



BOARD REPORT

TO: Chair and Directors

SUBJECT: Electoral Area E: Development Variance Permit No. 841-06

DESCRIPTION: Report from Ken Gobeil, Senior Planner, dated April 4, 2024.
4103 Balsam Way, Malakwa

RECOMMENDATION: THAT: in accordance with Section 498 of the Local Government Act, Development Variance Permit No. 841-06 for The North Half of the North West Quarter of Section 4 Township 23 Range 6 West of the 6th Meridian Kamloops Division Yale District Except (1) Part Included in the Right of Way Plan 633A9 and (2) Parts Included In Plans 1894, 1920, 4756, 4945, 5149, 8874, 9022, 10975, 11403, 12802, 13338, NEP21018, NEP67397, NEP79120, and EPP56359 (PID: 016-653-459) to vary the Electoral Area E Zoning Bylaw as follows:

- Section 4.10.4 (b) 'maximum parcel size created by subdivision' is varied by waiving the 2000 m² maximum parcel size requirement for new lots created by subdivision;
- Section 4.10.4 (l) 'servicing standard for subdivisions' is varied by waiving the community water system and community sewer system servicing requirement for new lots created by subdivision and allow servicing by an onsite sewerage disposal system and an onsite water system for each new lot;

for a six-lot subdivision, per Ministry of Transportation and Infrastructure Subdivision File No. 2021-02152 be denied issuance, this 18th day of April 2024.

Stakeholder Vote Unweighted (LGA Part 14) Majority

SUMMARY:

The owners of 4103 Balsam Way are applying to subdivide the property into 6 lots (including remainder) with the smallest lot being 1 ha, and the largest lot being 3.14 ha. The owners propose that each of the 6 lots be serviced by an independent onsite water systems (i.e. a well) and an independent onsite sewage disposal system. However, the RM1 Multiple-Dwelling Residential 1 zone requires all new lots created by subdivision be a maximum size of 2000 m² and that new lots be served by community water systems and community sewer systems. Therefore, the owners are also applying for a variance to waive the maximum parcel size requirement and waive the community water system and community sewer system servicing requirements for the proposed 6 lot subdivision.

BACKGROUND:

ELECTORAL AREA:
E

LEGAL DESCRIPTION:

The North Half of the North West Quarter of Section 4 Township 23 Range 6 West of the 6th Meridian Kamloops Division Yale District Except (1) Part Included in the Right of Way Plan 633A9 and (2) Parts Included In Plans 1894, 1920, 4756, 4945, 5149, 8874, 9022, 10975, 11403, 12802, 13338, NEP21018, NEP67397, NEP79120, and EPP56359

PID:

016-653-459

CIVIC ADDRESS:

4103 Balsam Way

SURROUNDING LAND USE PATTERN:

North = Park (Malakwa Community Park), Residential

South = Vacant, Crown/Provincial

East = Trans-Canada Hwy

West = Residential

CURRENT USE:

Vacant

PROPOSED USE:

Residential Subdivision

PARCEL SIZE:

9.15 ha (22.61 acres)

PROPOSED PARCEL SIZES:

Lot 1 – 1.17 ha

Lot 2 – 1.0 ha

Lot 3 – 1.0 ha

Lot 4 – 1.0 ha

Lot 5 – 1.0 ha

Lot 6 – 3.14 ha

CURRENT DESIGNATION:

[Electoral Area E Official Community Plan Bylaw No. 840](#)

MD – Medium Density Residential

PROPOSED DESIGNATION:

NA

CURRENT ZONING:

[Electoral Area E Zoning Bylaw No. 841](#)

RM1 – Multiple Dwelling 1

PROPOSED ZONING:

NA

AGRICULTURAL LAND RESERVE:

0%

SITE COMMENTS:

Malakwa has been identified as the 'village core' of Electoral Area E and is the social, cultural and economic hub. The subject property is 9.15 ha and is the largest undeveloped property in the residential core of Malakwa. The subject property has frontage along the Trans-Canada Hwy on the eastern

boundary. Immediately northwest of the property is a CSRD community park, the Malakwa Fire Hall, and Malakwa Community Centre. Road access is from Balsam Way, Bloomquist Rd, and Community Hall Rd. The property is relatively flat and is not within a defined hazard area.

