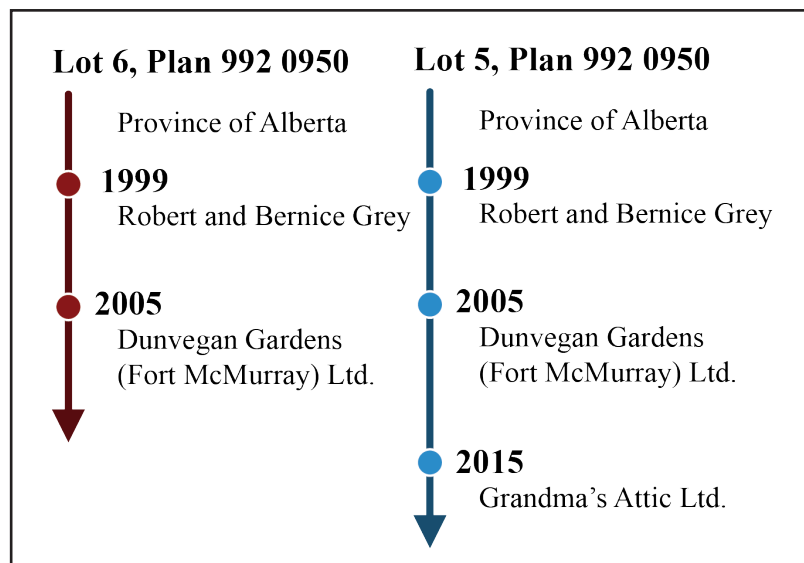


Figure 3 - Ownership Timeline

In 1982, Robert Grey and Clarence Satre opened MacKenzie Market and Greenhouses, a Farmer's Market at 384 Gregoire Drive. They sold bedding and house plants from Mr. Satre's Hasting's Lake Gardens (based in Spruce Grove, Alberta) and fresh vegetables from Grey's Gardens. They also sold eggs, honey, and prepared meats. In 2001, MacKenzie Market and Greenhouses was purchased by Dunvegan Gardens and in 2009, they moved the operation from 384 Gregoire Drive to the Draper location, without a Development Permit. This sequence of events is shown in Figure 4 below.

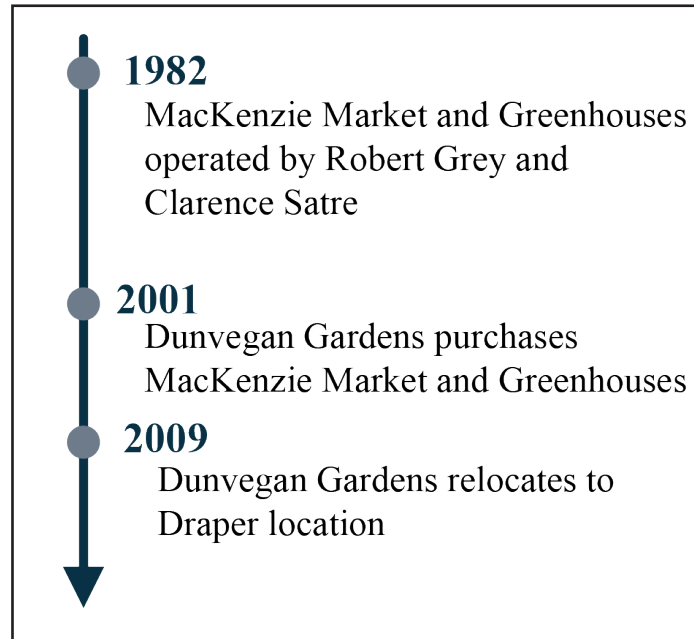


Figure 4 - Sequence of Events

2.1 Development Activity Timeline

The history of development activity on the subject properties is extensive. The timeline below outlines key land use planning and development activities, and does not include any electrical, gas, building permits, or similar permits, that do not fall within the scope of the Land Use Bylaw.



2007

DP 2006-0140 Development Permit for Accessory Building (Greenhouse)

The Development Permit approved an “Accessory Building (Greenhouse)” as a Permitted Use in the SH (Small Holdings) District. Condition 12, which required a Development Completion Certificate remains outstanding and was not completed. Figure 5 indicates the structures approved by this Development Permit.

- February 10, 2006 Development Permit Application received for “Greenhouses”. Application underwent a two week circulation period to internal and external stakeholders.
- April, 2006 The applicant was advised additional geotechnical information was required.
- September, November, December 2006 The outstanding information was discussed with the applicant.
- January 10, 2007 Site visits confirmed the greenhouses had been constructed without permit approval. The applicant was informed the outstanding information must be provided by January 31, 2007 or the development would be subject to enforcement.
- February 7, 2007 The required information was submitted and the development permit was approved.



Figure 5 - Development Permit 2006-0140

2007

DP 2007-0287 Development Permit for Stockpiling

This permit allowed the applicant to remove soil from Parcel F, now known as the Stone Creek Subdivision, and stockpiled at 128 Garden Lane. In the application, the 100,000-300,000 cubic metres of material was intended to be “screened later” and used to “build up ground around the area” for the use of the applicant.

- March 8, 2007 Development Permit application was submitted for stockpiling. The application underwent a one-week circulation period to internal and external stakeholders.
- March 19, 2007 The Development Permit was approved

2008

DP 2008-0138 Development Permit Accessory Building (Greenhouse)

This permit approved an “Accessory Building (Greenhouse)”. This use is identical to the original 2006 Permit, number 2006-0140. The approved structures under this development permit is shown in Figure 6.

- January 30, 2008 Development Permit application was received for a “Garden Shop to house tools of our trade, chemicals + pet supplies”. Following a circulation period, comments received initiated the requirement for revisions.
- July 9, 2008 The Development Permit was approved



Figure 6 - Development Permit 2008-0138

2009

DP 2008-0138R Market Garden – Accessory Building

Development Permit 2008-0138 was revised. The approved plans were identical to the original permit, however the project description changed from “Accessory Building (Greenhouse)” to “Market Garden – Accessory Building”. There were also additional development permit conditions.

- May 1, 2009 Since the approved use changed from Accessory Building (a permitted use) to a Market Garden (a discretionary use) the permit approval was advertised. The development permit decision was not appealed.

2010

Stop Order for Development without Development Permit Approval

Stop Order was issued to Dunvegan Gardens for Contraventions of Land Use Bylaw 99/059 – Development Without Development Permit Approval. Site visits indicated that a “Storage Facility” (U-Haul storage and rental drop-off) had been operating without Development Permit Approvals. Dunvegan Gardens appealed the Stop Order, however later withdrew their appeal after meeting the requirements of the Stop Order.

2011

DP 2010-1849 – Intensive Agriculture (Stockpiling) OVERTURNED

The intent of the application was to take between 300,000 and 400,000 cubic meters of soil from Abrahms Land to the subject property, where the applicant would screen it for “public and contracting sales for new and established housing or commercial projects.”

- October 28, 2010 A Development Permit application was submitted for “Stockpile – for processing previous stock pile”.
- January 21, 2011 The application was approved as “Intensive Agriculture (Stockpiling)”. As a Discretionary Use in the SH Small Holdings District, the approval was advertised on January 28, 2010 and was appealed.
- March 3, 2011 The Subdivision and Development Appeal Board (SDAB) Appeal Hearing was held.
- March 11, 2011 The SDAB overturned the decision, refusing the Development Permit on March 11, 2011. The reason is as follows: “The Subdivision and Development Appeal Board feels the development does not qualify as a discretionary use under the land use designation for this area. The Subdivision and Development Appeal Board also feels this development would negatively impact the use, enjoyment, safety and value of the neighbourhood and adjacent properties.”

