

# Report to Council



**Date:** May 10, 2021

**To:** Council

**From:** City Manager

**Subject:** Proposed Amendments to the Development Applications Procedure Bylaw

**Department:** Development Planning

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**Recommendation:**

THAT Council receives, for information, the report from the Development Planning Department dated May 10, 2021, with respect to amending the Development Application Procedures Bylaw No. 10540 for applications which require Bylaws (Rezoning and OCP Amendment).

THAT Council direct staff to bring forth changes to the Development Application Procedures Bylaw No. 10540 as outlined in the report from the Development Planning Department dated May 10, 2021.

T HAT Council direct staff to bring forth the proposed OCP amendment and Rezoning bylaws for the properties located at 1464, 1468 and 1476 Bertram Avenue for early consideration.

**Purpose:**

To facilitate a discussion with Council regarding the City's development application process for applications requiring Bylaws and provide suggestions on modifying the process for complex projects.

**Background:**

Over the past five years the pace of development projects being proposed in Kelowna has increased significantly. Along with this, the scope and complexity of the projects being proposed is continuing to increase with more complicated urban projects. However, the City's approach to the review and processing of these applications has largely remained unchanged. The process and steps are formally outlined in the City's Development Application Procedures Bylaw No. 10540 (Refer to Attachment A – Outline of Current Council Process and Requirements for Consideration of Bylaws). In reviewing the practices/processes of other BC municipalities, it is evident that there are a range of possibilities available under the Local Government Act as many of these municipalities have customized their planning processes to suit local context and values.

Staff find processing some of the more complicated files challenging especially when applicants push the boundaries of what City policy and staff are able to support. When staff make a negative recommendation, Council expects that an alternative recommendation of support be provided with all the necessary terms and conditions negotiated (to be able to approve). Details involved may include the completion of Environmental Impact Assessments or Transportation Impact Assessments and

involvement or sign-off from relevant provincial departments (e.g. 12-24 month process). A significant amount of resources can be invested in an application both in terms of staff time as well as by the applicant and their various consultants. When that amount of time and resources is put into a project, it can be challenging for staff to recommend against a project. In other instances, which may garner staff support, standard development application requirements may not necessarily scale up that well to larger more complicated processes such as public consultation and notification.

Staff have the ability to revise the Development Applications Procedure's Bylaw to be more context sensitive and better address larger, more complicated files.

The proposed change would allow Staff flexibility to bring complex Bylaw Applications directly to Council prior to completion of all requirements. It would allow for savings of:

- Time – Staff, Applicant and Consultant. This is extremely valuable due to the volume of projects in-process.
- Cost – Reports and Assessments not only take large amount of time but require a considerable investment on behalf of the applicant without providing any certainty of outcome.
- Certainty – Due to both the amount of time and the costs associated with completing the required reports and assessments, providing the applicant with more certainty (*if non-support will be the final outcome*) earlier in the process is beneficial to all involved. Staff provide recommendations based on the OCP and when a proposal is well outside of the OCP direction, Council would be able to provide clear direction to both Staff and the Applicant in regard to if the project has merit and should proceed through the current application process.

#### **Discussion:**

Referencing some of the Lower Mainland municipalities, initial consideration of bylaws is often separated from first reading for larger, more complicated files. This allows staff to bring forward a file to Council earlier in the process and for Council to not only consider the bylaw's appropriateness, but also provide direction in terms of how best to consider the proposal. This allows Council to provide input the steps in the process including the level of public consultation; or to stop an application early in the process. Technical reports and assessments not only take large amounts of time but also require considerable investment on behalf of the applicant and their consulting teams without providing any certainty of outcome. Providing additional direction early in the process would be beneficial to all involved. Should a proposal be supported at initial consideration, the applicant would then be expected to complete all technical requirements prior to coming back for first reading of the bylaw.