South of the property is a 6.44 ha parcel of crown land that was formerly used as a source of gravel/sand for road maintenance. It is no longer in use and the property is vacant.

BYLAW ENFORCEMENT:

No

POLICY:

See "DVP641-06_Excerpts_BL840.pdf" attached for relevant excerpts from the [Electoral Area E Official Community Plan Bylaw No. 840](#) (Bylaw No. 840) pertaining to this application.

- Section 3. Sustainability and Resilience
 - 3.14 Housing and Special Needs
- Section 4. Land Use Planning Strategy and Designations
 - 4.2.2 Malakwa
 - 4.7.4 Medium Density Residential
- Section 5. Community Infrastructure
 - 5.1 Transportation and Mobility
 - 5.3 Water Supply and Distribution
 - 5.4 Liquid Waste Management
 - 5.5 Solid Waste Management
 - 5.6 Hydro, Gas and Communication Utilities
- Section 6. Plan Implementation
 - 6.1 Development Permit Areas
 - 6.6 Malakwa Village Center Form and Character Development Permit Area

See "DVP841-06_Excerpts_BL841.pdf" for relevant excerpts from the [Electoral Area E Zoning Bylaw No. 841](#) (Bylaw No. 841) pertaining to this application.

- Section 2 Definitions
- Section 4 Zones
 - 4.10 RM1 Multiple Dwelling 1 Residential Zone

FINANCIAL:

There are no financial implications associated with this application.

KEY ISSUES/CONCEPTS:History

The owners of the subject property purchased the property in 2006 with the intention of subdividing the parcel. In 2008, the owners submitted a subdivision application for 57 lots as part of a phased subdivision plan for approximately 150 lots. The owners submitted a request to the CSRD to consider maintaining a community water system and community sewer system. The CSRD declined. The owners changed their application for 1 ha lots in 2013.

In 2013, the owners submitted a subdivision application for twelve 1 ha lots which would utilize onsite water systems and onsite sewage disposal systems. The owners proceeded with a five-lot subdivision

and indicated that they would complete the remaining lots in future phases. The first phase was five lots (three 1 ha lots, a park dedication, and a 9.15 ha remainder). This subdivision was completed in 2016. The subdivision was in compliance with the Subdivision Servicing Bylaw No. 641 which was enacted in 2012. Subdivision Servicing Bylaw No. 641 required lots with onsite servicing to be a minimum of 1 ha. During this time an Official Community Plan (OCP) and zoning bylaw did not apply to the property.

In 2008, the CSRD began drafting a new OCP and zoning bylaw for Electoral Area E. These bylaws would apply to the subject property; however, the project was put on hold due to the major debris flows which occurred at Swansea Point. Work began again on the draft OCP and zoning bylaw in 2016, and in 2021 the CSRD announced a new timeline for completion of this project for early 2022.

In October 2021, the owners applied for a six lot subdivision (1 ha lots with a remainder lot of approximately 3.14 ha) and in that application all lots were proposed to be serviced by onsite sewage disposal systems and onsite water systems. (i.e. a well and septic system). The owners' intended to finish the six lot subdivision before the new OCP and zoning bylaw would affect their property.

In 2021, the CSRD was also working on a new subdivision servicing bylaw which would update the technical requirements that must be met for subdivision applications.

On February 17, 2022, the Board adopted a new OCP and zoning bylaw for Electoral Area E and a new subdivision servicing bylaw for the entire CSRD. These bylaws include:

1. Electoral Area E Official Community Plan Bylaw No. 840 (Bylaw No. 840)
2. Electoral Area E Zoning Bylaw No. 841 (Bylaw No. 841)
3. Subdivision Servicing Bylaw No. 680 (Bylaw No. 680).

