



## REQUEST FOR DECISION

To: Development & Planning Services Committee

From: Planning Analyst & Manager of Planning and Building

Title: Development Procedures Bylaw and Council Policy – Land Development 3.23, 3.24 & 3.25

Date: April 2, 2024

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### **Executive Summary/Purpose:**

This report introduces updated bylaw and guidance policies that 1) govern City procedures for development applications; 2) establish existing delegation authorities/practices by bylaw; and 3) introduce some new authorities related to the imminent zoning changes for residential infill (i.e. small-scale multi-unit housing (SSMUH)). The companion Council Policies support the proposed Procedures Bylaw and clarify for all involved how Council and staff is to undertake the development processes.

### **Motion for Consideration:**

- THAT: a bylaw be prepared for Council's consideration, adoption of which would establish Development Procedures;
- AND THAT: Council approve Land Development Policy No. 3.23 – Development Variance Permit Application Process (effective following adoption of the Development Procedures Bylaw);
- AND THAT: Council approve Land Development Policy No. 3.24 – Development Permit Application Process (effective following adoption of the Development Procedures Bylaw);
- AND THAT: Council approve Land Development Policy No. 3.25 – Delegated Development Variance Permit Consideration Guidelines (effective following adoption of the Development Procedures Bylaw).

### **Staff Recommendation:**

That the Motion for Consideration be adopted.

## **Background:**

Similar to a Council Procedures Bylaw, legislation requires municipalities to have, in effect, a development procedures bylaw. Unless legislation expressly prohibits it, any action that is undertaken via a Council resolution can be delegated. This delegation must be authorized by bylaw; conversely, what is not listed as delegated remains with Council, for example, major variance applications and rezoning applications as these are via bylaw.

Currently, there are several City bylaws and provisions within bylaws and policies that set out the procedures for how to administer development. The proposed Development Procedures Bylaw would replace provisions in Section 3.8, 3.9 and 4.14 of Zoning Bylaw No. 2303 and the following City bylaws (available on our website):

- Temporary Commercial and Industrial Use Permit Procedure Bylaw No. 3548, 2006;
- Development Variance Permit Procedure Bylaw No. 3024, 2000; and
- Development Permit Procedure Bylaw No. 2870, 1998.

It would also set out OCP amendment procedures; cite what is delegated; how a delegated decision may be advanced for reconsideration by Council; and attributes of various administrative tasks such as mail out distances that staff undertake in processing applications.

### *What is the best practice for a procedure bylaw and why?*

Bylaws should not repeat what is already explicitly set out in provincial legislation. At best, this may result in confusion: at worst, it may result in conflict since legislation can and does change. For example, the timing of notices by “day” in newspapers prior to a public hearing is prescribed in the Act. Then a precise definition of what constitutes a “day” is in the *Interpretation Act*. Staff routinely refer to these primary documents in our work and keep up on any changes that impact how we process development.

A bylaw should not be a policy: it is a *regulation* and so needs to be drafted in regulatory form. It may have associated policy where *softer* guidance directs how applications proceed. This is especially the case for any delegated decisions.

A Development Procedures bylaw is also not intended to be a long detailed staff and Council task list. A bylaw or policy should not direct staff to make a file, draft a report, or register a permit on title. These are internal department operational steps or requirements under legislation rather than bylaw procedures.

### *What has changed in legislation?*

In 2021 the Province passed legislation that enabled councils to delegate a broader variety of approvals, including variance and temporary use permits. The Act has already enabled the delegation of development permits for decades. Public hearings were increasingly optional and their notices no longer needed to be posted in local newspapers (twice). This was in part because so many communities and regions of BC no longer had local newspapers. While the City of Salmon Arm has not implemented these changes (and a development procedures bylaw is where they would be established), staff have worked to ensure timely processing for Council consideration.

Since 2021, recent changes to the Act mean that there are cases where public hearings are prohibited, for example OCP consistent rezoning applications. The proposed Bylaw accounts for this change and covers the range of circumstances. One further note about public hearings,

Council Policy 3.7 of 1992 affirms that Council opposes the waiving of optional public hearings. This Policy can remain unchanged as it only applies when they can be waived and not when mandatory or prohibited. Cases of optional hearings will be fewer.

