



REFERRAL REPORT

Report Date: July 6, 2021
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VanRIMS No.: 08-2000-20
Meeting Date: July 20, 2021

TO: Vancouver City Council

FROM: City Manager

SUBJECT: Internal Development Application and Permitting Modernization Task Force – Zoning and Development By-law Amendments to Enable Issuance of a Building Permit for Excavation and Shoring Before a Development Permit

RECOMMENDATION

THAT the General Manager of Planning, Urban Design and Sustainability be instructed to make application to amend the Zoning and Development By-law, generally as presented in Appendix A, to:

- (i) Amend Section 4 to permit the Director of Planning to recommend that the City Building Inspector issue a building permit, limited to excavation and shoring, before issuance of the development permit for projects including Dwelling Uses developed as Social Housing or Secured Market Rental Housing, Institutional Uses, and select Cultural and Recreational Uses;

and that the application be referred to a Public Hearing;

FURTHER THAT the Director of Legal Services be instructed to prepare the necessary amending By-law, generally in accordance with Appendix A, for consideration at Public Hearing.

REPORT SUMMARY

This report proposes amendments to the Zoning and Development By-law to enable issuance of a building permit ("BP"), limited in scope to excavation and shoring, before the development permit ("DP") is issued. If approved, these amendments would provide additional flexibility in construction scheduling for eligible projects, limited to those including Dwelling Uses developed as Social Housing or Secured Market Rental Housing, Institutional Uses, and select Cultural and Recreational Uses. The ability to consider exceptions to the standard DP before BP

sequencing would provide an opportunity for applicants to start excavation and below grade work earlier.

Eligibility would be based on the proposed land use(s), complexity of the site and context, along with the proposed redevelopment plans. To be eligible for this new process, a BP application must be submitted by a certified professional and will require support from the Director of Planning, in consultation with the City Engineer, City Building Inspector, and Director of Legal Services. To mitigate potential public safety risks, all conditions required to obtain an excavation and shoring permit must be met, and the City may require a letter of credit that amounts to the cost to backfill the excavation. Sites with existing rental residential units will not be eligible.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

- **June 9, 2021 – Council supported proceeding with the first in a series of actions to reduce permitting and licensing backlogs, and the processing times of in-progress applications** administered by DBL. This included: approval of a resolution not to enforce design guidelines for one- and two-family dwellings in select zoning district schedules; not to enforce parts of the Protection of Trees By-law; and amendments to the Protection of Trees By-law.
- **March 31, 2021 – Council directed the City Manager to strike an Internal Development Application and Permitting Modernization Task Force**, to consolidate and integrate all work related to Council motions, and internal work regarding modernizing the City’s development application and permitting and licensing processes.
- **September 1, 1987 – Council approved the Certification of Professionals By-law**, enabling registered Architects or Engineers who have completed a study course in the application of Vancouver’s Building By-law to be recognized as a Certified Professional (“CP”). Vancouver’s CP program facilitates the issuance of building permits for new or existing buildings by allowing Certified Professionals to take on the full review and inspection role on behalf of the City.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Background: Existing Permitting Process

The permitting process for new construction is sequential. Approval of a development permit (“DP”) is a prerequisite to the issuance of a building permit (“BP”) for the same site. Development permits involve the review of an application for compliance with the Zoning and Development By-law, along with other by-laws or guidelines that may apply, based on the location of the site and the development being proposed. Building permits must comply with the life safety, livability, accessibility, and sustainability requirements of the Vancouver Building By-law. Engineering Services also reviews both building and development permits for impact on public property, services and public safety.

Background: Certified Professional Program

Vancouver's CP program facilitates the issuance of building permits for new or existing buildings by allowing certified professionals to take on the full review and inspection role on behalf of the City. Under the CP permit process, following issuance of a DP, the BP can be staged, allowing construction to start earlier than otherwise permitted. Typical BP stages include:

- (I) excavation and shoring: removal of earth (soil, rock or fill) for the purpose of construction and to install a temporary supporting structure forming a part of the excavation work in order to reduce the risk of accidental collapse and danger to any person or property on or adjacent to the work site;
- (II) foundation to grade: construction of the building foundation and basement levels to the street/ground level, including associated building services at these levels; and
- (III) remainder of the work: permits all of the above grade portions of the building to be constructed along with its associated building services, also known as full construction.