As per Section 511 of the Local Government Act, if a complete application for subdivision has been submitted prior to adoption of a bylaw that would otherwise be applicable to the subdivision, the bylaw has no effect with the respect to that subdivision for 12 months after the bylaws were adopted. This means the proposed six lot subdivision would need to be completed by February 17, 2023.

Subdivision in the CSRD

Outside of municipalities in electoral areas, subdivisions are approved by a Provincial Approving Officers (PAO). The PAO will consider more than local government bylaws as part of a subdivision. Matters considered on a subdivision application are outlined in legislation (Land Title Act) and include impact on surrounding properties, drainage, safety, highways and access, infrastructure, and conservation of heritage property in addition to local government bylaws.

A PAO may require additional reports or professional assessments as part of their subdivision review to determine whether the proposed subdivision will meet the legislative requirements. During this review the proposed layout of a subdivision can change substantially.

CSRD subdivision review is limited to compliance with the relevant CSRD bylaws and policies in effect. These include OCPs, zoning bylaws and the subdivision servicing bylaw. When the subdivision application was submitted (October 2021) there was no OCP or zoning bylaw in effect for the subject property and subdivisions were only reviewed by the CSRD for compliance with the Subdivision Servicing Bylaw in effect at that time (i.e. Subdivision Servicing Bylaw No. 641).

Within the Subdivision Servicing Bylaw No. 641, there were three main technical requirements for property owners to address for each lot for this subdivision.

1. Assessment and Demonstration of a minimum of 2,275 litres of potable water per day.

2. Documentation that each lot is capable of supporting an onsite sewage disposal system for a 4-bedroom home.
3. A site plan showing that each lot has a buildable area with access to a road.
 - a. A building site is a minimum of 1000 m² with a slope less than 30%.
 - b. The building site must be accessible by a driveway with a minimum width of 4 m and maximum slope of 15%.

These requirements are based on the plan of proposed subdivision. Without the final plan of subdivision, the CSRD is not able to provide final comment on the subdivision to the PAO.

To address technical requirements 1 and 2 above, the owners were able to provide an assessment of the on-site sewage disposal feasibility report, and a hydrogeological evaluation of the proposed subdivision dated January 11, 2023. The assessment of on-site sewage disposal feasibility and hydrogeological evaluation confirmed that the proposed subdivision could meet the CSRD potable water and sewage disposal system requirements in the Subdivision Servicing Bylaw. The owners were not able to complete technical requirement 3 noted above before February 17, 2023. The owners were also not able to submit a final subdivision plan before this date.

The owner noted that they were not able to complete technical requirements and the final plan of subdivision because of potential archaeological impacts, and the timelines for completing the necessary archaeological investigations, which could potentially affect the placement of property lines and building sites. The PAO requires proposed subdivisions to comply with the archaeology requirements of the Heritage Conservation Act.

The PAO noted that the owner will need to meet the requirements of the newly established CSRD bylaws starting February 18, 2023. The proposed six lot subdivision would not meet the requirements of the new Electoral Area E Official Community Plan and Zoning Bylaw; specifically, the proposed subdivision would not meet the lot size and servicing requirements of the zoning bylaw (maximum lot size of 2,000 m² and all lots must be served by community water and community sewer systems).

Electoral Area E Official Community Plan and Zoning Bylaw

The Official Community Plan identifies Malakwa as the largest community in Electoral Area E outside of Sicamous. Because of this new development is generally directed towards Malakwa (see Section 3.14 of Bylaw No. 840 in "DVP841-06_Excerpts_BL840.pdf" attached).

The subject property is designated as MD - Medium Density in the Electoral Area E Official Community Plan Bylaw No. 840 (Bylaw No. 840) which supports high residential density development in residential areas and recommends a maximum density of 40 dwelling units per ha.

