

# Report to Council



**Date:** August 14, 2023  
**To:** Council  
**From:** City Manager  
**Subject:** 350 Doyle Rescindment of Development and Development Variance Permits  
**Department:** Office of the City Clerk

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**Recommendation:**

THAT Council receive, for information, the Report of the City Clerk dated August 14, 2023 regarding Rescindment of the Development and Development Variance Permits for 350 Doyle;

AND THAT Council rescind the authorization for issuance of Development Permit No. DP21-0136 and Development Variance Permit No. DVP21-0137 authorized for issuance by Council July 26, 2022;

AND THAT Appelt Properties be invited to submit a development permit for Lot C District Lot 139 Osoyoos Division Yale District Plan EP95954, located at 350 Doyle Ave, Kelowna, consistent with the legal agreements and Zoning Bylaw No. 12375;

AND THAT Council rescind Council resolution R0614/22/07/26 that authorized staff to amend any legal agreements associated with the long-term lease of 350 Doyle Avenue;

AND THAT the Lease Agreement deadlines for starting construction at 350 Doyle Ave be amended to January 20, 2025, with substantial completion by January 20, 2029.

**Purpose:**

To rescind the Development Permit and Development Variance Permit for 350 Doyle Avenue

**Background:**

*Previous Council Resolution*

Resolution	Date
THAT, in the event Council approves DP-21-0136 and DVP21-0137, Council authorizes Staff to amend any legal agreements associated with the long-term lease of 350 Doyle Avenue as required to issue the permits associated with DP-0136 and DP-0137	July 26, 2022

<p>THAT Council authorizes the issuance of Development Permit No. DP21-0136 for Lot C District Lot 139 Osoyoos Division Yale District Plan EPP95954, located at 350 Doyle Ave, Kelowna, BC;</p> <p>AND THAT Council authorizes the issuance of Development Variance Permit No. DVP21-0137 for Lot C District Lot 139 Osoyoos Division Yale District Plan EPP95954, located at 350 Doyle Ave, Kelowna, BC;</p> <p>AND THAT the applicant be required to complete the above noted conditions of Council's approval of the Development Permit and Development Variance Permit Applications in order for the permits to be issued;</p> <p>AND FURTHER THAT a Housing Agreement Bylaw be adopted and registered on title prior to issuance of the Development Permit and Development Variance Permit.</p>	<p>July 26, 2022</p>
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**Discussion:**

The subject property, 350 Doyle Ave., Kelowna is a City-owned lot and the former site of the RCMP Detachment.

In September 2018, Council endorsed the long-term lease and redevelopment process for the former RCMP detachment, a 0.87-acre site located at 350 Doyle Avenue. As the property is located within the Civic Precinct, the Civic Precinct Plan, which identifies municipal objectives to increase vibrancy and establish a foundation of amenities in the downtown core while protecting for the future expansion of cultural facilities, guided the development vision for the site.

Beginning in the fall of 2018, the property was widely marketed through a third party commercial real estate brokerage seeking development consistent with the site-specific guidelines established in the Civic Precinct Plan. The nationally marketed, public sales process generated multiple proposals for the redevelopment of the site, which were evaluated by Staff and Council. The proposal submitted by Rise Properties Limited (now operating as Appelt Properties) was chosen. The ground lease and covenant formalizing Appelt Properties' commitments with respect to the site was finalized in February 2021, at which time care and control of the property was transferred to the proponent.

Council considered a Development Permit and Development Variance Permit for 350 Doyle on July 26, 2022. During the meeting, Council heard from twenty-four (24) members of the public, each of whom addressed Council with their reasons for supporting, or for not supporting, the application before Council.

