

To: Her Worship Mayor McKortoff and Members of Council

From: Christopher Garrish, Planner

Date: February 13, 2024

Subject: Development Permit Area Designations – Legislative Changes (Bill 44)

Tracker No: AI-613

RECOMMENDATION:

That the Southeast Meadowlark and Hillside Development Permit Area designations as well as related policies be repealed from the Official Community Plan (OCP) Bylaw;

AND That the Multi-Family, Mixed Use and Commercial Development Permit Area guidelines and mapping be revised in accordance with the Provincial Policy Manual & Site Standards (Small-Scale, Multi-Unit Housing) and be brought forward for consideration at a forthcoming meeting of the Committee of the Whole;

AND That Map 20, being the OCP map schedule for the Environmentally Sensitive Development Permit (ESDP) Area and Riparian Development Permit (RDP) be reviewed and separated into two (2) separate map schedules.

CAO Comments:

Approved for Council consideration.

Executive Summary:

The purpose of this report is to provide Council with options in relation to development permit area designations and guidance from the province regarding compliance with recent changes to the *Local Government Act* (e.g. *Housing Statutes (Residential Development) Amendment Act, 2023*).

Background:

On November 30, 2023, the provincial Legislature adopted Bill 44, which introduced a number of substantial amendments to the *Local Government Act*, the intent of which was the delivery of “more small-scale, multi-unit housing for people, including townhomes, triplexes and laneway homes, and fix outdated zoning rules to help build more homes faster.”

On December 7, 2023, the provincial government released *Provincial Policy Manual & Site Standards* (Small-Scale, Multi-Unit Housing) as a resource to assist local governments with the implementation of zoning bylaw amendments required to comply with the changes to the Act.

Under a new Section 481.3(7) of the *Local Government Act*, Council “must consider applicable guidelines” made by the Minister (e.g. the SSMUH Policy Manual) when developing or adopting a zoning bylaw to permit the use and density of use required under to be permitted under the Act.

While the SSMUH Policy Manual establishes numerous provincial expectations for local governments in relation to zoning regulations, it also addresses development permit area guidelines.

The Town is required to approve a zoning bylaw(s) that comply with SSMUH requirements by **June 30, 2024**, and notify the Minister of Housing, in writing, that the bylaw(s) have been adopted, the location(s) of any exempted land(s) and the legislative provisions supporting the exemptions.

Development Permits:

At present, the Town of Osoyoos has implemented eight (8) different development permit area designations, six (6) of which are related to residential development, specifically:

- Multi-Family Residential;
- Mixed Use & Commercial;
- Hillside;
- Southeast Meadowlark;
- Environmentally Sensitive;
- Riparian.

Analysis:

In reviewing the SSMUH Policy Manual, Administration notes that it states, “local governments in BC commonly use DPAs to achieve objectives that are outside the purposes prescribed in the LGA, and which can be regulated in other more appropriate ways.”

Accordingly, when implementing SSMUH requirements “local governments should ... ensure they are using the most appropriate tool or bylaw for the task and desired outcome” [emphasis added].

In support of this, the SSMUH Policy Manual provides a number of examples where common DP area guidelines can negatively impact the viability of small-scale multi-unit housing development (see Attachment No. 1) and encourages local governments to consider alternate approaches.

In light of the number of DPs potentially affected by the legislative changes, consideration of each will be addressed in the following sub-sections:

Multi-Family and Southeast Meadowlark DP Areas:

According to the Provincial SSMUH Policy Manual, “of the all the types of DPAs allowed under the LGA, those established ... for the purpose of managing the form and character of SSMUH development have the greatest potential to negatively impact the creation of new housing units.”

Of equal importance, “DPAs and the development guidelines through which they are typically exercised, can introduce significant time, costs, delays, and uncertainty into projects. In the context of SSMUH housing, these factors can easily undermine the viability of projects.”