2011

2011-DP-01030 Development Permit for “Freestanding Sign (2.4 x 1.2) and Freestanding Sign (2.4 x 1.2) and Freestanding Sign (2.4 x 1.2)”

The application was for three Freestanding Signs located on the property.

- June 8, 2011 Development Permit Application was received.
- June 10, 2011 The Development Permit was approved with conditions.

2011

Variance Certificate

A variance application was submitted to allow a fence at a height of 2.209m to remain. The maximum height for a fence is 2.0m.

2011

2011-DP-01843 Development Permit for Temporary Use for Chateau Boo

A Development Permit for “Temporary Use (Chateau Boo)” as a Discretionary Use in the SH Small Holdings District was approved on October 7, 2011.

- October 6, 2011 A Development Permit application was submitted.
- November 1, 2011 Given the development permit was issued on a temporary basis, the use was not to extend beyond November 1, 2011.

2011

**Stop Order for Contravention of Land Use Bylaw 99/059
– Development without an Approved Development
Permit – Illegal Storage of a Restricted Motor Vehicle.**

- May 9, 2011 A site visit confirmed the presence of a landscaping business on the property and exceeded the number of recreational vehicles and commercial vehicles allowed.
- June 22, 2011 The Stop Order was appealed to the Subdivision and Development Appeal Board (SDAB).
- August 18, 2011 The Subdivision and Development Appeal Board (SDAB) Appeal Hearing was held.
- September 2, 2011 The SDAB Decision 2011-012 upheld the Stop Order but varied it to apply to the entire Site owned by the appellant and required the removal of commercial landscaping business and commercial equipment and materials.
- September 22, 2011 Site inspection pertaining to the Stop Order were conducted to ensure the Order had been complied with.
- October 11, 2011 Site inspections pertaining to the Stop Order were conducted to ensure the Order had been complied with.

2011

Warning

A Warning was issued to Dunvegan Gardens for Contravention of Signage Bylaw No. 01/068 in response to a complaint. The applicant had installed a “Third Party Identification Sign” which is not permitted in the CR – Country Residential District.

2011

**2011-DP-01069 Development Permit for Third Party
Identification Sign REFUSED**

A Development Permit application was refused because the sign was in excess of the allowed 250.0m of the business which the sign refers to in the Rural Service Area Sign District Chart.

- June 13, 2011 A Development Permit application was submitted.
- October 28, 2011 The decision was advertised.

2012

2012-LU-00007 Land Use Bylaw Amendment Application REPEALED

The application was to conduct an Easter Egg Hunt on March 31, 2012.

- September 5, 2012 Land Use Bylaw Amendment Application was received.
- September 7, 2012 The application was circulated to internal and external stakeholders for comment. Approval was recommended.
- October 23, 2012 Land Use Bylaw Amendment was passed by Bylaw No. 12/039.
- June 11, 2013 Bylaw No. 12/039 was Repealed and replaced by Bylaw No. 13/014

2014

2014-DP-00322 Development Permit for “Dunvegan Gardens – Easter Egg Hunt”

A Development Permit was issued for a Special Event – Easter Egg Hunt, which was approved under Land Use Bylaw 99/059 Part 5 – General Regulations Section 300 – Special Events. No additional conditions were added to the permit.

- March 17, 2014 A Development Permit application was submitted.
- April 1, 2014 Development Permit was issued.

2014

2014-DP-00164 Development Permit for “Intensive Agriculture (Sod Farm & Tree Farm)”

The application was approved as “Intensive Agriculture (Sod Farm & Tree Farm)”.


- February 19, 2014 A Development Permit application was submitted for “Intensive Agriculture – Sod Farm, nursery/tree farm Animals, etc.”.
- May 5, 2014 The Development Permit was approved and issued. The development permit approval was appealed to the Subdivision and Development Appeal Board (SDAB).
- August 28, 2014 The SDAB heard the appeal.
- September 12, 2014 The SDAB upheld the permit approval but varied the conditions. The approval was limited to include only growing sod from seed and trees from seed or saplings.

A blue downward-pointing arrow with the year 2014 written in white at the top.

2014

2014-DP-00162 Development Permit for “Intensive Agriculture (Sod Farm & Tree Farm)”

The application was approved as “Intensive Agriculture (Sod Farm & Tree Farm)”.


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- A blue downward-pointing arrow with a series of blue dots along its length.
- February 19, 2014 A Development Permit application was submitted for “Intensive Agriculture – Sod Farm, nursery/tree farm Animals, etc.”.
 - May 5, 2014 The Development Permit was approved and issued. The development permit approval was appealed to the Subdivision and Development Appeal Board (SDAB).
 - August 28, 2014 The SDAB heard the appeal.
 - September 12, 2014 The SDAB upheld the permit approval but varied the conditions. The approval was limited to include only growing sod from seed and trees from seed or saplings.

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2015

2015-DP-00025 and 2015-DP-00025R Development Permit for “Easter Egg Hunt”

The application was to conduct an Easter Egg Hunt on April 4th, 2015

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- January 21, 2015 Development Permit Application was received.
 - February 17, 2015 The Development Permit Application was approved and later revokes and re-issued with revised conditions. This was done as a result of information pertaining to traffic flow at the previous year’s event, received by Planning and Development after the issuance of the original permit.
 - March 2, 2015 The revised Development Permit Application was approved (R2015-DP-00025). The Development Permit was advertised and appealed to the Subdivision and Development Appeal Board (SDAB).
 - April 1, 2015 The SDAB heard the appeal.
 - April 2, 2015 The SDAB Decision (2015/005) was to uphold the Development Permit approval but with additional conditions. The board felt that appellants reasons for appeal was because of a lack of conditions, and the board felt with the additional conditions, those concerns would be addressed.

2016

2016-DP-00022 Development Permit for “Special Event – Dunvegan Gardens 6th Annual Easter Egg Hunt” CANCELLED

The application was to conduct an Easter Egg Hunt on April 4th, 2016

- January 27, 2016 Development Permit Application was received.
- March 2, 2016 Development Permit was approved.
- March 10, 2016 The approved Development Permit was cancelled. The notice of development permit cancellation reads as follows:

“The applicant did not disclose that there were problems with the event in the year 2015 included non compliance with Section 18(d) and (i) of the Subdivision and Development Appeal Board decision dated April 2, 2015 (File Number; SDAB 2015/005) which read as follows:

18(d) No Parking is allowed on the Garden Lane, Draper Road or any other adjacent or neighbouring properties.

18(i) The special event shall take place on Saturday, April 4, 2015 only between hours of 11:00 a.m. and 3:00 p.m., excluding time to setup and dismantle the Special Event.”

2016

2016-DP-00091 Development Permit for “Special Event – Dunvegan Gardens 6th Annual Easter Egg Hunt”

The application was to conduct an Easter Egg Hunt on April 4th, 2016

- March 3, 2016 Development Permit Application was received.
- March 10, 2016 Development Permit was approved. There were additional conditions added that differ from the first application (2016-DP-00022).

2016

2016-DP-00453 Development Permit for “Demolition”

The demolition permit follows the 2016 Wildfire.

- July 13, 2016 Development Permit Application was received.

2016

Stop Order for Contravention of Land Use Bylaw 99/059

The Stop Order was issued on September 23, 2016 and identified seven items that were the subject of the Stop Order. These include:

1. Unauthorized Commercial Landscaping
2. Unauthorized Commercial Landscaping Materials Stockpiling
3. Unauthorized Retaining Wall
4. Unauthorized Sale of Goods
5. Unauthorized Farm Animals
6. Unauthorized Park
7. Unauthorized Electrical Panels

2016

October 7, 2016 The Stop Order was appealed to the Subdivision and Development Appeal Board (SDAB).

February 16, 2017 The Subdivision and Development Appeal Board (SDAB) Appeal Hearing was held.