The subject property is zoned RM1 – Multiple Dwelling 1 in the Electoral Area E Zoning Bylaw No. 841 (Bylaw No. 841). In the RM1 Zone, new properties created by subdivision are required to be a maximum of 2000 m² and be served by both a community water system and a community sewer system. The minimum density for development is 5 units per ha (i.e. one dwelling per 2000 m²) and the maximum residential density is 40 units per ha. For further details on the RM1 zone see "DVP641-06_Excerpts_BL841.pdf" attached. The definitions for a community water system and community sewer system are below:

Community water system

means a waterworks system, serving 50 or more connections or parcels, and is approved and operated under the Drinking Water Protection Act;

Community sewer system

is a sewage collection, treatment and disposal system serving 50 or more connections, or parcels. Facilities may include wastewater treatment (disposal) plants and ancillary works, sanitary sewers and lift stations for the collection and treatment of wastewater, and is approved and operated under the Environmental Management Act;

The property owners would like to continue with their 2013 application of subdividing 1 ha lots served by independent wells and onsite sewage disposal systems. The owners are therefore requesting that the zoning regulations for maximum lot size and servicing be waived.

MATTER REGULATED	REGULATION
(a) Minimum <i>parcel</i> size created by <i>subdivision</i> . ▪ where a <i>parcel</i> is serviced by a <i>community water</i> and <i>community sewer system</i>	▪ 500 m ²
(b) Maximum <i>parcel</i> size created by <i>subdivision</i>	▪ 2000 m ²
(e) Maximum number of <i>single detached dwellings</i> or <i>duplexes</i> or <i>multiple-dwellings</i> per <i>parcel</i> .	One
(I) Servicing standard for <i>subdivisions</i>	▪ <i>community water system</i> ▪ <i>community sewer system</i>

Subdivision Servicing Bylaw No. 680

For independent on-site water servicing and independent on-site sewer servicing, the regulations in both Subdivision Servicing Bylaws No. 641 (previous) and 680 (current) are very similar, and the implications of the change in those bylaws does not have a substantial impact on the technical requirements for this six lot subdivision with a minimum parcel size of 1 ha that is to be serviced by onsite water system and onsite sewage disposal systems.

The onsite sewage disposal feasibility report, and hydrogeological evaluation dated January 11, 2023 confirms that the six-lot subdivision could meet the requirements of Subdivision Servicing Bylaw No. 680 for lots to be served by onsite water systems and onsite sewage disposal systems. However, the Electoral Area E Zoning Bylaw does not permit lots created by subdivision to utilize onsite water systems or onsite sewage disposal systems.

The Electoral Area E Zoning Bylaw requires that new lots created by subdivision in the RM1 zone be served by a community water system and community sewer system. In Subdivision Servicing Bylaw No. 680, the following is required for subdivisions which utilize community water and community sewer systems:

- Community Water System
 - If it is a CSRD owned community water system, the subdivision must be connected to a system in accordance with the standards of the bylaw.
 - Any existing wells must be abandoned in such a way as to prevent cross-connection.
 - Staff note there are six known wells on the property.
 - If the community water system is privately owned the CSRD requires documentation from the operator of that system indicating that all conditions for connection to the

community water system have been met, and that the connections are permitted under the public utility's operating permits.

- Community Sewer System
 - If it is a CSRD owned community sewer system each lot must be connected to a community sewer system to the standards established in the bylaw.
 - Existing on-site sewage disposal systems must be abandoned.
 - If it is a privately owned community sewer system documentation must be provided from the operator of the community sewer system that all conditions for connection have been met and that all connections are permitted under the public utility's operating permit.

Analysis

Land Use Bylaws (Official Community Plan and Zoning Bylaws)

Prior to February 17, 2022 there were no land use bylaws in effect for the subject properties, and developers only needed to meet the technical requirements of Subdivision Servicing Bylaw No. 641. The Electoral Area E Official Community Plan was established to provide a long-term land use vision with objectives and policies to help guide land use decisions such as where and how development should occur.