Further, “since SSMUH forms are sufficiently close in size to single-detached dwellings and recognizing the other factors that can impact their viability, local governments are discouraged from using DPAs to control the form and character of SSMUH developments up to six [6] units in all but exceptional circumstances.” [emphasis added]

Finally, the Policy Manual states that applying provisions related to the conservation of energy, water, or reduction of greenhouse gas emissions “can raise building costs (even while lowering long-term operating costs) and hamper the viability and/or affordability of SSMUH forms of housing.”

In reviewing the Town’s Multi-Family and Southeast Meadowlark DP Areas against this provincial direction (see Attachment No. 2), Administration is concerned that the current guidelines contain many of the elements the province warns can negatively impact the creation of new housing units.

Given DPs represent an additional regulatory burden, and it is not clear that the benefits of these particular DPs outweigh the potential costs to a developer, Administration considers that changes are required.

Specifically, it is recommended that the Multi-Family DP Area designation be re-drafted to eliminate problematic guidelines (e.g. landscaping, water & energy conservation, greenhouse gas emission reductions, etc.) and that it only be applied to developments comprising seven (7) or more units.

It is further recommended that the Southeast Meadowlark DP Area be repealed in its entirety.

Conversely, the option of repealing the Multiple Family Development Permit Area designation is also available to Council. Similarly, the status quo remains an option, but is also not recommended.

Mixed Use & Commercial DP Area:

The Mixed Use & Commercial DP Area contains many of the design elements found in the Multi-Family and Southeast Meadowlark DP Areas (see above) that are now considered to be reflective of a regressive approach that has contributed to the current “housing crisis” (see Attachment No. 2).

By way of example, both DPs contain guidelines that place an emphasis on ensuring new development is compatible with existing development, including the following justification for the DP Area:

to ensure that mixed use and commercial developments are integrated into the community in a manner that preserves and complements Osoyoos's existing unique feel.

Other concerning guidelines relate to the location of entrances, building height, massing, landscaping, and vehicle parking, etc.

As the province is indicating that a new emphasis on encouraging higher density residential developments needs to be embraced, Administration is recommending that the Mixed Use & Commercial DP Areas be reviewed and problematic guidelines be either revised or removed.

If Council is supportive of this approach, Administration would prepare revised guidelines for consideration at a future Committee meeting to seek direction regarding possible amendments to these DP Areas.

Conversely, the option of retaining the status quo is available, but is not recommended.

Hillside DP Area:

“Hillside” development permit areas are typically designated in order to protect development from hazardous conditions, such as geo-technically unstable areas or steep slopes.

The Town's current Hillside Development Permit (HDP) Area has been designated in response to the presence of steep slopes in certain parts of Town, but also attempts to address energy and water conservation, greenhouse gas reductions and the form and character (i.e. aesthetics) of intensive residential development.

Administration is concerned that, as a result, the HDP is unfocused and is attempting to address issues better captured by zoning or other development permit designations and further incorporates elements that the province has identified as problematic in relation to SSMUH implementation.

Administration is further concerned that the map schedule and DP triggers, being “any area with slopes in excess of 15% for a distance of 10 metres or more” are too vague and difficult for Administration and the public to interpret and properly apply.

Given the Building Inspector has authority under the *Community Charter* to require the submission of a geotechnical report as part of a building permit application, and the Approving Officer can require a similar assessment in relation to subdivisions, Administration is recommending that the HDP be repealed.

Conversely, should Council consider there to be merit in retaining the HDP, the option of amending the designation to only address steep slopes hazards (i.e. deleting form and character, water and energy conservation and greenhouse gas emission reductions) at the time of subdivision is available.

Council could also consider the inclusion of retaining wall regulations within the zoning bylaw in order to address aesthetic considerations the construction of "a single, large, massive wall" currently comprised within the HDP.

Environmentally Sensitive DP Area:

With regard to the Environmentally Sensitive Development Permit (ESDP) Area designation, Administration is not making any recommendations in relation to the guidelines as this designation is seen to have generally been applied to Crown land and parcels owned by the Town.