March 16, 2017 The SDAB Decision was made to uphold but vary the Stop Order. The decision was to:

1. Revoke items 1: Unauthorized Commercial Landscaping, 2: Unauthorized Commercial Landscaping and Materials Stockpiling and 3: Unauthorized Retaining Wall of the stop order

2. Varies item 4: Unauthorized Sale of Goods of the stop order as follows:

The Appellants have one year from the date of this decision to obtain a development permit to permit the General Retail Store, which will require a rezoning. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to cease the sale of any unauthorized good from being available for sale at the end of the one year period. March 16, 2018

3. Varies item 5: Unauthorized Farm Animals of the stop order as follows:

To the extent that the animals are licensed by the Municipality, the stop order is cancelled in relation to those animals. The Appellants are able to keep those animals licensed by the Municipality without a development permit. For those animals which are licensed, the Appellants must not use them for commercial purposes, which means that they cannot sell eggs or other by-products of the animals, nor can the Appellants charge to see the animals. The stop order continues to apply to any animal not licensed with the Municipality. The stop order is varied to specifically exclude the fish and the bees on site from the provisions of the stop order.

4. Varies item 6: Unauthorized Park of the stop order as follows:

The Appellants must obtain a development permit for the park within three months from the date of the decision. If the Appellants do not obtain a development permit within the time specified in this paragraph, they are to remove those features at the end of the three month period. The Appellants must cease the use of the park until they have obtained a development permit.

5. Confirms item 7: Unauthorized Electrical Panels of the stop order but directs the Municipality:

The Municipality has two weeks from the date of issuance of this decision to inspect the site to ensure that the electrical panels have been removed.

2017

2016-DP-00599 Development Permit for “Outdoor Recreation Facility”

The application was approved as an Outdoor Recreation Facility.

- July 22, 2016 Development Permit Application was received.
- August 18, 2016 The application was circulated to internal and external stakeholders for comment.
- October 14, 2016 Additional information was requested.
- March 31, 2017 The requested additional information was provided and the application was re-circulated to internal and external stakeholders.
- July 5, 2017 The Development Permit was approved with conditions.
- July 14, 2017 The Development Permit approval was advertised and no appeal was received.

2017

2017-DP-00312 Development Permit for “Special Event – Dunvegan Easter Egg Hunt”

The application was to conduct an Easter Egg Hunt.

- March 2, 2017 Development Permit Application was received.
- March 15, 2017 The application was circulated to internal and external stakeholders for comment.
- March 27, 2017 The Development Permit was approved with conditions.
- March 31, 2017 The Development Permit approval was advertised and no appeal was received.

2017

2017-DP-01093 Development Permit for “Special Event – Annual Birthday Bash” VOID

The application was to conduct an Easter Egg Hunt.

- June 19, 2017 Development Permit Application was received.
- June 21, 2017 Application was VOID and cancelled by the applicant

2018

2018-DP-00055 Development Permit for “Special Event – Dunvegan Gardens Easter Egg Hunt”

The application was to conduct an Easter Egg Hunt on March 31, 2018

- February 7, 2018 Development Permit Application was received.
- February 8, 2018 The application was circulated to internal and external stakeholders for comment.
- March 6, 2018 The Development Permit was approved with conditions.

2018

2016-DP-00533 Development Permit for “2 Greenhouse Quonsets – Accessory Building” REFUSED

The application was for “2 Greenhouse Quonsets – Accessory Building”

- July 19, 2016 Development Permit Application was received.
- August 4, 2016 Additional information was requested and was not received.
- March 9, 2018 The Development Permit was refused for the following reasons:

1. When reviewing this application, the development authority took guidance from the Land Use Bylaw 99/059, the Subdivision Development and Appeal Board decision 2016-005 and the following provision of the Land Use Bylaw: section 50. 7 (b) “...for parcels 2.0 hectares and larger, the maximum site coverage of accessory buildings shall be 350.0 m².”
2. The applicant is proposing accessory buildings that are larger than the maximum size limitation prescribed in the above quoted section 50.7 (b).
3. In accordance with section 50.7, the maximum allowable size for an accessory building in a residential district on a parcel of land exceeding 2.0 hectares is 350.0m². The applicant has proposed construction of two accessory buildings, both of which are 412.3m² for a total of 824.6m². The total proposed accessory buildings exceed the approval authority by 474.6m², representing a potential variance of 135 %.
4. Since the proposed development is beyond the size limitation imposed by section 50.7 (b), Planning and Development cannot support this application.

March 29, 2018 Administration received notice the Development Permit Refusal had been appealed by the applicant.

April 5, 2018 Administration received notice from the Subdivision and Development Appeal Board a hearing has been scheduled for April 19, 2018.

3 Background of the Application

The following section provides a description of the amendment application and why an amendment application was required. It begins by describing the Subdivision and Development Appeal Board Decision, which recognized amendments would be required, and concludes with a description of the review process.

3.1 Subdivision and Development Appeal Board Decision 2016-005

A Stop Order was issued by the Municipality on September 23, 2016 against 116 and 128 Garden Lane for unauthorized use of land, including but not limited to, the operation of a retail store. Following an appeal by the land owners, a hearing at the Subdivision and Development and Appeal Board (SDAB) was held on February 16, 2017. The hearing resulted in decision SDAB 2016-005 issued by the Board on March 16, 2017.

An item of specific importance to the background of how the amendment application came to be is found in Section 145 of the SDAB decision, which reads as follows:

*“[145] As the Board understands that Mr. Friesen believed he had development approval for the sale of goods, it upholds the stop order on this point, but varies the time for compliance. The Board grants the Appellants a **one year period** from the date of issuance of this decision to obtain a development permit for **General Retail Store use**. As that use is neither permitted nor discretionary in the Small Holdings District, **the Site will have to be redistricted**. The Board is of the view that one year is a sufficient time to obtain a redistricting which would allow the General Retail Store use. If the Appellants do not obtain a development permit by the time specified in this paragraph, they must cease the General Retail Store use at the end of that one year period.”*

Emphasis added

By varying the time for compliance by one year, until March 16, 2018, it provided the land owner the opportunity to obtain a development permit for Retail Store, General. Since the SDAB is not authorized to add a land use to a district, the board identified that an amendment and proper development permits would be required to continue the retail sale of goods on the property.

3.2 Application Submittal and Review

The applicant (Mr. Friesen) submitted an initial incomplete application for the required amendments on April 11, 2017. Planning and Development has since circulated applications, sent out notices to the Draper community, conducted a survey, and provided guidance to the applicant to produce a complete amendment application.

Table 1: Selected Key Dates and Activities

September 23, 2016	Stop Order Issued
February 16, 2017	SDAB Heard the Appeal
March 14, 2017	Administration met with the applicant at his request to discuss the amendment process
March 16, 2017	SDAB Decision 2016-005 was issued
March 24, 2017	Pre-application meeting for amendment application with applicant
April 11, 2017	First Submission: Amendment application submitted, but was incomplete
July 7, 2017	Administration circulated the incomplete application for comments
July 25, 2017	A circulation package was hand delivered to Draper residents with a survey to receive feedback. Due date for survey was August 18, 2017
October 13, 2017	Administration met with the applicant and recommended the applicant seek a professional to help complete a formal application.
December 5, 2017	Administration met with the applicant and IBI, the consultant, to discuss the application.
January 9, 2018	Second Submission: Received a complete application
January 11, 2018	Meeting between Administration and the applicant to discuss the submission. Detailed notes were provided to the applicant on January 15, 2018.
January 22, 2018	Third Submission: received revised submission
February 5, 2018	Comments are provided to the applicant.
February 9, 2018	Fourth Submission: the applicant submitted the final amendment documents and confirmed this was their final submission for presentation to Council. Minimal changes were made from the third submission and Administration's comments were not addressed.
February 27, 2018	The applicant held a public open house which was observed by Administration.