The ability to authorize staged construction exists solely within the CP Program, because of the intensive training program and project oversight performed by the CP and established within the City's Practice and Procedure Manual. The staged BP approach allows a portion of the project (for example, excavation and shoring) to advance while other components of the project are still being coordinated, designed and finalized by the team of design professionals. A more complex project may result in additional staged permits and separation of site construction, with any BP following issuance of a DP for the site.

Strategic Analysis

1. Opportunity for Permitting Process Improvement

Vancouver's development permitting process has not been comprehensively reviewed in a number of years, despite the changing nature of construction and increasing complexity and scale of projects within the city. Through a series of concurrent programs, staff are exploring opportunities to streamline City regulations, modernize processes, and address permitting backlogs and service levels.

Staff have received feedback from applicants who are interested in streamlining the process to obtain BPs, to enable their projects to start construction, unlocking the ability to seek construction financing or loans. Through industry engagement during the Development Advisory Group (2017), Regulation Redesign (2018 - on) and Development Process Redesign (2019 - on) programs, staff are also aware of broad industry interest in reducing processing times to allow for flexibility and compression of overall construction scheduling.

Large-scale development projects support Council priorities through delivery of affordable housing, and in-kind public benefits like community centres, parks and childcare facilities. The vast majority of these projects are submitted through the CP program and benefit from the time savings that may be achieved through staged building permit issuance. In some circumstances,

an applicant may have completed the technical conditions associated with excavation and shoring, but the BP cannot be issued, due to unrelated above-ground DP conditions that still need to be cleared. The ability to consider an exception to the standard sequencing would allow a project to begin below grade work, accelerate their construction schedule and potentially secure financing linked to BP issuance.

2. Proposed Zoning and Development By-law Amendment

To support Council priorities, this report proposes amendments to the Zoning and Development By-law to enable issuance of a BP, limited to excavation and shoring only, before issuance of the DP for the same site. Eligibility would be based on the proposed land use(s), the complexity of the site and context, and the proposed redevelopment. A summary of the proposed by-law amendments is included below in Table 1.

Table 1 – Summary of Proposed Amendments

Zoning and Development By-law Amendment	Purpose & rationale
<p>New sub-section 4.7.2</p> <p>Despite section 4.7.1, the Director of Planning may recommend the issuance of a building permit to the City Building Inspector, provided that the:</p> <ul style="list-style-type: none"> (i) Director of Planning has issued a “prior-to permit issuance” letter for the development; (ii) Director of Planning, in consultation with the City Engineer and Director of Legal Services, is satisfied that the applicant has made substantial progress in satisfying the conditions imposed under (i); (iii) City Building Inspector, in consultation with the City Engineer, is satisfied that a building permit may be issued, and the building permit: <ul style="list-style-type: none"> a. application is submitted by a Certified Professional; and b. is limited only to excavation and shoring associated with the proposed development permit for the same site; and (iv) development must include one of the following uses: <ul style="list-style-type: none"> a. Cultural and Recreational Uses, limited to Artist Studio, Community Centre or Neighbourhood House, Library, Museum or Archives, and Park or Playground; b. Dwelling Uses, developed as Social Housing or Secured Market Rental Housing; c. Institutional Uses; and d. any other use which the Director of Planning reasonably considers to be similar to the foregoing. 	<ul style="list-style-type: none"> • This would be an exception to the standard sequential process of DP followed by BP. • DP application must be approved, subject to conditions, and applicant must be in the process of satisfying the conditions of approval, including CD-1 by-law enactment. • Requires a joint decision by Director of Planning, City Engineer and Director of Legal Services, or their delegates. • City Building Inspector and City Engineer must agree that a BP may be issued, and the BP application must have been submitted by a CP. • Scope of the BP is limited to excavation and shoring only, i.e. a Stage I BP. A Stage II BP (foundation to grade) may not be issued until the DP has been issued. • Eligibility is limited to projects that include specific uses, focusing on Council priorities, including affordable housing, and civic projects.