It is recommended, however, that the map schedule, being Map 20 of the OCP Bylaw, be amended in order to separate the ESDP and Riparian Development Permit (RDP) Areas and present this information on separate schedule in order to clarify where each applies.

Administration is concerned that the Map 20 may have incorrectly designated riparian areas as ESDP and separate Map Schedules could address this (e.g. Peanut Pond is designated as ESDP and not RDP).

Riparian DP Area:

Administration is not making any recommendations in relation to the RDP Area designation as the Town is a named local government under Section 2 of the *Riparian Area Protection Regulation* and, consequently, is legislatively required to implement riparian protection measures through its land use bylaws.

At present, the Town requires the receipt of an assessment report reviewed and confirmed by the province as meeting the requirements of the Regulation.

Options/discussion:

1. That the Southeast Meadowlark and Hillside Development Permit Area designations as well as related policies be repealed from the Official Community Plan (OCP) Bylaw;

AND That the Multi-Family, Mixed Use and Commercial Development Permit Area guidelines and mapping be revised in accordance with the Provincial Policy Manual & Site Standards (Small-Scale, Multi-Unit Housing) and be brought forward for consideration at a forthcoming meeting of the Committee of the Whole;

AND That Map 20, being the OCP map schedule for the Environmentally Sensitive Development Permit (ESDP) Area and Riparian Development Permit (RDP) be reviewed and separated into two (2) separate map schedules.

2. That the following be applied to the development permit area designation to ensure compliance with the *Housing Statutes (Residential Development) Amendment Act, 2023*:

i) *TBD*

Implications:

- a) Community – To provide clarity and consistency with new provincial legislation.
- b) Organizational – The changes will provide clarity and align with the provincial legislation changes.
- c) Budget
 - Financial/Risk Implications There are a suite of changes required in order to align with new provincial legislation changes. These changes will result in significant unavoidable costs.
- d) Significant Dates – Changes must be made by the June 30, 2024 legislated deadline.
- e) Sustainability- Increasing densities provides greater long-term sustainability as services are within a more confined area.

Others Consulted:

Corporate Services
Operational Services
Protective Services

Attachments:

No. 1 – SSMUH Policy Manual Guidance (“Form & Character” DP Guidelines)

No. 2 – Comparison of SSMUH Policy Manual Recommendations vs. Selected DP Guidelines

Attachment No. 1 – SSMUH Policy Manual Guidance (“Form & Character” DP Guidelines)

Common DPA requirements that can negatively impact the viability of SSMUH

Neighbourhood Character/Neighbourhood Fit (often considered ‘General DPAs’)

DPA guidelines predicated on an evaluation of how a project may impact neighbouring properties prioritizes the interests of existing single-detached dwellings and detracts from the intention of the SSMUH legislation, which is to stimulate the creation of new SSMUH homes. Examples of these types of guidelines include requiring transitions through massing, height, or setbacks, as well as attempts to mitigate impacts on immediate surroundings via shadow, solar impact, views, and privacy.

Location of Entrances

Some form and character DPA guidelines require buildings to have primary entrances to each residential unit that face, or are visible from, the street. Adherence to such guidelines may limit creative building design or be open to administrative misinterpretation. Guidelines that limit the number of entrances to a building are also not appropriate for SSMUH.

Building Height

Guidelines that attempt to manage building height through a development permit to reduce impact on adjacent buildings or address shadow or privacy are not best practice for buildings of three storeys or less. Maximum building height is more appropriately regulated through the zoning bylaw.

Building Massing

Form and character guidelines that attempt to show how a building should be massed such as step-backs from street frontage or requiring upper storeys to have less mass than lower storeys put more constraints on already-constrained sites and can be eliminated in respect of buildings three storeys or less.

Parking and Waste Management

Policies that require parking areas to be completely enclosed or screened may result in more space being allocated for vehicles that could be dedicated for living. The same is true for solid waste management infrastructure.