This step may add additional time to processing applications and it may not be necessary for the more straight-forward (staff supported) applications. Should a change in the development process be determined to have merit, it may only apply to Major Rezoning and Major OCP Amendment applications. The following indicates factors which put an application into the Major category for each application type (either a Zoning Bylaw or an OCP Amendment Bylaw):

#### **Major Zoning Bylaw Amendment Applications include one of the following:**

- Involves creation of a Comprehensive Development zone; or
- Involves a total land area of 2.0 hectares or greater; or
- Involves the addition of 100 or more dwelling units and/or parcels; or
- Involves a major change in land use intensity (including, but not limited to, local to urban centre commercial, or business to heavy industrial).

Major OCP Amendment Applications include one of the following:

- Involves a major change to the Future Land Use class (including, but not limited to, Residential to Commercial, Commercial to Industrial, Resource Protection to Residential) of the applicable parcel(s) or portions thereof; or
- Involves a change of two (2) increments within a Future Land Use class (including, but not limited to, Single / Two Unit Residential to Multiple Unit Residential (Medium Density) (ex. S2RES to MRM)
- Involves a significant deviation to other relevant development policy.

**Proposed Council process and requirements for consideration of Bylaws:**

Under the Local Government Act, the Municipality has the ability to separate Initial Consideration of the proposal from First Reading of the proposed Bylaw changes. This would allow the ability for Council consideration prior to finalizing or completing the TIA or other reports.

**1) Initial Consideration:**

- a) Staff has the ability to bring an application directly to Council for Consideration prior to requiring the completion of a TIA or other technical reports.
  - i. Applies to applications proposing development well beyond OCP Policy/Guidelines.
- b) Council has the option to:
  - i. Turn down the application - application is defeated and closed.
  - ii. Direct the applicant to complete all necessary requirements (ex. TIA etc). The requirements would be noted as recommendations by Staff for Council to endorse.
  - iii. Direct staff to bring the Bylaw to Council for 1<sup>st</sup> Reading upon all requirements being met.
  - iv. Provide Council the opportunity to provide direction and to customize any City requirements (ex. Requiring more robust public consultation requirements).
  - v. The application would follow the remainder of the existing Council processes from 1<sup>st</sup> reading through to Adoption of the Bylaw (Refer to Attachment A – Outline of Current Council Processes and Requirements for Consideration of Bylaws).

**Conclusion:**

Should Council see merit in bringing about changes in the Development Application Procedures Bylaw, staff would come forth with a formal report for consideration with recommendations for changes. Overall the intention of any change would be to bring a degree of flexibility to the review of more complicated development proposals and to provide a greater degree for Council direction to shape a development proposal.

**Pilot Project**

In addition to bringing about formal changes, staff could also proceed with a test case for Council's consideration. The property owner for the parcels located at 1464, 1468 and 1476 Bertram Avenue has made application for a major OCP amendment and rezoning application in order to develop a 46-storey tower project. By current practice, this project would require a Transportation Impact Assessment and negotiation not only with the City, but also with the Ministry of Transportation. It is anticipated that this study and negotiation could take 12-18 months which would normally occur prior to Council's initial consideration. The proposal is well beyond City policy and regulations and so Staff could bring this project to Council for early consideration (prior to commencement of the TIA) in order to provide greater certainty to all parties involved.

**Internal Circulation:**

Department of the City Clerk  
Policy and Planning Department

**Considerations applicable to this report:**

Legal/Statutory Authority:

**Development Application Procedure Bylaw No. 10540:** 2.2 Council Decisions & Schedule 2

**Community Charter:** Division 3 – Bylaw Procedures – Requirements for Passing Bylaws

135 (1) Before a bylaw is adopted by a council, it must be given 3 readings by the council.

(2) Subject to this section and the applicable procedure bylaw, a bylaw may be given up to 3 readings at one meeting of council.

(3) There must be at least one day between the third reading and the adoption of a bylaw.

**Considerations not applicable to this report:**

Legal/Statutory Procedural Requirements

Existing Policy

Financial/Budgetary Considerations

External Agency/Public Comments

Communications Comments

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