Council's task in deciding whether to grant variances to a zoning bylaw is to determine whether granting the variances is "in the interest of the community as a whole." In the July 26, 2022 Report to Council staff identified the provision of rental housing as being consistent with increasing housing and tenure diversity in urban centres, an objective in the 2040 OCP. The staff oral presentation to Council also mentioned the proponent had added the affordable rental housing component. The need for rental and affordable housing was a community interest, supported by existing policy, which was the apparent basis for several of the participants expressing their support in the public portion of the meeting.

In October 2022, the City and Council-elect began to receive statements that some of the public intervenors had been paid to speak in favour of the 350 Doyle application. In particular, the Mayor received an email in early January from one individual confirming that at the request of a friend, he and several others had spoken in favour of the project and "was paid \$250 via e-transfer for my comments".

Upon further investigation by staff, Appelt Properties confirmed a company hired by them to engage with the public did provide "nominal expenses" to an unspecified number of persons who spoke in support of the application during the meeting. Further correspondence from the "third party communications vendor" JDH Naturals, confirmed that JDH reimbursed speakers \$250 each to address Council during the meeting. While JDH explained that the payments were "capped" at \$250, the City's understanding is that each of the participating speakers received a uniform amount of \$250. It is difficult to accept the explanation offered by JDH that the payment of that set amount represents reimbursement for "a range of costs, including lost earnings from time spent away from work, for information sessions, the council meeting, travel, parking, and meal expenses." Conceivably, some of the presenters may have lost earnings but it seems highly unlikely that across-the-board, each of the presenters' expenses reached \$250.

JDH Naturals Inc. was incorporated under the Canada Business Corporations Act in 2020. No City of Kelowna Business Licence has been applied for nor issued to this company.

The minutes of the July 26, 2022 meeting indicate that of the 24 persons who made submissions, approximately half referenced the need for affordable housing, student housing or affordable student housing in their comments. One of the persons speaking in favour, who referenced the need for student housing, was the principal of JDH Naturals. Five members of Council made reference to either affordable or student housing as being an issue of concern for them during the course of their remarks.

The ability for members of the public to address Council directly with their support or concerns regarding development applications is an integral part of the Council decision-making process, as established by case law, Provincial legislation, and Council bylaw. While Council would expect that consultants, such as architects, engineers, planners or lawyers, would be compensated by a proponent for their assistance in making a presentation to Council, there is no similar expectation of compensation having been paid to members of the public who make presentations. Council would assume that members of the public have not been compensated for their attendance. The direct payment to individuals to speak in favour (or opposed) to an application undermines public confidence in the public process, to the extent of calling into question the validity of the public hearing or meeting. Council's decision, based as it was on paid statements of support, is subsequently tainted.

To address this tainted process, staff recommend Council rescind the July 26, 2022, motions authorizing issuance of the Development Permit and the Development Variance Permit for 350 Doyle Ave. and the condition that a Housing Agreement be registered on title prior to the permits themselves being issued.

Staff recommend Appelt Properties be invited to submit a development permit for Council's consideration, that is in compliance with the pre-established disposition terms and current Zoning Bylaw No. 12375. The January 2024 construction deadlines in the Lease Agreement would be extended twelve months from the dates identified in the Lease, which commenced February 10, 2021:

- a. Current requirement to start construction is January 20, 2024  
Amended Date January 20, 2025

- b. Current requirement for substantial completion is January 20, 2028  
Amended Date January 20, 2029

To ensure procedural fairness, Appelt Properties, or their representatives, has been offered an opportunity to address Council prior to Council making a decision on the staff recommendations contained in this Report.

**Conclusion:**

The tainted process can be remedied by rescinding the issued Development and Development Variance Permits for 350 Doyle Ave. and inviting Appelt Properties to submit an application for Council's consideration.

**Internal Circulation:**

Real Estate Department  
Investments and Partnerships  
Development Planning

**Legal/Statutory Authority**

See attachment

Submitted by:

Stephen Fleming  
City Clerk

Attachments:

1. Authority for Rescinding Council Resolution approving issuance of a Development Permit/Development Variance Permit
2. PowerPoint presentation