As relayed to Council in February, staff anticipate that the changes for small-scale multi unit housing will compel some changes in how the City processes applications. The legislation did not and does not require hearings for Development Permits and there is a risk to holding a hearing when there is a narrow window of discretion prescribed by the Development Permit Guidelines. The public may believe their input can impact a development; however, if a proposal is consistent with the OCP and its development permit guidelines, meets zoning, and any applicable legislation (e.g. floodplain, riparian areas, building code), then the permit **must** be issued. This has been tested in BC courts who have underlined the limited discretion to deny development permits that meet municipal bylaws. This is not the case for variances and land use changes.

Finally, application, permit, and agreement forms were historically appended to bylaws as templates but this has not been best practice for decades. The Bylaws proposed to be repealed have a series of scheduled forms. In the context of rapidly changing technology, provincial legislation, and right to information (or privacy) it is prudent to delegate this to the Corporate Officer and Director who may then make timely adjustments to forms as needed.

#### *What has carried through from previous Procedure Bylaws?*

The following provisions have carried through to the proposed Bylaw:

1. mail-out distance for notices;
2. development information sign requirements for a site subject to public hearing;
3. requirements to provide application supporting information and professional reports;
4. fees remain as stipulated in the Fee for Service Bylaw No. 2498 with the proposed bylaw simply referencing it;
5. refunding of fees for withdrawn applications;
6. Development Permits waivers for environmental/riparian protection areas, etc. administered by staff;
7. requirements and procedures for the posting, the use, and the return of security monies; and
8. bylaw recitals and purpose statements are updated and renamed for concordance with current legislation.

The proposed Development Procedures Bylaw is more comprehensive but shorter than the three prior bylaws and sections of the Zoning Bylaw that it replaces. It has eliminated repeated or overlapping sections. Also, based upon the best practices rationale outlined on the previous page, numerous provisions that are set out in legislation have simply been removed from the proposed Bylaw.

There are sections of the Bylaw that set out delegated authority that cover current department practices but there are also a few that introduce additional delegated authority. For clarity, these are detailed below and have proposed policy for added certainty and transparent decision-making.

Specific changes, additions and key content of the procedures bylaw include:

1. the form associated with applications is delegated to the Corporate Officer with a general list of application fields;
2. the form associated with permits is delegated to the Director;

3. the authority to ask for additional and more specific qualified professional submissions such as geo-tech reports, traffic studies, etc. is delegated to the Director;
4. a process is established for closing applications that are incomplete, lapsed or shelved for years;
5. a conditional refund of fees is established;
6. delegation of certain development permits for protection of the environment and infill housing to the Director – *all other DPs for multi-family residential, industrial, commercial, and institutional continue to go before Council as will cases where a DP is combined with a variance permit;*
7. delegation of minor variance permits to the Director (see companion policy) – *major variance permits and combination applications as well as those related to subdivision will continue to go before Council;*
8. delegation of temporary use permits that are regulated in the Zoning Bylaw – *all other temporary use permits continue to go before Council;*
9. Statutory Public Hearings are limited to OCP Amendments, Zoning Bylaw Amendments and Temporary Use Permits. Staff note that it is not in legislation that the issuance of Development Variance Permits occur after a Public Hearing, as currently practiced. Under the proposed bylaw notices are mailed to adjacent land owners and occupiers within 30m of the application and comments received for Council's consideration in their deliberation of the issuance of that permit as per the Act. As presented in the proposed procedures bylaw, the issuance could take place during the Regular Council meeting. Evening sessions would then be reserved for Statutory Public Hearings.
10. regulation and timing of the reconsideration process is set out in section 12; and
11. the process for taking, holding and using security deposits has been prescribed in more detail in section 11 than under the current Bylaws.

Where an application or an approval is not delegated, it remains with Council. It is not advisable to list all the items that go before Council as this is the default route for consideration if and where not delegated in the Bylaw.

