

THE PROVINCE PROPOSES TO SIMPLIFY AND ACCELERATE MUNICIPAL DEVELOPMENT APPROVALS

On November 3, 2021, Bill 26¹ (the “**Bill**”) received third reading by B.C.’s legislature. The Bill seeks to amend the *Local Government Act*² (“**LGA**”) by removing the default public hearing requirement for zoning amendment bylaws that are consistent with an official community plan (“**OCP**”) and enabling local governments to delegate decisions on minor development variance permits (“**DVPs**”). The purpose of the proposed legislative amendments is to give local governments more powers to simplify and accelerate their development approvals processes to increase the housing supply.

REMOVING THE PUBLIC HEARING REQUIREMENT

Local governments are authorized by the *LGA* to adopt zoning bylaws that regulate the use and density of land and buildings, as well as the siting, size, and dimensions of buildings and uses permitted on the land.³ Since zoning bylaws can have a significant effect on how owners, including developers, may use their property, before adopting such bylaws, local governments are required to hold a public hearing to allow any member of the public who believes their interests may be affected an opportunity to be heard or to present written submissions respecting matters contained in the

bylaw that is the subject of the public hearing.⁴ The present approval process has been criticized as being complex and lengthy, and “can lead to unnecessary delays and fewer homes being built, as well as a pent-up demand for housing”.⁵ As explained by the Hon J. Osborne, the purpose of the proposed legislative amendments is: “to help streamline and improve the speed of... [local government] ...development approvals processes, with the intention of helping British Columbians get into homes faster”.⁶

Local governments currently have the authority to waive a public hearing if an OCP exists for the affected area and the bylaw is consistent with this OCP.⁷ If the Bill passes, local governments would no longer be required to take the extra step in the development approval process of waiving the public hearing when an amended zoning bylaw is consistent with an existing OCP, and instead, they would only be required to publish a public notice before the first reading.⁸ However, where a local government considers a public hearing is needed, despite the fact that the proposed rezoning is consistent with the OCP, the local government may still choose to hold a public hearing.

The rationale for removing the public hearing requirement where the proposed rezoning is

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consistent with the OCP is the same as the rationale for the current legislation, which allows local governments to choose to waive the public hearing, and still provides for consultation and accountability to the public of a rezoning application:

- 1) public consultation, as well as a public hearing, has already taken place when the OCP was adopted; and
- 2) a judicial review is still available to challenge a local government's determination that the zoning bylaw was consistent with an OCP, and therefore, whether a public hearing was in fact required.

As noted above, where a public hearing is not needed, local governments would be obligated to give public notice of the proposed zoning bylaw before first reading takes place. This is intended to ensure that the public is informed of the bylaw amendment and to enable the provision of feedback to council/board members through regular channels (e.g., letters and emails).

AUTHORITY TO DELEGATE DECISIONS ON MINOR DEVELOPMENT VARIANCE PERMITS

Perhaps the more notable proposed amendment will be in relation to DVPs. Presently, owners have two methods to seek a variance to a zoning bylaw. One is a DVP issued by a local government, and the other is an order issued by a Board of Variance.⁹ These are separate processes, and one does not prohibit the other. Under the first method, an owner may apply to the local government for a DVP when it seeks to vary the provisions of an otherwise applicable bylaw.¹⁰ DVPs are issued by council resolution. As a restriction on council's discretion, council must not issue a DVP that varies use or density, the application of a zoning bylaw in relation to residential rental tenure, or a flood plain specification. Under the second variance method, an owner may apply to Board of Variance for an order granting a "minor" variance. The Board's principal function is to provide an avenue of relief for

persons seeking a variance from certain provisions of municipal bylaws where compliance would create undue hardship. The question of whether a variance is a "minor" one must be decided by the Board in relation to all the surrounding circumstances. Generally, the Board's decision is final (there is no right of appeal unless it was made without jurisdiction).

The local government has broader powers to approve DVPs. Unlike the Board of Variance, council is not restricted to only issuing "minor" variances where there is "undue hardship". Councils are, however, currently prohibited from delegating the issuance of DVPs.¹¹

The Bill seeks to enable the delegation, by bylaw, of a local governments' power to issue DVPs to its officers or employees for minor variances in certain circumstances. As with the proposed amendments to the public hearing requirements discussed above, the amendments to the DVP provisions are designed to speed up the local government approval processes to increase the housing supply. Minor variances that fall under this proposed authority may include siting, size and dimensions of buildings, structures and permitted uses; off-street parking and loading space requirements; the regulation of signs; or screening and landscaping to mask or separate uses or preserve, protect, restore, and enhance the natural environment. In addition, regulations may later be adopted to add to this list. While the Bill enables the delegation of decisions on minor variances, the alternative avenue of seeking a variance from the Board of Variance remains available.

Where a bylaw is adopted by a local government to delegate minor variances, the bylaw must set out what minor variances are delegated, the principles to determine whether the proposed variance is minor, as well as guidance about how to exercise the delegated

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power. The applicant is also entitled to request reconsideration by council or the Board of the decision of the delegate.

It is notable, that the local governments' obligation to give notice before passing a resolution to issue DVPs will not apply to the delegate issuing such permits. This is so because local governments would have already adopted a delegation bylaw that contains the characteristics of minor variances.¹²

KEY TAKEAWAYS

The changes encompassed in the proposed Bill may be beneficial to developers and other owners in situations where there is an OCP, and the developer or owner is seeking to amend a zoning bylaw in a way that is consistent with the OCP. If a public hearing is not required, this may shorten the approval process, with the developer or owner being able to move forward on its proposed development faster. Further, the delegation of power to issue DVPs may also speed up such approvals, which should allow developers or other property owners to proceed with the work sooner.

While local governments already have the authority to waive public hearings where zoning amendments are consistent with OCPs, they may now be more inclined to do so if this Bill passes. There is still, however, a risk that a third party could challenge the local government's decision not to hold the public hearing by arguing that the zoning bylaw is not consistent with the OCP. This may especially be the case where the proposed zoning amendment is complex or controversial. Accordingly, developers may still want to seek the community's support for development projects, even where a public hearing is not required.

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¹ Bill 26, *Municipal Affairs Statutes Amendment Act* (No. 2), 2021, 42nd Parl, 2nd Sess, British Columbia.

² *Local Government Act*, [RSBC 2015] c. 1 [LGA].

³ *Ibid*, s. 479(1).

⁴ LGA, *supra* note 2, s. 464(1), 466.

⁵ British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 42nd Parl, 2nd Sess, No. 123 (2 November 2021) [Debates], at 3906 (Hon. J. Osborne).

⁶ *Ibid*, at p. 3916.

⁷ LGA, *supra* note 2, s. 464(2).

⁸ Debates, *supra* note 5, at p. 3916.

⁹ LGA, *supra* note 2, s. 542.

¹⁰ LGA, *supra* note 2, s. 498

¹¹ LGA, *supra* note 2, s. 498(4).

¹² British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 42nd Parl, 2nd Sess, No. 124 (3 November 2021), at 3931 (Hon. J. Osborne).



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Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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