As stated by the applicant, the purpose of the proposed amendment submitted to the Municipality is:

1. *"...to add a Direct Control District to enable the land uses associated with a community focused greenhouse commercial establishment," and;*
2. *"...[the purpose of an amendment] to the Highway 69/Clearwater Valley Area Structure Plan (ASP) is to add a Direct Control District to the ASP to enable the land uses associated with a community focused greenhouse commercial development."*

A first draft of a complete application was received by the Planning and Development Department on January 9, 2018. After review and comments

were provided by the Development Authority, a second draft submission was received on January 22, 2018. Comments issued to the applicant resulted in the third and final amendment application package authored by the applicant's consultant on February 9, 2018. As directed, the applicant hosted a public open house on February 27, 2018 and Planning received open house summary comments from the applicant on March 2, 2018. Since this time, Planning has conducted a comprehensive review of all materials submitted by the applicant, analyzed additional submissions from the applicant, and reviewed and analyzed survey results of the Draper community conducted by the Municipality; this is discussed further in the following sections.

4 Analysis of the Proposed Land Use Bylaw Amendment Application

An application to amend the Land Use Bylaw can have substantial impact to lands within new and existing neighbourhoods. For instance, the subject area is traditionally a low density, large lot residential and agricultural area. A commercial land use could have a significant impact on the area and surrounding properties by increasing traffic, servicing requirements, and creating additional noise, vibration, dust, smoke, and odors.

The intent of the amendment submitted by the applicant is to rezone the subject area from SH Small Holdings District to DC# Direct Control District. This section will include:

1. a description of the existing Small Holdings District;
2. existing land uses in the Small Holding District versus proposed land uses in the Direct Control District; and,
3. a discussion on the impact the proposed uses could have on surrounding properties.

It is the intent of Administration to provide a transparent, analytical review of the application to help the reader understand the process and rationale used to reach the recommendation for refusal.

4.1 SH Small Holdings District

As stated in section 120 of the LUB,

*“The purpose of the Small Holdings District is to provide **large lot acreages** intended for **residential, small scale agricultural pursuits** and other compatible uses on land that are potentially susceptible to flooding which are located below the 250 m contour.”*

Emphasis added

All lands in Draper located north of Draper Road (riverside) are zoned SH Small Holdings. As such, the character of the area consists of large lot residential uses. However as discussed in the historical context, the Garden Lane area of Draper, where Dunvegan Gardens is currently located, has been utilized as a small scale agricultural area. This is consistent with the size of land parcels within this area which limits the number of lots and reduces potential impact to adjacent and surrounding property owners.

4.2 Existing Versus Proposed Land Uses

The existing land uses and proposed land uses are outlined below:

Table 2: Existing SH Small Holdings District

Permitted Uses	Discretionary Uses – Development Officer	Discretionary Uses – Planning Commission
Accessory Building Essential Public Service Home Occupation Manufactured/Modular Home Park Public Use Public Utility Satellite Dish Antenna Single Detached Dwelling	Amateur Radio Antenna Family Care Dwelling Home Business Market Garden Temporary Building or Structure	Bed & Breakfast *Campground (Bylaw No. 04/012) Community Service Facility Country Inn *Guest Ranch *Intensive Agriculture (*as per Section 76.7 keeping of animals) *Kennel *Outdoor Recreation Facility Deleted (Bylaw No. 04/012) *Resort Facility

The applicant has included **12** new uses not currently contemplated in the Small Holdings District, which are shown below. The uses in red are additions, while the uses in black are existing. A commentary on the new proposed uses is explored further under the *Applicants Submission* section.

Table 3 Proposed DC# - Direct Control District

Permitted Uses	Discretionary Uses – Development Authority
Accessory Building and Uses <i>Breweries, Wineries and Distilleries</i> <i>Commercial Recreation Facility, Indoor</i> <i>Commercial Recreation Facility, Outdoor</i> Community Service Facility <i>Community Garden</i> <i>Events/Special Events</i> <i>Food Service, Major Restaurant</i> <i>Food Service, Minor Restaurant</i> <i>Greenhouse/Plant Nursery</i> Home Business Intensive Agriculture (on lots larger than 4 hectares) (*as per Section 91.0 Additional Provisions: Intensive Agriculture) <i>Keeping of Animals (Petting Zoo) (*as per Section 91.0 Additional Provisions: Intensive Agriculture)</i> Manufactured/Modular Home Market Garden Office Park Public Use <i>Retail Store, General</i> Temporary Building or Structure <i>Warehouse and storage</i>	Amateur Radio Antenna Bed and Breakfast Campground Country Inn Essential Public Service Family Care Dwelling Home Occupation Kennel Parking Lot/Structure Public Utility <i>Retaining Wall</i> Resort Facility Satellite Dish Antenna Single Detached Dwelling

Red colour indicates new proposed land uses as per the amendment application

4.3 Analysis of Land Use Bylaw Amendment Application

The review and analysis provided in this section is specific to the applicant's final Land Use Bylaw amendment submission received by the Municipality on February 9, 2018. As previously noted, the applicant is proposing to redistrict the subject area from a SH Small Holdings District to a new DC Direct Control District. The proposed DC Direct Control District:

1. provides uses (permitted uses and discretionary uses – development authority);
2. adds new uses to the Land Use Bylaw ("*Breweries, Wineries and Distilleries*", "*Community Garden*", and "*Keeping of Animals*");
3. adds additional provisions to the new district;
4. proposes text amendments to "*Part 5 General Regulations*"; and,
5. amends a land use map.

Taken together, the review will largely formulate the Municipality's rationale and recommendations specific to the proposed Land Use Bylaw amendment.

4.3.1 Proposed DC# - Direct Control District

The DC Direct Control District submitted by the applicant is not a pure Direct Control District, in the sense that it includes many permitted and discretionary uses. As described in section 1.1.2 of this document, a Direct Control District is intended to provide Council with a high degree of control for the development of lands. In a true Direct Control District it is Council, not a Development Officer, who reviews a development permit application to determine whether the proposal is appropriate. Additionally, a Direct Control District provides a high degree of transparency for decision making as all development permits are subject to a public hearing process, which is not required when an application is subject to approval by a Development Officer.

A pure Direct Control District provides flexibility to the applicant, since they are not restricted to a list of pre-determined uses, as is the case in a conventional district. However, by including permitted and discretionary uses, the proposed Direct Control District provides the applicant with certainty, regarding what types of uses and developments can occur on the subject lands. This provides the applicant with significant benefits at the cost of Council's flexibility and control.

During a meeting on January 11, 2018 administration recommended the applicant propose a true Direct Control District (without uses) so all development decisions would be made by Council. Administration also commented that the certainty the applicant was seeking could rest in specific policies residing in their Area Structure Plan (ASP) proposed amendment. A pure Direct Control District, without the inclusion of specified uses, provides flexibility for the applicant, while still providing Council and the community with a substantial amount of transparency and control over appropriate land use activities when reviewing applications.

4.3.2 Proposed Permitted and Discretionary Uses

A development permit application for a Permitted Use cannot be refused and is not subject to appeal so long as the application meets all applicable provisions of the Land Use Bylaw. Conversely, Discretionary Uses are often an activity or development that may have an adverse impact on adjacent properties. As such, the Development Authority can exercise their discretionary and refuse a development or use proposal, and stakeholders have a right to appeal a decision of the Development Authority. This principle is pivotal when analyzing the applicant's proposed Direct Control District.

As identified in section 4.2 of this supplemental document, the applicant is proposing twelve (12) new uses not currently contemplated in the SH – Small Holdings District. The new uses are identified in Table 3.