Malakwa is the largest community in Electoral Area E, and as such the OCP directs and supports higher density residential and commercial development in Malakwa. The subject property is near the centre of Malakwa, and it is the largest undeveloped property at 9.15 ha. This property is designated MD - Medium Density and has the greatest potential in the community for higher density residential development. Inappropriate development of this site will limit overall residential density opportunities and future growth of Malakwa and its Village Centre as supported by the OCP.

Due to the location and size of the subject property, and to be consistent with the policies and land use designation of the OCP, the property was zoned RM1 – Multiple Dwelling 1. The RM1 Zone was specifically written to permit high density residential development consisting of single family dwelling, duplex, multiple-dwelling, and/or assisted living housing as permitted uses. The property is approximately 9.15 ha; for simplicity, rounding down to 9 ha, the following could be permitted on the property under the current zoning:

- Maximum number of lots created by subdivision (500 m^2): 180.
- Minimum number of lots created by subdivision ($2,000\text{ m}^2$): 45.
- **Number of lots proposed by this subdivision: 6.**

Depending on site design, staff note that there would be physical features such as roads, utilities, and parkland that would reduce the zoning maximum number of 180 lots.

This proposal is only creating six lots that will be sold as rural size properties in the middle of a residential area designated and zoned to permit higher density residential development. The surrounding lots to the subject property are approximately $2,000\text{ m}^2$ which is approximately a half acre (see "DVP841-06_Maps_Plans_Photos.pdf" attached). The maximum lot size in the current RM1 Zone is also 2000 m^2 which is consistent with the surrounding area. The development variance permit would waive this maximum lot size requirement and proposed lots would be considerably larger than those in the surrounding area.

Creating large 1 ha properties in the centre of a community surrounded by smaller residential lots is not supported in the Official Community Plan for the following reasons:

- Allowing large rural properties in this location will disrupt the future continuity and delivery of community services, which makes provision of infrastructure and access to such services more expensive per user and would limit the overall number of people that could utilize the services.
 - The subject property is very close to a community park, community centre, and firehall. Having large lots next to these services will limit the value of those services, and the people who can enjoy them.
- When larger lots such as this one are developed with higher density (i.e. number of units) it makes the construction of a community water system and community sewer system more affordable as the costs are distributed per user.
 - Smaller community systems are more expensive per resident and not as economically viable.
- Pedestrian connectivity is disrupted with 1 ha properties separating smaller residential lots in a community.
- More residents in a community will help support existing and new businesses.

Section 3.14.2 of the OCP notes that with a community water system and community sewer system, up to 200 new lots may be able to be created in the MD designation in Malakwa, but without those services, only 10 new properties could be subdivided with on-site servicing (see "DVP841-06_Excerpts_BL840.pdf" attached). If this 9-ha property is subdivided into six lots there would be very limited residential growth opportunities for Malakwa.

Future Potential

Staff shared these concerns regarding the proposed six lot subdivision with the owner. Although the owner prefers to move forward and seek approval for their application for six 1 ha lots they understand the staff concerns and provided a concept subdivision plan which shows that each of the six proposed lots could be further subdivided (see, "DVP841-06_Maps_Plans_Photos.pdf" attached). The proposed lot sizes shown in the concept plan range from approximately 510m² to 2,000 m². The concept plan shows that a higher density subdivision which is consistent with the OCP and compliant with the zoning bylaw may be possible in the future. However, the concept plan does not take into account the requirement for parcels less than 1 ha to be serviced by community sewer and water systems, or the location of these systems. Also, further subdivision of the subject properties to create additional lots and density would be dependent on the willingness of each property owner to undertake such subdivision at some time in the future.

It was also noted that the RM1 Zone does not limit the maximum number of dwellings in a multiple dwelling on a property, and therefore a future property owner could build a maximum 40 dwelling units per ha on each of the six proposed lots. To achieve this density the housing units would need to be included mostly within multiple dwelling buildings, with a limited number of duplexes and single detached dwellings.

