
MEETING TYPE: Regular Council Meeting
MEETING DATE: June 18, 2024
AUTHOR: Reyna Seabrook, Director of Corporate Services
DEPARTMENT: Corporate Services
ITEM TITLE: Development Approval Procedures Bylaw 1227, 2024
DESCRIPTION: Rewritten bylaw to align procedures with recent bylaw amendments and updates.

PURPOSE

To consider an updated Development Approval Procedures Bylaw 1227, 2024.

RECOMMENDATION

THAT Development Approval Procedures Bylaw 1227, 2024 be read a first, second and third time.

EXECUTIVE SUMMARY

Council recently considered amendments to the Official Community Plan, Subdivision and Development Servicing Bylaw, Building Regulation Bylaw and Council Procedures Bylaw with the goal of streamlining and simplifying development processes and meeting the provincial requirements related to the Small-Scale Multi-Unit Housing legislation (Bill 44) that encourage residential growth and infill development.

The amendments within the OCP are highlighted in the [Report to Council dated May 7, 2024](#) where Council considered second reading of Bylaws 1225 and 1226. Section 460 of the LGA requires a municipality that has an OCP or zoning bylaw to define procedures under which an owner of land may apply for an amendment to the OCP or zoning bylaw or the issue of a permit under Part 14 (development permits, development variance permits and temporary use permits) that requires a council resolution.

The current Development Application Procedures Bylaw 1133, 2021 is 41 pages and cumbersome for both staff and the public to understand. The current bylaw includes detailed operational processes that do not meet the needs of staff or the public and as a result of the recent bylaw amendments, some procedures may no longer be applicable. The process of finalizing detailed procedures, guidelines, forms and processes is underway and an overarching review is required to ensure each step, from counter to issuance of a permit is outlined and documented ensuring consistency for staff and customers. The proposed changes to the Development Application Procedures bylaw will assist staff and customers in the immediate future although once an overarching review has taken place, additional amendments may be required. The proposed bylaw provides high-level procedures that are simplified and aligned with the recent bylaw updates.

The attached document, “1133-CONSOLIDATED-with comments”, is a copy of the most recent version of Bylaw 1133 with comments inserted identifying where each of the sections can be located within the new proposed bylaw or if that section has been removed. Additional information is included in some of the notes to provide clarification on why an item was moved, reduced or removed entirely from the new bylaw.

Summary of amendments:

Definitions has been removed as a schedule and located at the beginning of the bylaw. Defined words have been reviewed and updated to ensure they accurately reflect their use within the bylaw. For example, a definition of Qualified Professional and substantial construction have been added. This allows use of the words to be more simplified within the body of the bylaw.

Scope and Delegation of Authority

The layout of "Scope" has only been slightly amended to remove technical development permits and development permit exemptions. The applications listed under the Agricultural Land Commission remain the same.

Delegation of Authority has been consolidated into Section 6 and remains mostly the same except language has been updated and consolidated. A new provision to consider is the requirement that, where a document (such as a covenant, SROW, lease etc.) has been put in place at the direction of Council, the discharge of such document must be done in the same manner.

Delegation of development permits is located in section 6. Consideration of applications within the Stability, Erosion and Drainage Hazard, Natural Environment and Wildland Fire Hazard development permit areas continue to be delegated and the other previously delegated "technical development permits" have been removed through the OCP amendments. The caveat to this clause/section is that the Director is required to refer an application to Council where it does not meet the conditions of the section, or, it would be in the public interest to be considered by Council, is included in the section.

Development Approval Information

Development approval information (LGA s 484) is defined as information on the impact of a proposed development on the community, including (without limiting) information regarding impacts on transportation, infrastructure, public facilities, community facilities and the natural environment. The OCP identifies all development permit areas as development approval information areas and therefore a bylaw must establish the process for requiring the information and the substance of the information that may be required (LGA s 486). A bylaw can also identify employees authorized to request the information and must set out procedures for reconsideration.