Table 4 Proposed New Uses

Proposed Use	Use Defined in the Bylaw?	Proposed as Permitted or Discretionary	Does the Use have General Regulations?
Breweries, Wineries and Distilleries	No	Permitted	Proposed Regulations
Commercial Recreation Facility, Indoor	Yes	Permitted	No
Commercial Recreation Facility, Outdoor	Yes	Permitted	No
Community Garden	No	Permitted	No
Events/Special Events	Yes	Permitted	Yes
Food Service, Major Restaurant	Yes	Permitted	No
Food Service, Minor Restaurant	Yes	Permitted	No
Greenhouse/Plant Nursery	Yes	Permitted	No
Keeping of Animals (Petting Zoo)	No	Permitted	Proposed existing regulation for control
Retail Store, General	Yes	Permitted	No
Warehouse and Storage	Yes	Permitted	No
Retaining Wall	Yes	Discretionary – D.O.	Yes

Of the applicant's proposed **twelve (12)** new uses not currently contemplated in the SH - Small Holdings District, **eleven (11)** of those uses are proposed as Permitted Uses, and one a Discretionary – Development Officer (D.O.) approval authority. All **eleven** of the proposed Permitted Uses are considered **commercial** in nature. Additionally, **three (3)** of the proposed uses are not currently defined in the Land Use Bylaw (LUB), and no definitions have been proposed. Lastly, of the last **three (3)** proposed new uses, only one (*Breweries, Wineries, Distilleries*) has proposed general regulations for “*Part 5 General Regulations*” of the LUB.

Upon reviewing of the applicant's submission, Administration has identified several concerns regarding the proposed uses.

4.3.2.1 Increase in Land Use Intensity

The proposed uses constitute a substantial increase in land use intensity in an area that is intended for large lot residential and small scale agricultural activities. This could result in an increase in traffic, servicing requirements, and additional noise, vibration, dust, smoke, and odors. No additional information (for example, a Traffic Impact

Assessment (TIA)) has been provided to justify or support this increase in intensity of uses.

4.3.2.2 Commercialization of the Land

The applicant's proposed Direct Control District includes eleven new uses that represent a commercialization of the land. These uses are all included as Permitted Uses in the applicant's proposed district. The concern regarding an inclusion of 11 commercial uses as permitted means that the applicant has the explicit right to use the property for all the listed commercial activities included with their proposed district.

4.3.2.3 Conflicting Land Uses

The applicant has proposed potentially conflicting land uses without any explanation of what mitigative measures will be used to reduce conflict with neighbouring properties. The increase in commercial land uses represent the highest level of potential land use conflict as they are all substantially commercial in nature, such as food service major and retail store, general. By being permitted, the Development Authority or Council have no authority to refuse a proposed development if it meets standard provisions of the bylaw, regardless of the potential impact to surrounding and adjacent properties. Additionally, if all the uses are approved as Permitted Uses, the surrounding and adjacent property owners will have no right to appeal a development permit decision, should there be concerns regarding impact. As such, Planning and Development does not support the inclusion of commercial uses in a land use district that does provide Administration or Council the discretion to mitigate the potential use.

4.3.2.4 New Uses without Supporting Documentation and Provisions

The applicant has also proposed **three (3)** new uses not currently considering in the Land Use Bylaw. These include "*Breweries, Wineries, and Distilleries; Community Garden; and Keeping of Animals*". While reviewing the proposed uses, Administration found the applicant did not include definitions of the uses, which is necessary to properly assess the potential impact of the use on the surrounding and adjacent properties. As such, Administration does not have enough information to critically assess the appropriateness of the proposed uses being added to the Land Use Bylaw.

4.3.2.5 Approval Authority in the Proposed DC Direct Control District

Administration also has concerns regarding the lack of clarity provided in the proposed Direct Control District. The applicant has proposed discretionary uses as development officer approval authority, meaning an application made for such uses is not required to go to Council for approval. However, the list of Permitted Uses included by the applicant does not identify who has the authority to make decisions on the application. As it currently reads, should Council approve the proposed amendment, the land owner would effectively be granted the right

to operate all the Permitted Uses on the property without additional consent from the Development Authority, so long as the proposed uses meet all other provisions of the Land Use Bylaw. This leaves very little room for the Development Authority to provide oversight to an application and mitigate any land use conflicts with surrounding and adjacent properties. This is not supported by Administration.

4.3.2.6 Survey Responses

Up to this point, Planning has noted that concerns exist over the permitted commercial uses included in the applicant's amendment proposal, and the potential impacts that could occur to the surrounding and adjacent lands. Planning and Development identified the potential concern early in the review. Given the lack of information in the initial application, Planning and Development drafted a survey and hand delivered them to the property owners in Draper on July 26, 2017 until August 18, 2017. The survey presented the information to the residents, including the uses proposed by the applicant, and ask if they supported the proposed uses. Results are outlined in Table 4.

Table 5 Survey Response Results

Proposed Uses	Suitable		Not Suitable		No Reply	
	Number of responses	%	Number of responses	%	Number of responses	%
Support Direct Control	16	26.23	41	67.21	4	6.56
Intensive Agriculture	20	32.79	40	65.57	1	1.64
Kennel	18	29.51	42	68.85	1	1.64
Market Garden	58	95.08	3	4.92	0	0.00
Bed and Breakfast	21	34.43	40	65.57	0	0.00
Campground	17	27.87	44	72.13	0	0.00
Resort Facility	17	27.87	44	72.13	0	0.00
Park	25	40.98	35	57.38	1	1.64
Commercial Recreation...	19	31.15	42	68.85	0	0.00
Country Inn	17	27.87	44	72.13	0	0.00
Farm Agritainment	22	36.07	39	63.93	0	0.00
Events and Special Events	22	36.07	38	62.30	1	1.64
Greenhouse/Plant Nursery	24	39.34	37	60.66	0	0.00
Home Occupation	26	42.62	34	55.74	1	1.64
Principal Building or Use	24	39.34	35	57.38	2	3.28
Accessory Building or Use	21	34.43	38	62.30	2	3.28
Retail Store, General	21	34.43	39	63.93	1	1.64
Office	19	31.15	42	68.85	0	0.00
Food Service/Restaurant	17	27.87	44	72.13	0	0.00

Based on the result of the survey, Draper residents support the idea of a Market Garden, which is defined in the LUB 99/059 as:

“MARKET GARDEN – means the growing of vegetables or fruit for commercial purposes.”

As noted in the historical context of this report, the resident’s support the idea of the former owner’s business Grey’s Garden, which grew and sold vegetables on the land. However, when looking further into the commercialized uses proposed for the site, it is relatively clear that a majority of resident’s (over 50%) do not support the proposed intensification of land.

Planning has provided an in-depth analysis of the proposed uses included in the applicant’s amendment. As a synopsis, Planning provides the following commentary regarding the proposed uses:

1. Additional uses, not currently afforded to the applicant in the SH Small Holdings District, have been proposed;
2. The application includes uses that are not currently contemplated in the Land Use Bylaw;
3. There is a lack of clarity surrounding the justification of the uses;
4. There exists a lack of general guidance for the issuance of development permits;
5. It is not clear in the proposed district who has the authority to issue development permits for the proposed uses; and,
6. The potential impact of the uses, additional provisions, and general regulations contemplated by the application.

4.3.3 Proposed Additional Provisions

The applicant is proposing “Additional Provisions” in Section (5)(c) of their Land Use Bylaw amendment, which allows neighbouring parcels of land under the same ownership the ability to transfer development potential from one lot to the next. The provision is proposed as follows:

“The keeping of animals, birds and livestock shall be as per Section 91.0 Additional Provisions: Intensive Agriculture. Where there are multiple lots adjacent to each other owned by one owner, the total allowed units of livestock will correspond to the total lot area combined. Grazing areas are to implement adequate fencing and buffering to ensure the safe on-site confinement of animals and to reduce the noise and visual impacts on neighbouring properties. All grazing areas shall provide adequate measures for the disposal of animal waste to the satisfaction of the Development Authority and the Regional Health Authority.”

