



# BOARD REPORT

**TO:** Chair and Directors

<b>File No:</b> 4001-6 PL2022-205
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**SUBJECT:** Proposed Development Variance Permit (DVP) Procedure Amendments

**DESCRIPTION:** Report from Gerald Christie, Manager Development Services, dated September 20, 2022.  
Proposed bylaw amendments for the processing and delegation of minor Development Variance Permit (DVP) applications.

**RECOMMENDATION #1:** THAT: the Board review and provide comments to staff with regards to proposed changes to DVP application processes and delegation.

**RECOMMENDATION #2:** THAT: the Board direct staff to prepare amendments to Development Services Procedures Bylaw No. 4001-2, as amended, and Development Services Fees Bylaw No. 4000, as amended, for Board consideration at a future Board meeting.

## SHORT SUMMARY:

Recent legislative changes to the Local Government Act now allow local governments to delegate approval of DVPs to staff in specific circumstances. This change follows significant provincial consultation with local governments throughout the province towards the goal of making land use application processes more efficient. The delegation of DVP approvals was one of the most requested changes by local governments, with support for such a change also being discussed by the CSR Board on numerous occasions over the years. The procedural changes in this report are in line with the new legislation and propose a delegation of some setback variances to staff whilst all other variance approval requests would continue to remain with the CSR Board.

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<b>VOTING:</b>	Unweighted Corporate <input type="checkbox"/>	LGA Part 14 (Unweighted) <input checked="" type="checkbox"/>	Weighted Corporate <input type="checkbox"/>	Stakeholder (Weighted) <input type="checkbox"/>
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## BACKGROUND:

Legislation was recently passed by the Province of BC which, among other changes, allows for the delegation of DVPs to staff at the discretion of the local government Board or Council. These changes follow the *Development Approvals Process Review* completed by the Ministry of Municipal Affairs in 2019 that consulted with local governments and the development community with regard to identifying efficiencies in the processing of applications for land use change, e.g. rezoning, Development Permit (DP), and DVP. One of the most requested changes by local governments and developers was the delegation of minor DVPs to staff to reduce timelines in the application and development process for staff, builders, and landowners. The CSR Board has discussed the desire for this delegation to staff on many occasions; this report therefore outlines an approach to the delegation of minor DVPs, i.e. some building setbacks, to staff while leaving the approval of more significant DVPs to the Board, e.g. height, parcel coverage, site area.

Since the enactment of the legislation to allow for DVP delegation, staff have been waiting for an associated provincial regulation to provide guidance to local governments to utilize these new legislative

powers; unfortunately, the provincial regulation is still not forthcoming in a timely manner, therefore staff are proposing to move forward with the proposed bylaw changes, given the significance of these legislative changes towards improving application timelines.

### **CSRD STRATEGIC PLAN:**

The CSRD's 2019-2022 Strategic Plan was adopted in September 2019. The Plan lays out strategic themes of interest and identifies priorities within those themes to help guide staff and the Board in achieving the shared vision of a region that innovative, prosperous, and resilient in the face of change.

#### ***Responsible Governance***

- ***Reviewing the Development Services Procedures Bylaw to streamline the CSRD's development application process.***

### **POLICY:**

Bill 26 *Municipal Affairs Statutes Amendment Act* came into effect on November 21, 2021 which included amendments to the *Community Charter* with regard to Code of Conduct requirements and also included several amendments to the *Local Government Act* (LGA) with respect to public hearing requirements, public notices, and the authority for local governments to delegate decisions to staff for minor DVPs (LGA s.498.1).

### **Delegation of power to issue development variance permit**

- 498.1** (1) A local government may, by bylaw, delegate to an officer or employee of the local government the power under section 498 to issue a development variance permit if the proposed variance
- (a) is a minor variance, and
  - (b) varies the provisions of a bylaw under any of the following:
    - (i) section 479 (1) (c) (iii) [*zoning bylaws respecting siting, size and dimensions of buildings, structures and permitted uses*];
    - (ii) section 525 [*off-street parking and loading space requirements*];
    - (iii) section 526 [*regulation of signs*];
    - (iv) section 527 (1) (a) or (b) [*screening and landscaping to mask or separate uses or to preserve, protect, restore and enhance natural environment*];
    - (v) a provision of this Act prescribed by regulation of the Lieutenant Governor in Council.
- (2) A bylaw delegating the power to issue a development variance permit under this section must include
- (a) criteria for determining whether a proposed variance is minor for the purposes of subsection (1) (a), and
  - (b) guidelines the delegate must consider in deciding whether to issue a development variance permit.

(3) The bylaw may also include any terms and conditions the local government considers appropriate.

(4) If a local government delegates the power to issue a development variance permit, an owner of land that is subject to a decision of the delegate is entitled to have the local government reconsider the matter.

Of note, and similar to CSRD procedures for delegated Technical Development Permits, the LGA amendments for delegated minor variances do not require public notice of the application; however, CSRD staff are of the opinion that notification to neighbouring property owners within 100m of the subject property should continue per current procedures for such applications if delegation is given.

