

To: Her Worship Mayor McKortoff and Members of Council

From: Christopher Garrish, Planner

Date: May 14, 2024

Subject: Zoning Bylaw Review – Foreshore and Lake Zoning Bylaw

Tracker No: BLW-375

RECOMMENDATION:

THAT the Committee of the Whole recommend to Council that the Town of Osoyoos Foreshore and Lake Zoning Bylaw No. 1294, 2012, be repealed and merged with the Draft Town of Osoyoos Zoning Bylaw No. 1395.

CAO Comments:

Approved for Council consideration.

Executive Summary:

The purpose of this report is to provide Council with options in relation to zoning of Osoyoos Lake.

Background:

At its meeting of April 15, 2013, Council adopted the Foreshore and Lake Zoning Bylaw No. 1294, 2012, the purpose of which is stated as being to:

1. *Promote environmental sustainability of Osoyoos Lake, foreshore and adjoining upland areas;*
2. *Protect safety of water users;*
3. *Avoid overloading and congestion of our finite resource base;*
4. *Ensure adequate access to the Lake by all user groups including residents, second home owners, and visitors;*
5. *Reclaim public lands and water for community benefit;*
6. *Promote the aesthetic appeal of Osoyoos as a resort community; and*
7. *Strengthen the Town's regulatory and enforcement powers.*

The Foreshore and Lake Zoning Bylaw applies to the area between the foreshore of Osoyoos Lake and the Town's municipal boundary, which extends approximately 100 metres into the lake (see Attachment No. 1).

When considering this bylaw in 2012, Council was advised that the foreshore:

... is under intense pressure from sometimes conflicting multi-users, such as recreational and commercial boaters, private, strata and group moorages, marinas and boat launches, ferry services, and swimmers, and more recently, aqua parks, paddle boarding and kite boarding.

Some of these areas are also valuable aquatic habitat, including salmon staging areas, spawning habitats, and rearing areas. This close nexus of intense multi-user pressures together with serious ecological threats leads Staff to recommend water zoning as an effective resource management tool, [and will result in the Town being] one of the first jurisdictions in BC to take this initiative.

Council was further advised that “the Town has acquired tenure from the Province for a License of Occupation over the foreshore and waters fronting all our publicly-owned lands, which will allow [the Town] to treat any unauthorized use of these waters as an illegal trespass.”

Since its adoption, the Foreshore and Lake Zoning Bylaw has been amended four (4) times in order to allow additional berths at 5901 Main Street (Paradise Park RV Resort) and 8000 Cottonwood Drive as well as an inflatable waterpark (Wibit) at Gyro Park.

A further series of “housekeeping” amendments were adopted in 2017 in relation to the implementation of a complementary Foreshore and Lake Development Permit (FLDP) Area.

Of note, approximately two (2) development variance permits (DVPs) for docks while no development permits (FLDPs) have been issued.

Importantly, Council’s statutory authority to enact the Foreshore and Lake Zoning Bylaw exists within the *Local Government Act* and is the same one used to enact the Town’s principal zoning bylaw, being Zoning Bylaw No. 1085, 1998.

Licence of Occupation – Osoyoos Lake Foreshore:

Generally speaking, the Crown (i.e. province) holds title to the foreshore and all lands covered by water (i.e., the bed of the lake) while the Licence of Occupation that the Town previously entered into with the province effectively resulted in the Crown delegating to the Town the responsibility of policing its property and only allowing the installation of improvements for the purposes set out in the licence.

This has two benefits – the Town can install improvements at its discretion (so long as they are for valid purposes), and it can take measures to prohibit the installation of other improvements.

With regard to the zoning regulations that the Town has previously applied to Osoyoos Lake through the Foreshore and Lake Zoning Bylaw, these are unrelated to the Licence of Occupation and their merging will not adversely impact the Town’s licences with the province.

Foreshore and Lake Zoning Bylaw Review:

In 2022, the Town initiated a Bylaw Review Project that included, amongst other things, a review of the Foreshore and Lake Zoning Bylaw.