Zoning and Development By-law Amendment	Purpose & rationale
<p>New sub-section 4.7.3</p> <p>If the Director of Planning recommends that a building permit be issued pursuant to section 4.7.2, the City Building Inspector may issue a building permit, and in addition to any authority granted to the City Building Inspector under the Building By-law, may impose conditions on the building permit that require the owner to:</p> <ul style="list-style-type: none"> (i) provide the City with a certified Letter of Credit for an amount equal to the estimated cost of backfilling the excavation and shoring works to the satisfaction of the City Engineer; and (ii) register a covenant on the title of the site, pursuant to section 219 of the Land Title Act, that is satisfactory to the Director of Legal Services. 	<ul style="list-style-type: none"> • The City may require a Letter of Credit or covenant to be registered on title to mitigate risk and ensure that the site may be returned to pre-excavation condition, at no cost to the City, if needed.

This process, which would enable an earlier start to below grade work, would not result in a time saving for all projects. For example, projects without significant excavation requirements would be unlikely to see a time saving as a result of obtaining a BP for excavation and shoring in advance of a DP. While this additional flexibility is seen by industry as an advantage, under the select criteria, staff do not anticipate a significant uptake and expect that this process would remain the exception rather than a new standard.

3. Sites with Existing Rental Residential Units

Sites with existing rental residential units would not be eligible for this process, based on the requirements of the Zoning and Development By-law, along with the provincial Residential Tenancy Act (“RTA”). Section 4 of the Zoning and Development By-law requires a development permit for demolition of any building containing residential rental accommodation. Pursuant to Section 10.8.2, a permit for demolition may not be issued until a development permit for a new building on the site has been issued, with some exceptions as noted in sub-section 10.8.3.

Section 49(6) of the RTA allows a landlord to end a tenancy only if all the necessary permits and approvals for renovation or redevelopment have been received. A BP for excavation and shoring alone would not be sufficient to trigger the landlord’s ability to lawfully end a tenancy.

Sites with existing rental homes are identified through a Renter Declaration Form and Renter Screening Form. This form is completed as part of the rezoning (if applicable) or development permit application. It is used to help identify when the provision of a Tenant Relocation Plan, under the *Tenant Relocation and Protection Policy*, and/or replacement of existing rental units, per the Rental Housing Stock Official Development Plan, are applicable.

The proposed amendments would not change existing City policy to protect renters, or to require replacement of existing rental units. Any applicant interested in accessing this process would have to complete a Renter Declaration Form and Renter Screening Form, to confirm that there are no rental homes on the site.

Implications/Related Issues/Risk

Shoring refers to soil reinforcing and retention, as well as structural works for supporting excavation cuts, and the structures, elements, and features beyond those areas. Excavation and shoring is considered to be high risk engineering work that can result in significant public safety risk, as well as cause damage to physical assets such as utilities, roads, and other buildings. Shoring issues or failures have been recorded within the last few years.

This process may result in excavations remaining open longer, while the project obtains a DP. Depending on the size and depth of the excavation, and associated risk factors, the City may establish additional requirements to ensure that the structure is designed to remain safe over a longer period of time. Additional monitoring and quality assurance will also be required. Public safety as well as the safety of adjacent property and assets will be carefully considered, along with legal obligations of the developer to safely maintain the shoring and excavation for a longer period of time.

The ability to access this process will be at the applicant's request and at the discretion of the Director of Planning, in consultation with the Chief Building Inspector, the City Engineer and the Director Legal services. To mitigate potential public safety risks, all conditions required to obtain an excavation and shoring permit must be met. Applicants may be required to provide: final hydrogeology study if development occurs within the areas of concerns for groundwater; geotechnical review and approval; form of development, including parking, and any shoring and excavation phase requirements. Additional independent reviews and inspections may be required to monitor the site.