Staff note that once a single detached dwelling, accessory buildings and yard is established on a larger rural size lot of 1 ha, it is very unlikely that it would be developed in any other way in the future. While it may be possible to further develop the 1 ha lots, it is less likely to happen as there are many complications with coordinating development between separate properties with separate owners. Multiple owners are less likely to agree on development plans, coordinate lot layouts, roads, utilities, finances, or agree to timelines. These complications make development less cost effective and properties are more likely to remain as rural lots indefinitely.

Staff continue to be concerned that if the requested variance is approved by the Board, and the proposed six lot subdivision is approved by the Provincial Approving Officer, the largest and most centrally located parcel in Malakwa will be lost for future higher density residential development which

is expected to underpin the creation of the Malakwa Village Centre and provide the potential for more and affordable housing units in the community.

In discussions with the owner, it was also noted that building sites of the proposed lots could be limited to ensure that future subdivisions are still possible. This can be done through a Section 219 covenant registered on title in favour of the CSRD. A proposed covenant has not been drafted.

As staff noted above, the proposed subdivision is not consistent with the Official Community Plan or zoning and is not supported by staff. However, if the Board does decide to approve this application staff recommend that the application be approved subject to a Section 219 Covenant being registered in favour of the CSRD to limit the building site of a property.

Rationale For Recommendation

The owners of 4103 Balsam Way are applying to waive the maximum lot size and community water and community sewer servicing requirements for a subdivision that included the in RM1 – Multiple Dwelling 1 Zone. Staff do not support the application for the following reasons:

- The proposed subdivision is inconsistent with the objectives and policies of the Electoral Area E Official Community Plan.
- The subject property is well served by parks, a fire hall, and community centre which would not be properly utilized by 1 ha lots.
- The subject property is in an area with the highest residential density development potential in Electoral Area E and Malakwa.
- The subject property is large enough to make development of community water and community sewer systems financially viable and which would support much higher levels of residential density. Such future servicing is much less feasible for the community as a whole if the proposed six lot subdivision is approved.
- Low density rural subdivision as proposed for this location will not support necessary increases in population that will support long-term economic growth and additional business opportunities or services in the community, nor help to create a Malakwa Village Centre as proposed in the Electoral Area E OCP.
- Future residential development within the proposed lots, or further subdivision is unlikely.

IMPLEMENTATION:

If the Board approves the staff recommendation and chooses not to approve the proposed variance, the owner will be notified, and staff will work with the owners to submit a revised subdivision plan that conforms to the Electoral Area E Zoning Bylaw.

If the Board denies the staff recommendation and chooses to approve the Development Variance Permit application, staff recommend that the Development Variance Permit be conditionally approved subject to a restrictive covenant being registered on each of the proposed six lots that would establish a building site for a single detached dwelling, onsite water system and accessory buildings, and a no build area for the majority of each of the lot where accessory buildings and structures could not be constructed. The size of buildable area would be limited to 2000 m² to ensure that the building area could be subdivided in the future, and that a majority of each parcel would remain free of buildings and structures that may otherwise limit future subdivision and/or residential development potential. Staff would work with the owner and their agents (e.g. surveyor and lawyers) regarding the covenant wording and potential reference plan showing buildable areas and no build areas. With the registration of this covenant the DVP could be issued, and applicant could proceed with completing the other subdivision requirements of the Subdivision Servicing Bylaw No. 680.

COMMUNICATIONS:

Letters were sent to all owners of property lying within 100 m of the subject property advising of this application for Development Variance Permit in accordance with the Local Government Act requirements on April 5, 2024. Written submissions received regarding this application will be attached to the late agenda.

DESIRED OUTCOMES:

That the Board endorse the staff recommendation.

BOARD'S OPTIONS:

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

Report Approval Details

Document Title:	2024-04-18_Board_DS_DVP841-06.docx
Attachments:	<ul style="list-style-type: none">- DVP841-06_Permit.pdf- DVP841-06_Excerpts_BL840.pdf- DVP841-06_Excerpts_BL841.pdf- DVP841-06_Maps_Plans_Photos.pdf
Final Approval Date:	Apr 10, 2024

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



Gerald Christie



Jennifer Sham



John MacLean