Landscaping

Policies that require landscaping plans by a qualified landscape architect or irrigation installation are discouraged. For SSMUH there may be little landscaped area and these requirements may not be necessary. Also, there are some policies that require each unit to have exterior space at-grade adjacent to each housing unit. This hinders creativity in providing amenity space on the parcel. Reasonable compromises must be considered to stimulate development of desired housing forms.

Attachment No. 2 – Comparison of SSMUH Policy Manual Recommendations vs. Selected DP Guidelines

SSMUH Policy Manual	Multi-Family DP Guidelines	Southeast Meadowlark DP Guidelines
Guidelines requiring transitions through massing, height, or setbacks, as well as attempts to mitigate impacts on immediate surroundings via shadow, solar impact, views, and privacy prioritizes the interests of existing development.	<ul style="list-style-type: none"> • Building massing should be considerate of uses on adjacent properties. • The impact of shadows on surrounding uses and buildings should be minimized. • Window placement should be offset between buildings facing each other to maintain privacy. • Buildings on lakefront property shall be massed and sited with attention to views of Osoyoos Lake from adjoining streets and nearby buildings. • Lot grading must be harmonious with adjoining lots. 	<ul style="list-style-type: none"> • Building massing should be considerate of uses on adjacent properties. • Window placement should be offset between buildings facing each other to maintain privacy in residential units. • Development shall be tailored to site conditions including topography, solar orientation and other natural features, and will maximize opportunities for views.
Guidelines that limit the number of entrances to a building or require buildings to have primary entrances to each residential unit that face, or are visible from, the street are also not appropriate for SSMUH.	<ul style="list-style-type: none"> • The main entrance of townhouse, duplex, and apartment buildings shall be oriented to face the street or an internal road where possible. 	<ul style="list-style-type: none"> • The main entrance of townhouse, duplex, and apartment buildings shall be oriented to face the street or an internal road where possible. Carriage homes fronting onto a lane shall be oriented to face the lane.
Guidelines that attempt to manage building height through a development permit to reduce impact on adjacent buildings or address shadow or privacy are not best practice for buildings of three storeys or less. Maximum building height is more appropriately regulated through the zoning bylaw	<ul style="list-style-type: none"> • The objective of this development permit areas is to ensure multi-family developments are designed in a manner that positively enhances the overall aesthetic of neighbourhoods, while minimizing conflicts with other less-intensive uses. 	<ul style="list-style-type: none"> •
Form and character guidelines that attempt to show how a building should be massed such as step-backs from street frontage or requiring upper storeys to have less mass than lower storeys put more constraints on already-constrained sites and can be	<ul style="list-style-type: none"> • Facades shall be stepped back for buildings with three or more storeys situated adjacent to buildings with two or fewer storeys ... 	<ul style="list-style-type: none"> • Facades shall be stepped back for buildings with three or more storeys situated adjacent to buildings with two or fewer storeys ...

SSMUH Policy Manual	Multi-Family DP Guidelines	Southeast Meadowlark DP Guidelines
eliminated in respect of buildings three storeys or less		
<p>Policies that require landscaping plans by a qualified landscape architect or irrigation installation are discouraged.</p> <p>For SSMUH there may be little landscaped area and landscaping requirements may not be necessary.</p>	<ul style="list-style-type: none"> • A Landscape Plan prepared by a registered Landscape Architect or related professional shall be submitted as part of the Development Permit application. • Screening in the form of landscaped buffers and/or solid fencing is required along property lines abutting land used for single detached housing. • All areas not covered by building, structures, roadways, pathways, or parking or otherwise not used for multi-family residential purposes, shall be suitably landscape. 	<ul style="list-style-type: none"> • A Landscape Plan prepared by a registered Landscape Architect or related professional shall be submitted as part of the Development Permit application. • Retain existing healthy and mature trees and vegetation where possible. • Screening in the form of landscaped buffers and/or solid fencing is required along side and rear property lines. • Where shared parking areas for row or apartment housing abut other residential uses, visual screening in the form of solid fencing or landscaping shall be provided.