An applicant may be required to provide a letter of credit and enter into a legal agreement as required by the Director of Legal Services. This would ensure that the City bears no costs or liability related to the excavation or shoring, and that the site can be returned to pre-excavation condition and made safe by the owner, or by the City at no cost to the City, if the DP cannot be issued. Staff do not anticipate a high volume of applications to go through this process; volumes will be tracked and monitored.

Financial

The proposed amendments, if approved, are not expected to result in material financial obligations for the City. As outlined in the previous section, a letter of credit would be provided by the applicant, to ensure a site would be returned to pre-excavation condition, and made safe by the owner or the City if required. Development cost levies (DCLs) are required to be paid when a BP is issued. These amendments, if approved, may lead to a DCL payment earlier in the process, before issuance of a DP for the site. Staff will monitor the volume of interested applicants, including any impact on staff resources for review, and will report back and adjust the process as needed.

Legal

Section 565A. (c) of the Vancouver Charter authorizes Council to make by-laws "providing that no building permit shall be issued for the construction of any building until a development permit has first been obtained". Section 565A. (d) of the Vancouver Charter authorizes Council to make by-laws "delegating to any official of the city or to any board composed of such officials such

powers of discretion relating to zoning matters which to Council seem appropriate”. Section 199 of the Vancouver Charter grants Council “power to do all such things as are incidental or conducive to the exercise of the allotted powers.” These specific powers, and others found in Part XXVII of the Vancouver Charter authorize the proposed by-law amendment.

CONCLUSION

This report recommends amendments to the Zoning and Development By-law to enable issuance of a building permit for eligible projects, limited in scope to excavation and shoring, before the final development permit is issued for a site. If approved, these amendments would add flexibility to the permitting process and allow compression of construction scheduling for applications proposing Social Housing or Secured Market Rental Housing, Institutional Uses, and select Cultural and Recreational Uses.

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**A By-law to Amend
Zoning and Development By-law No. 3575
Regarding Building Permits**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. This By-law amends the indicated provisions of the Zoning and Development By-law No. 3575.
2. Council strikes out section 4.7 and substitutes the following:

“4.7 Building Permit Validity

4.7.1 Unless issued in accordance with sections 4.7.2 and 4.7.3, no building permit issued for any operation with respect to which a development permit is required under this By-law shall be valid unless and until a development permit has been issued.

4.7.2 Despite section 4.7.1, the Director of Planning may recommend the issuance of a building permit to the City Building Inspector, provided that the:

- (i) Director of Planning has issued a “prior-to permit issuance” letter for the development;
- (ii) Director of Planning, in consultation with the City Engineer and Director of Legal Services, is satisfied that the applicant has made substantial progress in satisfying the conditions imposed under (i);
- (iii) City Building Inspector, in consultation with the City Engineer, is satisfied that a building permit may be issued, and the building permit:
 - (a) application is submitted by a Certified Professional; and
 - (b) is limited only to excavation and shoring associated with the proposed development permit for the same site; and
- (iv) development must include one of the following uses:
 - (a) Cultural and Recreational Uses, limited to Artist Studio, Community Centre or Neighbourhood House, Library, Museum or Archives, and Park or Playground;
 - (b) Dwelling Uses, developed as Social Housing or Secured Market Rental Housing;
 - (c) Institutional Uses; or
 - (d) any other use which the Director of Planning reasonably considers to be similar to the foregoing.

4.7.3 If the Director of Planning recommends that a building permit be issued pursuant to section 4.7.2, the City Building Inspector may issue a building permit, and in

addition to any authority granted to the City Building Inspector under the Building By-law, may impose conditions on the building permit that require the owner to:

- (i) provide the City with a certified Letter of Credit for an amount equal to the estimated cost of backfilling the excavation and shoring works to the satisfaction of the City Engineer; and
- (ii) register a covenant on the title of the site, pursuant to section 219 of the Land Title Act, that is satisfactory to the Director of Legal Services.”.

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