The OCP identifies reports required for each DP area. For example, Section 21.11.14 of the OCP says a Stability DP permit may require reports certified by a professional including, but not limited to a site plan, geotechnical hazard assessment report or landscape plan. The existing document, Bylaw 1133 expands on this, requiring every Stability, Erosion and Drainage Hazard development permit application to include 10 different reports including an Engineering Assessment, Erosion and Sediment Control Plan, Geotechnical and Hydrogeological Report, Grading Concept Plan, Landscape Plan, Preliminary Concept Plan, Stormwater and Drainage Management Plan, Topographic and Feature Survey and Tree and Vegetation Management Plan.

Trying to locate the required reports for each application is also difficult in Bylaw 1133 as the information is located in numerous sections. Section 4 and Schedule B include exhaustive details on each type of report, each schedule sets out the base information required plus additional information (sometimes), and Table E4 identifies additional submission requirements by DP area which refers readers back to Schedule B or Section 4 to determine exactly what that means.

This process is cumbersome for staff and readers to determine exactly what is required for each application type. Legislation sets out that a local government may require development approval information which varies based on the type of application and site-specific details. For example a single-family home in a previously disturbed development permit area may not need to submit a geotechnical report on the environmental impacts of construction although development on an undisturbed site may require additional reports to support the application.

The proposed speaks to development approval information in Section 7. A baseline list of required information for all applications is listed in section 7.3, each application requires evaluation, through a pre-application process typically, before staff can determine exactly what reports are necessary to support the application. Requiring every application to provide every report as part of the application creates unnecessary costs and workload.

One list of detailed development approval information (the substance) that may be requested has been included in the bylaw and aligns with the information identified in the OCP. This does not limit the information that may be

requested by the Director or Council for an application. As part of the overarching operational development process review that is currently underway, specific application requirement checklists and processes will be developed to assist customers and that information can be further refined during a pre-application meeting.

Public Notification and Consultation

The LGA sets out notice required for public hearings and notice required for land use permits.

A public hearing is a separate formal proceeding held to receive testimony from interested or affected parties. The LGA requires a public hearing for official community plans and zoning bylaws (and amendments). All those that feel they are affected are afforded an opportunity to make an oral (or written) submission at a public hearing.

Council considers land use permits (DP, DVP or TUP) at a Regular Council Meeting. Notice requirements for land use permits are within the LGA. Where someone receives a notice related to land use permit, there is no automatic right to make an oral submission at a Regular Council Meeting, but Council may pass a resolution to hear from members of the public at a Regular Council Meeting at any time (unless prohibited).

The recent changes to the LGA for Bill 44 prohibit public hearings in certain circumstances. The LGA sets out notice requirements where a public hearing is prohibited or waived. Even if a public hearing is waived or prohibited, the public can still provide written submissions or engage with staff or Council. The right to provide oral submissions at a public hearing has been removed.

Council Procedures Bylaw identifies when a public hearing is required, waived, or prohibited and sets a deadline of 4:30 p.m. on the date of the public hearing or first reading for receiving written responses. To summarize:

- a public hearing is mandatory for OCP bylaws (or amendments)
- Can be waived if the zoning is consistent with the OCP.
- Are prohibited if the zoning bylaw is for the sole purpose of complying with SSMUH
- Are prohibited if the proposed zoning: is consistent with the OCP; AND is solely for residential development (in whole or in part) AND the residential component is at least half of the building.

LGA section 499 requires notice for a development variance permit (DVP) and section 494 requires notice for a Temporary Use Permit (TUP). The Development Approvals Procedure Bylaw establishes a 50-metre radius from the subject property for the delivery of notices.

There is no obligation under the LGA to give notice of an intention to issue a development permit. William Buholzer, BC Planning Law and Practice (s 16.48) states that local governments providing gratuitous notices of DP's may create a legitimate expectation that notices will always be provided, such that a failure to notify could provide grounds for a legal challenge to a permit. Notice may also create an impression that Council has discretion to refuse a development permit and Council has no such discretion. The local government may, by providing notifications, be encouraging expectations it cannot satisfy. Neither the existing procedures bylaw nor the proposed bylaw amendments require notification for development permit applications.