Administration has interpreted this to mean that an owner of multiple adjacent lots is able to transfer the development potential from one lot onto the other. The applicant has not provided any supporting documentation regarding whether this will have an impact on the surrounding neighbourhood and the extent of the lands this provision

would apply. The Municipality does not support additional intensification of land beyond the current provision of the Land Use Bylaw without proper justification.

4.3.4 Proposed Text Amendments to “Part 5 General Regulations”

The amendment application also included additional provisions and amendments to existing provisions in “Part 5 General Regulations” of the Land Use Bylaw. Administration has concerns with the proposed amendments and additions, but also the lack of additional provisions to help mitigate and control the proposed uses.

4.3.4.1 Permitted Commercial Uses

As shown in Table 3, **eight (8)** of the proposed Permitted Uses that are commercial in nature do not currently have general regulations in the Land Use Bylaw. These uses do not have specific general regulations in the LUB because those uses are currently only allowed in commercial land use districts. In these districts, a commercial use is appropriate and there is sufficient separation from residential districts where impact could be a concern. These commercial uses that are currently in the LUB are also only discretionary uses throughout the Municipality, so the Development Authority can assess impact and suitability of the use before approval. Should this amendment application be approved, a development permit application for these uses would result in little ability to mitigate potential impact with neighbouring land uses.

4.3.4.2 Proposed New Provisions in “Part 5 General Regulations”

The applicant has also identified general regulations for their proposed use “*Breweries, Wineries, and Distilleries*”. While Planning has reviewed the proposed general regulations, there is no supporting information to justify whether these proposed general regulations reflect best practice, or are appropriate for the RMWB. As such, additional information is required to determine whether the regulations will mitigate potential land use conflicts.

4.3.4.3 Amendments to Existing Provisions in “Part 5 General Regulations”

The applicant has proposed text amendments to “Part 5 General Regulations” Section 76.7 and 76.8 of the Land Use Bylaw. These two sections currently exist as follows:

*“76.7 No livestock, fowl or fur-bearing animals, other than domestic pets, shall be permitted in any residential districts, except for horses, donkeys, goats, llamas, alpacas, and other similar such animals, kept as pets and/or for personal enjoyment, at Sapræ Creek, Conklin, Janvier, Anzac and **deleted (Bylaw No. 01/043)** whereby parcels greater than 0.809 ha are permitted a maximum of (3) three horses, conditional upon the horses being confined within a fence constructed to the satisfaction of the Development Officer. **Deleted (Bylaw No. 00/011)**”*

And,

“76.8 Notwithstanding section 76.7, on residential lots in the hamlets of Conklin and Janvier, the keeping of animals, including livestock, is permitted at the discretion of the Development Authority in accordance with the provisions for Intensive Agriculture contained in Section 116.6 of this Bylaw.”

The proposed amendment seeks to add the term **“Draper”** to the list of areas that allow for certain types of animals to be kept as pets and/or for personal enjoyment. The applicant identified this to administration early in their application. Initial discussions with the applicant provided the suggestion that if the applicant were to seek the opportunity to keep animals both for personal and commercial purposes, the regulation should be specific to the subject area, Lot 5 and 6, Plan 992 0950. However, the applicant’s proposal seeks to change this to allow the keeping of animals for all of Draper without evidence suggesting residents of Draper support this change. Therefore, Administration cannot support the amendment to section 76.7 and 76.8 without input from residents in Draper.

Generally, when it comes to the *“Part 5 General Regulations”* text amendment, Administration has the following concerns:

1. The proposed land uses do not have proper regulation through the “Part 5 General Regulations” section of the Land Use Bylaw;
2. The Regional Municipality of Wood Buffalo does not define “Draper” as a hamlet;
3. The applicant’s proposed general regulation for the use *“Breweries, Wineries, and Distilleries”* has been proposed without any supporting documentation to determine if the regulations are appropriate and mitigate land use conflict; and,
4. The proposed text amendment to section 76.7 and 76.8 represents a change that will impact all Draper residents and no feedback has been provided to administration to determine if the residents support this change.

Taking all of the above analysis of Section 4 of this report, administration does not support the applicant’s proposed LUB amendment.

5 Analysis of the Proposed Highway 69/Clearwater River Valley Area Structure Plan Amendment

In order for the Applicant's proposed land uses to be supported by the statutory plan currently in effect in the area, an amendment to the Highway 69/Clearwater River Valley Area Structure Plan (ASP) is necessary. The Development Concept and several policies presented in the ASP conflict with the Applicant's proposal because they do not envision the array of land uses being proposed. Amendments to such statutory plans are infrequent (this ASP has only been amended 7 times in the last 18 years), and when they do occur, they require thorough review and consideration because they reflect the community's overall vision for future development.

To support a re-districting of Dunvegan Gardens to Direct Control, the ASP would have to be amended to:

1. Ensure consistency between the ASP, Municipal Development Plan (MDP), and the activities contemplated by the Applicant; and,
2. Ensure guidance is given for the range of activities contemplated by the Applicant.

Since the ASP does not contemplate all the activities proposed by the Applicant, it does not provide appropriate guidance for those activities. At the time the ASP was written, the area of Dunvegan Gardens was agricultural in nature. To ensure agricultural land be protected and to better control flood hazard lands, the ASP called for the Small Holdings (SH) District to be added to the Land Use Bylaw. The Development Concept (Map 6 of the ASP) was influenced by existing land use patterns, for example, Grey's Gardens operated by Robert and Bernice Grey, so the subsequent SH District enabled agricultural activities to continue. However, the ASP and the SH District did not enable the wider array of activities now being proposed.

What follows is a breakdown of important components of the Applicant's submission, omissions, and Administration's position on each. Administration cannot support this amendment application for the following key reasons:

1. The proposal does not provide proper guidance for the wide array of proposed activities, (see Section 5.2 for more information);
2. The proposal does not adequately demonstrate how negative impacts on surrounding properties will be mitigated (see Section 5.2 for more information);
3. The proposal does not adequately demonstrate how a key MDP and ASP objective is being met: that the rural residential character of Draper will be preserved (see Section 5.3 for more information);
4. The proposal does not adequately demonstrate how a key MDP objective is being met: that the Municipality's limited supply of agricultural land will be preserved (see Section 5.3 for more information); and,
5. The proposal does not address other policies in the ASP that should be amended to more fully support and guide the proposed activities (see Section 5.4 for more information).

5.1 Purpose of the Small Holdings Designation in the Area Structure Plan

The current purpose of Small Holdings, as described in the ASP, is to:

“Designate lands in the flood plan below the 250 m contour for small holdings with a minimum parcel size of 2.0 ha (5 acres) on Map 6 – Development Concept. The intent of the small holdings designation is to avoid the fragmentation of parcels that are suited for market gardening and provide for acreages with larger lots on lands that are susceptible to flooding as not to put excessive numbers of residents at risk and make flood proofing difficult. A list of permitted and discretionary uses along with specific development regulations will be included within a new small holdings district through an amendment to the Land Use Bylaw. Generally, the proposed district would allow for acreage development with the keeping of animals and horticultural uses. Golf courses, bed and breakfast establishments, resorts and other private recreational development could be considered as discretionary uses.”⁵

Given the agricultural and rural residential activities that existed when the ASP was written in 1999, this purpose statement envisions a very different style of development than is now being proposed – one that is less intensive, less diverse, and less impactful on adjacent properties. To accommodate the activities now being proposed by the Applicant, a new designation with a new purpose and associated guiding policies would be necessary in the ASP.