LGA amendments do not include provisions to delegate variances to Subdivision Servicing Bylaw regulations and as such these variances must go to the Board for consideration.

### **FINANCIAL:**

Although a considerable amount of staff time still must be dedicated to reviewing DVP applications, liaising with applicants, preparing a report and completing permit documents, if the Board is supportive of DVP delegation, some cost savings may be incurred for the applications that do not require Board consideration. If the Board directs staff to proceed with delegation changes to the DS Procedures Bylaw, staff will also consider DS Fees Bylaw amendments for delegated DVP applications.

### **KEY ISSUES/CONCEPTS:**

Prior to the most recent LGA amendments of Bill 26 there were only two ways for a landowner to seek a variance approval, either through the local government Board/Council, or through the Board of Variance (BOV). Local government Boards and Councils have the option to consider variances to land use regulations as long as they do not change the use, density or flood plain regulations as noted by bylaw. For all other variance requests the local government has an unfettered ability to approve, modify or deny a variance application based on its merits. The recent LGA amendments allowing for the delegation of 'minor' variances provides another option to local governments wishing to streamline development approval processes to the greatest extent possible; however, the new legislation does not provide guidance to local governments as to what is 'minor' and therefore the decision is at the discretion of the local government as to what 'minor' variances may be delegated.

A BOV on the other hand is restricted to adjudicating on three categories of variances as noted in s.540, s.543 and s.544 of the LGA, i.e. (1) Hardship and Minor Variances from various bylaws, (2) Hardship from Early Termination of Land Use Contracts, and (3) Extent of Damage Appeals of the Building Inspector.

In the absence of specific legislative or provincial regulation defining 'minor' variances, staff have reviewed the application of LGA requirements pertaining to BOV jurisdiction, and most notably BOV case law, as both help to provide some guidance as to how to consider and define what constitutes a 'minor' variance, what is 'undue hardship', and what guidelines should be considered when making such variance decisions. For example, per the LGA, a BOV must reach the following conclusions prior to granting a variance:

1. An "undue hardship" is present;
2. The variance or exemption would be a "minor variance"; and,

3. The BOV is of the opinion that the variance will not:
  - a. Result in inappropriate development of the site;
  - b. Adversely affect the natural environment;
  - c. Substantially affect the use and enjoyment of adjacent land;
  - d. Vary permitted uses and densities under the applicable bylaw; or,
  - e. Defeat the intent of the bylaw.

An “undue hardship”, could be one of several constraints related to the configuration of the land, topography, lot dimensions, property physical limitations (e.g. trees, rocks, watercourses, etc.), builder’s error, or legal property restrictions (e.g. roadways, rights of way). It must be noted that in case law, financial consideration alone is not considered undue hardship.

At a high-level, per case law, the determination of a “minor” variance primarily rests as a judgement call and on common sense after considering proper evidence (*Heading v. Delta*) and how it relates to the surrounding properties, is no more than what is required to relieve the undue hardship, and would not significantly impact on neighbouring properties.

Staff are of the opinion that similar criteria as noted above for BOVs can be used for providing the parameters upon which to delegate some minor DVPs to staff such as some building setbacks, including eaves, and retaining walls. Staff would utilize the same BOV undue hardship considerations as guidelines when determining if the delegated approval is appropriate. If, in the opinion of the Manager of Development Services, the criteria for undue hardship cannot be met the application may then be forwarded to the Board for consideration at the request of the applicant. Further, if staff receive a negative submission through the public notification process for the application, the application will also be forwarded to the Board for consideration. All other variance requests, i.e. other than those for some building setbacks and retaining walls, would be forwarded to the Board for consideration.

### **2021/2022 DVP Analysis**

Staff undertook a review of all DVP applications for 2021 and 2022 year to date. The intent of the review was to determine the types of DVP applications being made, how many applications were made, number of public submissions received, what the staff recommendation was in each circumstance, and ultimately the decision of the Board to approve or not the application being considered.

By far the majority of applications received are for building and eave setback variances, e.g. house, shed, garage, followed by height variances, parcel size and floor area. Almost half (48%) of all variance requests are to reduce the setback to some variance greater than 2 metres (28%) or between 1 and 2 metres (20%). Such variance requests equate to an approximate 50% reduction in what is permitted by zoning regulation for a front, rear or side yard setback.

Staff are of the opinion that variance requests that result in a setback that is still greater than 1 metre are often "minor" given the limited impact such requests have on surrounding properties or the built environment. This opinion appears to be supported by the very limited number of public submissions received generally, i.e. 46 total submissions of which 32 were in favour and 14 received in opposition to the proposed variance; in addition, out of the 94 setback variances requested (buildings and eaves) there were only 7 submissions received that were specifically against the proposed variance. Further, staff have recommended, and the Board has approved, all setback variance applications that have been made in the last two years.