Section 9 Table 1 of the new bylaw identifies the notice set out for each type of application. OCP Amendment – Neighbourhood Plan has been removed from the list as this would qualify under OCP amendment. The L indicates where the notice is required under legislation. Checkmarks are at the discretion of Council to determine if such notice is required.

Application Type	Public Hearing	Two newspaper ads	Surrounding Property Owner Letters	Public Information Meeting	Notice Sign	Neighbour Consultation
OCP Amendment	L	L	L	✓	✓	✓
Zoning Bylaw Amendment	L	L	L		✓	✓
Zoning Bylaw Amendment - PH waived or prohibited		L	L		✓	✓
DP Delegated						
DP Council						
DVP Council			L		✓	✓
TUP		L	L		✓	✓
TUP Renewal					✓	✓
Phased Development Agreement	L	L	L	✓	✓	

✓ = Required, Blank = not required, L = required under legislation

Section 9 provides details on each type of notice required. For example, notice of public hearing must be published in a local newspaper for 2 consecutive weeks and be mailed to all Owners within a certain distance of the subject property. The current bylaw identifies an area of 50 metres although Council has expressed an interest in expanding that area to 100 metres. Staff found the following for a comparison to other municipalities:

Salmon Arm = 30 metres	North Van = 100 metres
Saanich = 90 metres	Oak Bay = 50 metres
Whistler = 100 metres	Sooke = 100 metres
Nanaimo = 10 metres	Vernon = 30 metres
	Victoria = 100 metres

Owners are currently notified by mail and the expanded area would be largely an administrative exercise of printing, addressing envelopes folding etc. If notice was required to be hand delivered in the case of inability to deliver notice through the mail, the 100-meter area may result in additional staff time.

One of the changes in section 9 is the requirement for Owners to prepare their own notice signs. The District's current practice is to provide all notice signs and have them available for the Owner to pick up on a specified date. The Owner is then responsible for posting the signs on the property and providing evidence of such. This practice has been amended to be in keeping with other municipalities' services where the owner is provided with the required information and format and obtains the signs from a sign business at their expense.

Application Process

Section 10 of the bylaw establishes the process for land use applications. Section 2, 3, 8, 9, 10 and 11 as well as some of the base application requirements in the schedules of the current bylaw, have been consolidated and reduced into section 10 of the new bylaw. The process outlined in the new bylaw is high level as there is no need to provide step by step instructions in a Council bylaw. Additional procedures and checklists can be created at the staff level that will assist applicants and staff. Section 10 identifies the options available for Council when considering an application and establishes a timeline for Owner's to receive notification once a decision has been made.

Reconsideration

In accordance with section 486, 487 and 493 of the LGA, where authority has been delegated to staff to make a determination on a land use application or on required development approval information, Council must, by bylaw, establish procedures regarding applying for and dealing with a reconsideration. Section 11 sets out the process and timelines for processing a reconsideration.

Performance Security

The form, amount and release of performance security is detailed in section 9 of the current bylaw. Section 502 of the LGA sets out that a local government may require security to satisfy landscaping conditions, to correct an unsafe condition or correct damage to the environment. The new Performance Security section (12) retains the same conditions as identified in the existing bylaw, streamlines the language and removes unnecessary information that is not required to be located within the bylaw.

Renewal, Extension and Lapse

Section 14 of the existing bylaw has been streamlined into section 13 in the new bylaw. The timeline to apply to complete prerequisite conditions for one 6 month period has remained the same and the maximum timeline for the opportunity to start substantial construction has been increased to 36 months from 30 months (item 13.3(c)).