5.2 The Content of the Amendment Application and How It Differs from the Existing Area Structure Plan

The Applicant’s proposed amendment to the ASP includes removing Dunvegan Gardens from Small Holdings and creating a unique land use designation known as “Village Commercial / Community Greenhouse.” All other existing designations in the ASP (such as Small Holdings) would continue to exist, but only the new “Village Commercial / Community Greenhouse” designation would apply to Dunvegan Gardens. As per the Applicant’s submission, the new “Village Commercial / Community Greenhouse” designation would include, but not be limited to:

- Expansion of outdoor events incorporating patios, event lawns, and gardens to host gatherings and events,
- Local food and beverage processing, packaging and sales,
- Petting zoos and animal interaction venue,
- Food concessions,
- Country store and market and,
- Farm life activities and events.

The Applicant proposes adding new policies to the ASP in support of the new “Village Commercial / Community Greenhouse” designation which further describe the intent being “to promote a local community establishment that

⁵ Regional Municipality of Wood Buffalo, *Highway 69/Clearwater Valley Area Structure Plan* (Armin A. Preiksaitis & Associates Ltd., 2000), 5-3.

promotes sustainable agricultural development and active involvement with the local residents and visitors through recreational activities, onsite education, special events and retail of locally grown produce. Onsite processed food and beverage goods will also be available in the form of fruit wine, leather and dairy products.” The policy provides some guidance on the kinds of land uses that would be allowed, including, but not limited to, “Agricultural Intensive, Campgrounds, Keeping of animals, Market Gardens, Recreational Use and Single Family Dwelling.”

One of the primary goals of the ASP, as indicated in Section 5.2, is to “ensure orderly, efficient, environmentally sound and compatible land uses within the ASP area.” Of note is the need for *compatibility*, and the ASP goes on to state that a main objective of this goal is to “minimize potential land use conflicts.” The Applicant’s submission introduces a wide array of land uses that have the potential to create conflict with surrounding residential land uses. The proposal contains limited solutions to mitigate potential conflicts, and offers no parameters for the activities proposed.

It is important for parameters and mitigation solutions to be set out, given how the proposed land uses differ substantially from the established character of the area. Since current activities on-site are already causing conflicts with the surrounding area, it is essential that more attention be paid to mitigating the effects of the proposed activities so that the situation does not worsen.

The Applicant’s submission recognizes that development parameters and considerations need to be incorporated, and proposes a series of development policies that future development must adhere to in order to mitigate effects on surrounding properties. They state that Dunvegan Gardens will consider the following:

1. Enhancement of the agricultural character of the area;
2. Landscape buffering;
3. Separations and setbacks; and,
4. Other applicable municipal bylaws and requirements.

The submission goes on to outline the policies in more detail:

1. Lighting is to be shielded and directed towards the interior of the site and away from adjacent properties;
2. All activities are events are to comply with RMWB Noise bylaws;
3. Litter is to be collected and controlled through various means including screened collection and storage areas and regular off-site disposal;
4. Existing vegetation buffers are to be protected and repaired;
5. Where no vegetation buffer exists a 5m landscaped buffer is to be developed between Dunvegan Gardens and other properties;
6. Signage is to be developed in compliance with RMWB bylaws;
7. Screening of exterior storage area is to be developed with vegetated/ landscaped screening or fencing; and,
8. Dust is to be controlled in compliance with RMWB bylaws.

However, the Applicant does not indicate where these policies would be added to the ASP, making it difficult to know how they would be implemented. Even if these policies were added to the ASP, they do not provide suitable

parameters for the proposed activities or go far enough in mitigating possible effects. Considering the rural setting and proximity to adjacent residences, it is appropriate that some parameters be set to limit the size and scale of activities, prescribe appropriate locations for them, and identify parking and traffic solutions to ensure compatibility. Presently, the submission does not adequately demonstrate how the Applicant will minimize potential conflicts with the rural residential character of the area.

This is particularly concerning because many of the proposed activities are either new to the Draper area, new to the Land Use Bylaw, or new to the ASP. It is good planning practice to ensure that potentially contentious activities are well-regulated (i.e. activities which are likely to bring additional traffic to the area, or change the visual appearance and/or character of the area). This amendment application does not provide suitable comfort for decision-makers or community members that on-site activities will have limited impacts. Given the lack of guidance being provided for the proposed activities, Administration cannot support this amendment application.

5.3 Other Unsatisfactory Aspects of the Application

While the issues above constitute some of the primary concerns with this proposal, there were other areas that were inadequately addressed, which are identified below:

1. The submission highlights policies in the ASP and MDP which the proposal complies with, but does not demonstrate how a key objective in either plan is being met: that the rural residential character of Draper be preserved. Section 5.2 of the ASP not only requires compatible development, but states that there is a need to “promote a pattern of land uses that will not restrict existing residences⁶”. The proposal indicates that this key objective is being complied with, but offers little reassurance that nearby residences will be unaffected. Furthermore, the MDP spells out this key objective in even more direct terms, with Policy C.3.1 being entitled “Preserve residential character of Draper⁷”. However, the application does not address this policy, which is concerning, as it is the key MDP policy for Draper. Readers should be mindful that Policy C.3.1, while offering support for local economic development and enhanced recreational opportunities, must be read with the title in mind: recreational and economic developments should only be supported when they do not threaten the existing residential character.
2. The submission indicates that the agrarian character of the area will be preserved, but the majority of activities proposed on-site are not agrarian and would involve re-purposing of agricultural land. Given that there is limited agricultural land available in the Municipality, and that Policy 4.4.1 of the MDP calls for preserving this land, it is unclear how the introduction of several uses requiring physical

6 Regional Municipality of Wood Buffalo, *Highway 69/Clearwater Valley Area Structure Plan* (Armin A. Preiksaitis & Associates Ltd., 2000), 5-1.

7 Regional Municipality of Wood Buffalo, *Municipal Development Plan* (2011), 78.

structures and parking areas accomplishes this goal. Put another way, how will agricultural land be preserved if new buildings are to be erected? The application does not provide any limitations on size or location of buildings, making it difficult to assess whether agricultural land will be preserved. The application has missed an opportunity to describe how agricultural pursuits will be protected and enhanced, and provides no reassurances that lost land will not be detrimental. This is especially critical to address because the application states that it is compliant with this policy.

3. The submission indicates that the future vision for the site is one that will support (and be supported by) the local community. Public reaction to the proposed amendments have been mixed, with the majority of respondents to a survey administered by the RMWB in July 2017 showing no support for this proposal. This survey was administered to each Draper household, and garnered 61 responses from 42 properties. Therefore, it should be considered alongside the results of the Applicant's open house held on 27th February 2018, which showed support from 9 participants. Given these negative reactions from Draper residents, it is critical for the submission to show how impacts from the proposed activities will be mitigated.
4. The rationale for many proposed activities in the submission is lacking. A strong rationale is beneficial in determining the purpose, and garnering support for, the activities proposed on-site. Administration cannot responsibly support the introduction of an array of activities – some new or contentious – without a rationale.
5. Inclusion of policies from the draft Draper ASP are unnecessary, as this is an un-approved plan and therefore not current Council-endorsed policy. Draft bylaws cannot be relied upon as they are still subject to change. The application must be reviewed according to bylaws that are in effect.

Since these components were not adequately addressed in the submission, Administration cannot support this proposal.