A more detailed analysis of the DP and DVP changes follows:

#### *Development Permit (DP)*

Given the pending small-scale multi-unit housing changes, delegated authority for infill residential DPs is recommended to be implemented in this bylaw. To qualify, a DP would not be required for one or two detached dwellings (with or without suites) but only in cases where three or four *detached* housing units are proposed upon one property. So a principal dwelling with a suite and an accessory dwelling unit (ADU) in a yard does not require a DP nor does a dwelling with two ADUs attached side by side or one over the other. The objective is to encourage applicants to add housing by combining units to minimize the number of buildings and the “build-out” on a property.

In cases where an applicant opts to **detach** three or four dwellings, these developments would be scrutinized for massing, architectural design, site plan, pedestrian and vehicle access, etc. as outlined in the proposed DP Policy and the OCP guidelines. For those developments in which three or four ADUs are proposed in three buildings or less, the DP would be delegated to staff. For developments in which four ADUs in four separate buildings, the DP would be issued by Council. The present OCP policy under *8.4 Residential Development Permit Area* is adequate and comprehensive so as to serve as a starting point. The DPA scope in 8.4 will have to be

revised to apply to these cases of multi-unit infill developments on “Low Density Residential” designated lands. The DPA Guidelines will be presented for Council’s consideration in a separate bylaw.

Over four units in clusters, apartment buildings, and row housing across medium to high-density lands remain subject to form and character DP policies set out in the current OCP and will all continue to go before Council for review and approval. Finally, delegation for environment related and geotechnical matters covered via DP areas are typically processed by staff via a waiver - provided the applicant undertakes the necessary review with a qualified professional. No change is proposed for these cases.

*Minor development variance permits (VPs)*

Minor variance permits as defined below, are proposed to be delegated:

- a) the variance must be for an individual property or development;
- b) the variance is not conditional on *Council* approval for a related application;
- c) the variance is generally consistent with any applicable OCP policy;
- d) the variance is a one-time renewal of a lapsed approved application;
- e) building setback variance to a parcel line would result in a reduction of no more than 20%;
- f) building height variance would permit an increase of no more than 15%;
- g) a screening and landscaping requirement that does not serve a purpose in the given context;
- h) a sign variance would permit an increase in sign size of no more than 20%;
- i) off-street parking space requirements would result in a reduction of no more than 20% on residential lands and no more than 10% on institutional, industrial or commercial lands; and
- j) will not vary any provision of a subdivision servicing bylaw in effect.

The Bylaw stipulates the parameters of what is “minor” as required by the Act, then the associated Council Policy sets out the kinds of items and questions with respect to the issuance of a delegated Development Variance Permit.

Recall that if a development is for three or four detached dwellings on one property and it requires a variance to be issued by Council, then under the proposed Bylaw terms, it would be advanced to Council for consideration.

**Relevant Policy(ies):**

The Official Community Plan includes guidelines on Development Permits such as those cited in the proposed bylaw.

**Planning Department**

Given that the *Local Government Act* (the “Act”) is often amended and processes/practices change, it is prudent to consider procedures amendments at this time.

While the attached Bylaw *could* go much further with respect to the scope of delegation, it is less ambitious as regards delegation than the norm of other similar sized and larger municipalities, some of which delegate all development permits.

In closing, the proposed Bylaw will bring Salmon Arm into compliance with the Act and will enable both staff and applicants be clear on the procedures that govern how we administer development applications. It will reduce risk and increase efficiency.

**Financial Considerations:**

None expected at this time; however, at a later date staff will bring forward fee changes to reflect the revised processes noted within the proposed development procedures bylaw.

**Committee Recommendations:**

N/A

**Public Consultation:**

The adoption of a Development Procedures Bylaw does not require a Public Hearing.

**Alternatives & Implications:**

N/A

Prepared by: Planning Analyst & Manager of Planning and Building

Reviewed by: Director of Planning & Community Services

Reviewed by: Position

Approved by: Chief Administrative Officer

**Attachments:**

- Appendix 1 – Proposed Development Procedures Bylaw
- Appendix 2 – Council Policy Land Development 3.23 – Development Variance Permit Application Process
- Appendix 3 - Council Policy Land Development 3.24 – Development Permit Application Process
- Appendix 4 - Council Policy Land Development 3.25 – Delegated Development Variance Permit Application Process