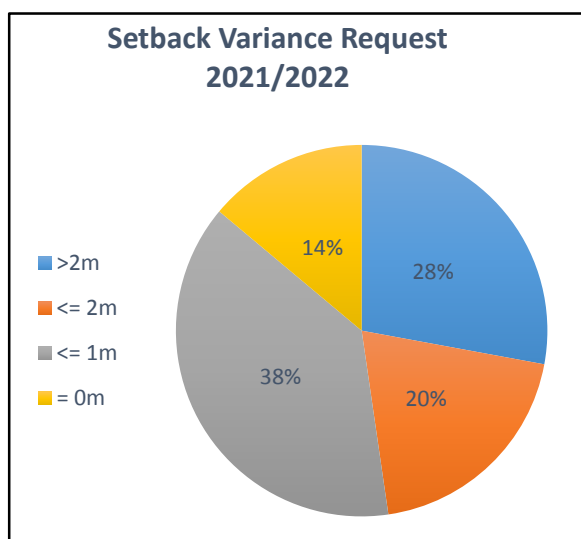
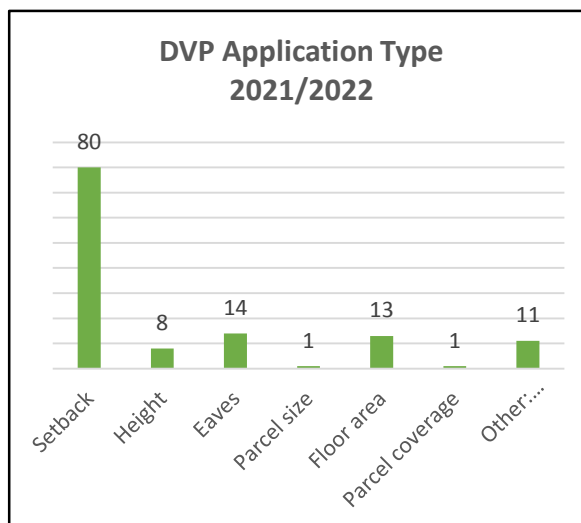
Of all the DVP applications made, the height, parcel coverage, parcel size and floor area variance requests incurred most of the additional concern of nearby residents and the Board, although all but one of the variances were ultimately approved.

Retaining wall setback variances were also requested in 9 instances, all of which were approved and with no submissions being made. In such cases retaining walls are often required to protect property from scour and erosion, are appropriately engineered and require provincial approval hence why there is often no concern with such requests.

There were only three Subdivision Servicing Bylaw No. 680 variance applications made in the last two years. At this time the delegation of these types of variances is not permitted by the legislation.

### Proposed Delegation Criteria

In previous discussions with the Board, there has been a strong desire to look for ways to create efficiencies for applicants and staff in the planning process, most notably where requests for minor deviations from bylaw regulations can be accommodated by staff without having to incur the added expense and time for staff and the applicant to have the Board consider minor land use matters. Given the new provincial powers allowing local governments to delegate minor variances to staff, and in light of the analysis of DVP applications for the last two years, staff are proposing a conservative approach be taken and allow for the delegation of approval of DVPs to staff where the request would not exceed what is allowed under the bylaw by 50% or more. It is anticipated that this change would result in



approximately half of all building setback variances being delegated to staff going forward. For example, delegation staff would include variance requests:

- Front setback 5 m to 2.5 m
- Interior side parcel line setback from 2 m to 1 m
- Eaves 1 m to .5

<b>DVP Application/Criteria</b>	<b>Board Approval</b>	<b>Staff Delegated</b>
Subdivision Servicing Bylaw	X	
"After the Fact" DVP	X	
Public submission(s) that do not support application	X	
No Hardship	X	
Major- Building Setback Variance $\geq$ 50%	X	
Minor - Building Setback Variance $<$ 50%		X
Retaining Walls		X
All other DVPs (e.g. height, parcel coverage, site area, docks/buoys)	X	

As previously noted, for clarity and to reduce the possibility of receiving frivolous delegated variance requests, an applicant must still prove hardship even where such a variance may meet the criteria for delegated approval. Per the new legislative change, staff will utilize the BOV undue hardship criteria discussed previously and include such language within the amendments to be proposed for the DS Procedures Bylaw upon positive direction from the Board.

### **SUMMARY:**

Bill 26 has provided a long requested legislative change by local governments to allow for the delegation of minor DVPs to staff in order to provide more timely decision-making on variance applications which would be considered to have only marginal land use impacts. As building setback variances are by far the most common DVP application made to the CSRD, staff believe that a delegation of these variances to a maximum of 50% of the bylaw setback regulation would provide for a more timely decision to applicants for such minor variances in hardship situations.

### **DESIRED OUTCOMES:**

That the Board endorse the staff recommendations. If the Board approves the recommendations, staff will draft amendments to the DS Procedures Bylaw No. 4001 and DS Fees Bylaw No. 4000 for consideration for approval at a future Board meeting.

### **BOARD'S OPTIONS:**

1. *Endorse the Recommendations.*
2. *Deny the Recommendations.*
3. *Defer.*
4. *Any other action deemed appropriate by the Board.*

**Report Approval Details**

Document Title:	2022-09-22_Board_DS_DVP_Procedures_Amendments.docx
Attachments:	
Final Approval Date:	Sep 21, 2022

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



Jennifer Sham



Jodi Pierce