APPLICABLE LEGISLATION, BYLAWS AND POLICY

LGA Part 14, Section	Requirement/Authority
Permit means	Development permit Development variance permit Land use permit (means DP, TUP, DVP or any other permit under Division 10) Temporary Use Permit Tree cutting permits (Division 10)
460	Define procedures by bylaw for: amending OCP amending zoning issuing a permit under Part 14
465	Public hearing must be held after 1 st and before 3 rd Can be electronic
466	If PH not held must give notice Published for 2 weeks and posting places Not less than 3 and not more than 10 days before PH (5) Establish distance by bylaw for mailing notice Not required if 10 or more parcels are owned by 10 or more persons
467	Notice if PH waived or prohibited as per section 466 Except, the date of the PH is date of first reading
468	May by bylaw require posting of notice on land May specify size, form and content of notice
470	After PH Adopt or defeat the bylaw Alter then adopt provided the alteration does change use, increase density or decrease density without owners consent, or alter residential rental tenure
485	OCP may require development approval information: In specific circumstances; In designated areas In designated areas in specified circumstances Must justify specification or designation
486	Must, by bylaw established procedures and policies for requiring DAI May delegate authority to require DAI must establish procedures for reconsideration where delegated
487	may require DAI for Amendment to zoning DP TUP At applicants expense

	Entitled to reconsideration
490(1)	By resolution, may issue DP that: Varies land use bylaw Varies bylaw under Division 11 (Subdivision and Development) Includes requirements, conditions or sets standards Imposes conditions on sequence and timing of construction
490(2)	DPs must be in accordance with guidelines
490(3)(4)	DP must not vary use or density vary zoning in relation to residential tenure vary flood plain specification
493	May issue TUP by resolution May allow use not in zoning bylaw Specify conditions Allow and regulate construction of buildings respecting use Can be delegated and subject to reconsideration
494	Notice required for TUP 2 consecutive weeks in newspaper and posting places
496	Permit conditions: additional security requirements In addition to 502, for a TUP, security to guarantee performance of terms of permit Permit can provide form, the means for determining default and amount foregone in event of default
498	By resolution, may issue a DVP for: Zoning bylaw (division 5) Subdivision bylaw (division 11) Other land use regulation powers (division 13)
498.1	DVP may be delegated, by bylaw if: Is minor, Varies zoning bylaw Varies siting Size and dimensions of structures Permitted uses Off street parking Signs Screening and landscaping to mask or separate uses or protect natural environment
499(1)	Must give notice of resolution to issue DVP
499(1.1)	No obligation to give notice for delegated variances
499(4)	Notice satisfied if made reasonable effort to mail or otherwise deliver
502(1)	May require security as condition of land use permit
502(3)	May undertake works at expense of permit holder to correct or apply security in payment of cost
502(5)	Delegate power to require security Bylaw must include guidelines on how to determine amount of security
504	For DP, if construction does not substantially start within 2 years after date of issue, permit lapses, Must return security
506	By bylaw, regulate works and services respecting subdivision, for different circumstances, areas, land uses, zones, classes of highways, including: Minimum standards for dimensions, locations alignments and gradient of highways Require highways, sidewalks, boulevards crossings, transit bays, street lighting, underground wiring Require a water distribution system, fire hydrant system, sewage collection, sewage disposal system, drainage collection system

IMPACT ON INFRASTRUCTURE, SERVICES AND STAFF CAPACITY (if applicable)

The proposed changes are interim amendments that will assist staff in streamlining the development processes and ensure the procedures bylaw aligns with recent bylaw amendments.

FINANCIAL IMPLICATIONS

None Budget Previously Approved Other (see below)

ALIGNMENT WITH COUNCIL STRATEGIC PRIORITIES

Identify and support improvements to the Development Process

OPTIONS

THAT Development Approval Procedures Bylaw 1227, 2024 be referred to staff for additional information as identified by Council.

Respectfully Submitted,
Reyna Seabrook, Director of Corporate Services

Report Approval Details

Document Title:	Development Approval Procedures Bylaw 1227, 2024.docx
Attachments:	- Attachment A-Development Approval Procedures Bylaw 1227, 2024.pdf - Attachment B-Bylaw 1227, 2024-Redline Bylaw 1133, 2021 with comments.pdf
Final Approval Date:	Jun 13, 2024

This report and all of its attachments were approved and signed as outlined below:

Brian Zurek, Manager of Planning - Jun 12, 2024 - 7:05 PM

Paul Gipps, Chief Administrative Officer - Jun 13, 2024 - 8:29 AM