The object of this review was stated as being to “update the current [bylaw] to address challenges related to foreshore use, placement of buoys and alignment with Provincial regulations” with a required deliverable being “recommendations on a buoy lease program and include provisions for such a program in the updated bylaw.”

Three Workshops were subsequently scheduled with Council on January 20, 2023, May 9, 2023, and July 25, 2023, in order to discuss this aspect of the project.

At the last of these Workshops, it is understood that Council expressed support for conducting a lake health assessment to determine the capacity of the lake to accommodate a buoy farm or

buoy lease program. This "Lake Health Assessment" was to be discussed further in the Fall of 2023 as part of budget planning.

Finally, Council indicated that a long-term vision for Osoyoos Lake is still required with a public marina likely a necessary long-term solution to address challenges as they relate to safety and environmental health; however, these discussions are outside the scope of the on-going zoning bylaw review project.

Consequently, very limited revisions have been proposed for the Foreshore and Lake Zoning Bylaw.

Analysis:

Administration considers there to be significant merit in reducing the number of land use bylaws currently maintained by the Town due to available resources as well as concerns related to consistency of interpretation and coherence between bylaws purporting to regulate the same issues.

Further, there is no statutory requirement that compels the Town to maintain separate zoning bylaws for land and water, while there exists significant duplication between the two zoning bylaws (i.e. definitions, administration, enforcement, establishment of zones, etc.),

With regard to the on-going private use of public foreshore areas for docks and buoys, Administration considers this to be primarily an enforcement issue and understands that further direction, including possible amendments, may occur as a result of the proposed "Lake Health Assessment" to be completed in 2024.

Alternative:

Conversely, the option of retaining a separate zoning bylaw to address concerns with the use of Osoyoos Lake is available to Council. Under this option, a revised Foreshore and Lake Zoning Bylaw would be finalized and brought forward for Council consideration at a subsequent meeting.

Administration is anticipating that a new Foreshore and Lake Zoning would be substantially the same as the current bylaw.

Summary:

In light of the considerations outlined above as well as pending statutory timelines required for the Town to implement zoning changes related to ensure compliance with new Small-Scale Multi-Unit Housing (SSMUH) requirements, Administration is recommending that the Foreshore and Lake Zoning Bylaw be merged into the new Draft Zoning Bylaw No. 1395.

In making this recommendation, Administration considers that the environmental objectives that lead Council to enact the Foreshore and Lake Zoning Bylaw in 2013, and which remain relevant today, can be preserved in the new zoning bylaw.

Options/discussion:

1. THAT the Committee of the Whole recommend to Council that the Town of Osoyoos Foreshore and Lake Zoning Bylaw No. 1294, 2012, be repealed and merged with the Draft Town of Osoyoos Zoning Bylaw No. 1395.
2. THAT the Committee of the Whole recommend to Council that the Town of Osoyoos Foreshore and Lake Zoning Bylaw No. 1294, 2012, be repealed and replaced with a new Foreshore and Lake Zoning Bylaw.

Implications:

- a) Community:
 - reducing the number of zoning bylaws that apply to the land improves access and ease of use of these bylaws by the public, staff, and other agencies/professionals.
- b) Organizational:
 - reducing the number of bylaws administered by the Town is seen to improve efficiency and also reduces unnecessary duplication and overlap between similar bylaws.
- c) Budget:
 - None at this time.
- d) Financial/Risk Implications:
 - None at this time.
- e) Significant Dates:
 - the Town's zoning bylaw must be updated by June 30, 2024, to comply with provincial legislation. The Review of the Town's Zoning Bylaw has also been on-going for 18 months.
- f) Sustainability
 - Not applicable

Others Consulted:

Corporate Services
Financial Services
Operational Services

Attachments:

Attachment 1 - Foreshore and Lake Zoning Map

Attachment No. 1 - Foreshore and Lake Zoning Map