5.4 Components of the Area Structure Plan Not Addressed

It is important for ASPs to be read comprehensively, because policies throughout the document can affect a given property. To ensure that the application had considered all aspects of development, the following policies would also have to be addressed:

1. Policy 5.2.7 and 5.2.9 are policies in a section that governs how commercial and industrial development should occur. This section would be the logical place for new policies guiding the commercial activities proposed in the submission, but no new policies were proposed. Given that there are 11 commercial activities proposed on-site, this is a significant omission. This does not provide a reasonable level of assurance to community members or decision-makers, who rely on such policies to reduce impacts on residential properties. Impacts from commercial operations can vary widely,

based on the size of the operation, number of employees, physical scale of buildings, location, available parking, associated customer and delivery traffic, and proximity to major roadways.

2. Policy 5.3.10 discourages development in areas that are prone to flooding or any other natural or human-induced hazards. The submission does not address this issue, which is cause for concern given the significant amount of new development proposed on-site. Generally, the intensification of properties in flood-prone areas is discouraged because it exposes more private property to damage. Additionally, flood-proofing measures such as raising the elevation of a property can have significant upstream impacts if the elevated area is so large that it displaces water and worsens flooding upstream. Since the ASP identifies the subject properties as being in a flood-prone area, the lack of attention to flooding issues is concerning, particularly given the significant amount of development contemplated on-site.
3. Policy 5.3.14 requires developers to consider the guidelines contained within the Management Plan for the Clearwater Heritage River. The submission does not confirm whether these were considered in the amendment application.
4. Section 5.4 aims to provide residents of the RMWB and visitors with recreational opportunities, and policy 5.4.1 directs recreational activities to preferred areas (shown on Map 6). The subject properties are not identified as a preferred location for recreational uses, but their current Small Holdings designation does allow some. Therefore, this section would have been the logical place for some policies identifying the subject property's proposed role as a provider of community-wide recreational activities. Additional policies could have also been added, placing parameters on the activities so that impacts on the surrounding community could be mitigated.

Since these components were omitted in the submission, Administration cannot support this proposal.

6 Rationale and Recommendations

The Municipality's rationale and recommendations listed in this section are based on all the information submitted by the applicant, the feedback from the survey and responses received by the Municipality and the applicant's public engagement feedback.

When a Municipality reviews an application to amend the existing Land Use Bylaw and Area Structure Plan, it must endeavor to ensure the proposed changes do not unduly interfere with the amenities of an area or, materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. Further, an important principle of land use planning is to achieve safe and orderly development where complimentary uses are located in such ways that potential land use conflicts are minimized. Taking the above into consideration, the Municipality recommends refusal of Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) specific to Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950.

1. Direct Control Districts are intended to provide Council with maximum flexibility and high level of control over proposed development on a site. The applicant's proposed Direct Control District is more accurately described as a site-specific land use district, limiting Council's degree of control and taking development decisions out of a transparent, public hearing process.
2. Administration has the following concerns regarding the permitted and discretionary uses within the applicant's proposed DC Direct Control District:
 - 2.1. A total of **twelve** new Uses within the applicant's Direct Control District have been proposed which are not within the Small Holdings District. There is an absence of supporting documentation and rationale indicating why those uses are proposed and whether those uses were supported by the Draper neighbourhood.
 - 2.2. A total of **three** uses in the proposed Direct Control District currently do not exist in the Land Use Bylaw. The amendment does not include definitions of the uses and only one of those uses includes provisions for the "General Regulations". Provisions under "Part 5 General Regulations" are essential to provide guidance to the Development Authority when reviewing development permit applications.
 - 2.3. Several proposed permitted land uses do not currently have provisions under "Part 5 General Regulations". These provisions guide the Development Authority when reviewing development permit applications to determine whether any negative impacts of the development are properly mitigated and to reduce potential land use conflicts with the surrounding neighbourhood.
 - 2.4. The applicant's proposed Direct Control District does not specify whether the proposed Permitted Uses are for Council or the Development Authority to approve.
 - 2.5. The applicant has proposed **11** new commercial uses in their Direct Control District. These uses are not currently contemplated in the Small Holdings District, which has an existing rural residential character. The

applicant has provided insufficient documentation and feedback from Draper residents supporting the addition of commercial land uses in a rural residential area.

3. The applicant is proposing “Additional Provisions” in Section (5)(c) of their Land Use Bylaw amendment, which allows neighbouring parcels of land under the same ownership the ability to transfer development potential from one lot to the next. The applicant has not provided any supporting documentation regarding whether this will have an impact on the surrounding neighbourhood and the extent of the lands this provision would apply to. The Municipality does not support additional intensification of land beyond the current provision of the Land Use Bylaw without proper justification.
4. The applicant’s submission proposes additional regulations to “Part 5 General Regulations” of the Land Use Bylaw. The Municipality was not provided with any supporting documentation to determine if the proposed provisions represent best practice or whether the proposed regulations are appropriate to control, limit, and mitigate potential land use conflicts.
5. The applicant has proposed text amendments to “Part 5 General Regulations” Section 76.7 and 76.8 of the Land Use Bylaw to allow livestock, fowl, or furbearing animals for all lots in Draper that meet the current Land Use Bylaw provisions. The applicant has not provided supporting feedback from the residents agreeing with this activity that could create potential land use conflicts.
6. The proposed Area Structure Plan (ASP) amendment does not provide proper guidance for the wide array of proposed activities, many of which are new and may conflict with surrounding properties.
7. The proposed Area Structure Plan (ASP) amendment does not adequately mitigate negative impacts on surrounding properties.
8. The proposed Area Structure Plan (ASP) amendment does not adequately demonstrate how a key Municipal Development Plan (MDP) objective C.2.1 and ASP policy 5.2 is being met: that the rural residential character of Draper will be preserved.
9. The proposed Area Structure Plan (ASP) amendment does not adequately demonstrate how a key Municipal Development Plan (MDP) objective 4.4.1 is being met: that the Municipality’s limited supply of agricultural land will be preserved.
10. The Municipality conducted a survey of Draper residents from July 26, 2017 - August 18, 2017, asking individuals to provide feedback on the applicants proposed uses. Of the 61 responses received from Draper residents, a majority did not support commercial activities included in the amendment proposal.
11. The proposal does not address other policies in the ASP that should be amended to more fully support and guide the proposed activities.

Based on the above, the Municipality recommends refusal of Land Use Bylaw Amendment (2017-LU-00003) and Area Structure Plan Amendment (2017-LU-00004) specific to Lot 6, Plan 992 0950 and Lot 5, Plan 992 0950.

7 Considerations

While Administration has recommended refusal of the proposed Land Use Bylaw and Highway 69/Clearwater River Valley Area Structure Plan amendment, Council has the authority to make their own decision based on their objective review of the facts presented. As such, Planning and Development has provided some additional considerations that Council should be aware of prior to rendering a decision on the proposed amendments. These considerations have not been fully explored and only represent a very high level of potential outcomes.

1. The RMWB Safety Codes has made Planning aware that the current structure onsite used for commercial retail purposes, when approved, was only intended for warehousing and storage. As such, any approval of a higher-level occupancy of a structure would require safety codes review and approval to ensure public safety is maintained.
2. The scale and intensity of the potential development is proposed on potentially environmentally sensitive lands. A proper bio-diversity assessment is required to determine the level of sensitive to the natural surrounding landscape. This report will also determine the appropriate amount of development for the lands.
3. The approval of intensified uses on the site may trigger the requirement for infrastructure upgrades in the area.
4. The applicant has not provided a Traffic Impact Analysis (TIA) to determine whether the existing road infrastructure could accommodate the potential intensification of land contemplated by the proposed amendment.
5. Concerns over fire water and access will need to be addressed if intensification is to occur.
6. Approval of the proposed amendments will most likely result in a reduction in the use and enjoyment of neighbouring parcels.
7. Conflict with existing Area Structure Policies will continue to remain unaddressed.
8. Approval of the proposed amendments has the potential to change the entire character of the Draper area.
9. Further authorization of development on potential flood hazard lands as the Province has yet to clarify whether the lands are considered within the flood plain.