



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: October 28, 2019

SUBJECT: FrontCounter BC Referral Application – 1875 Banff Road
RDCO File: CL-19-04 / FrontCounter BC File: No. 3413329
Central Okanagan West Electoral Area

Voting Entitlement: All Directors – Unweighted Corporate Vote – Simple Majority – LGA 208.1

Purpose: To consider a FrontCounter BC referral application to acquire a License of Occupation (Over 30 years) to permit an existing concrete apron on the foreshore of Okanagan Lake.

Executive Summary:

The applicant, owner of Lot 1, Plan KAP8596, District Lot 2186, ODYD (upland private property) adjacent to the subject area, wishes to acquire a License of Occupation with the Province of BC in order to permit an existing concrete apron on the foreshore of Okanagan Lake. Jurisdiction for approving the application lies with the Province of BC so there is no formal RDCO public notification process required for Crown Land referral applications.

The referral application conflicts with policies and objectives contained in the Central Okanagan Foreshore Plan, the Regional Board Strategic Priorities 2019 - 2022 document and the Regional Growth Strategy.

RECOMMENDATION:

THAT the Regional Board not support FrontCounter BC referral application 3413329 for the issuance of a License of Occupation to permit an existing concrete apron on the foreshore of Okanagan Lake.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Todd Cashin".

Todd Cashin
Director of Community Services

Approved for Board's Consideration

A handwritten signature in black ink, appearing to read "Brian Reardon".

Brian Reardon, CAO

Implications of Recommendation:

Strategic Plan: Not supporting the referral application complies with the strategic priority “Environment” and the Regional Board’s action to reduce development activities within higher risk floodplain areas.

Policy: Not supporting the referral application complies with:

- Regional Growth Strategy Bylaw No. 1336
- Central Okanagan Lake Foreshore Plan

Background:**Upland Property History**

The subject property consists of one single detached house and one boathouse. Under previous ownership, the owners received a Development Permit to construct a two-storey accessory structure (boathouse) and reduce the setback of the structure from 7.5m to 4.6m from the natural boundary of Okanagan Lake (RDCO File: DP-88-327). Furthermore, the owners requested a reduction in the side-yard setback from 4.0m to 1.6m for the single detached house due to topographic restrictions, an irregular shaped lot, and septic field requirements (RDCO File: DVP-94-748).

As a condition of the Development Permit approved in 1988, the Ministry of Environment indicated no objection to the setback reduction to construct a boathouse 4.6 metres from the natural boundary of Okanagan Lake, provided that no area is used for habitation or storage of goods damageable by floodwaters (see Appendix ‘A’).

According to the site plan dated March 6, 2019 submitted with the Crown land application, the existing boathouse is situated 0.14m from the natural boundary of Okanagan Lake (see Appendix ‘B’) and therefore is not in compliance with the existing Development Permit or Provincial approval in 1988.

Proposal

During the flooding events of 2017, the private moorage at the subject property was significantly damaged. As such, the applicant is proposing to repair the existing, damaged moorage and in order to facilitate this, is required to remove the concrete boat launch. Furthermore, the property owner is proposing to retain a 1.4m wide concrete apron in front of the existing boathouse to protect the structures foundation, as per an engineer’s recommendation. The removal of the concrete boat launch and repairs to the existing, damaged moorage are proposed to occur concurrently.

The purpose of this Crown land application is to acquire a Licence of Occupation from the Province to permit an existing area of the concrete boat launch (+/- 3.4 m²) along the foreshore of Okanagan Lake (See Appendix ‘C’).

Environmental Considerations

As per the May 2019 Environmental Management Plan (EMP) prepared by Ecoscape Environmental Consultants Ltd., the proposed works associated with the removal of the boat launch are anticipated to have minimal impacts provided the guidelines and best practices identified in the EMP are followed. The concrete boat launch is proposed to be removed by hand using a jackhammer and manually removing waste. Any naturally occurring substrates will be hand-raked to match the natural slope of the lakebed.

Furthermore, as per the June 2018 Geotechnical Report prepared by Interior Testing Services Ltd., a minimum 1.4m of concrete apron is recommended to remain in place to minimize erosion and undermining of the boathouse in addition to the placement of riprap boulders along the edge of the concrete. The proposed works are to occur on dry land during the least-risk timing window between June 1 and September 30.

Regional Growth Strategy Bylaw No. 1336

- Policy 3.2.8.2: Encourage collaboration to adopt consistent terminology, policies and actions that support the protection and conservation of environmental features and watersheds within the Region.
- Policy 3.2.8.7: Protect natural environments, parks and water systems, as these systems are essential to the quality of life in the Okanagan that support active and healthy lifestyle.

Central Okanagan Lake Foreshore Plan

The section entitled 'Designation and Strategic Policies,' General and Specific Strategies, indicate Regional Board policies that apply to all foreshore areas within the plan boundaries. The following policies specifically provide this direction:

- Public access to the foreshore is a basic right; if not available, it will be established;
- Crown foreshore shall remain in public ownership for public use and shall not be alienated by sale or lease, except where the public interest is being served; and
- Within development areas, shorelines shall be maintained in a predominantly natural state with natural riparian tree cover and ground vegetation.

Site Context

The subject Crown land is located outside of all RDCO Official Community Plans. The upland private property adjacent to the Crown land is located within the Rural Westside Official Community Plan (OCP) Bylaw No. 1274. In accordance with Bylaw No. 1274 the Aquatic Ecosystems, Hillside, and Wildfire Development Permit provisions affect the upland property.

As the proposed works will occur primarily on Crown land below the present natural boundary, a Development Permit is not required for the removal of the concrete boat launch. Should any land disturbance associated with the proposed works affect the upland private property, a Development Permit may be required.

Additional Information:

Owner/Applicant:	H. Brunt c/o Ecoscape Environmental Consultants Ltd.
Legal Description:	Unsurveyed Crown foreshore being part of the bed of Okanagan Lake and fronting on Lot 1, District Lot 2186, ODYD, Plan KAP8596.
Address:	Adjacent to 1875 Banff Road
Area Size:	+/- 3.42m ² concrete apron
Existing Zone	RU1 – Rural 1 (Crown Land)
Surrounding Uses:	North: Rural Residential South: MOTI Road Right-of-Way / Rural Residential East: Banff Road / Rural Residential West: Okanagan Lake

RDCO TECHNICAL COMMENTS:

Planning Services staff advises that support for the referral application cannot be provided at this time. Regional Growth Strategy Bylaw No. 1336 and Central Okanagan Lake Foreshore Plan policies do not support this referral application.

While the proposed works are located outside of Development Permit Areas, Appendix 6 of the Rural Westside OCP identify the Foreshore Sensitivity Zone for the upland parcel as an 'Orange Zone' meaning the shoreline represents high value areas that are sensitive to development and continue to provide important habitat functions. The minimum leavestrip for future development identified within the Orange Zone is 20 metres.

As per the Okanagan Large Lakes Foreshore Protocol, the parcel fronts a Black Zone for shore-spawning Kokanee which is identified as critical habitat in areas where recent aggregations of greater than 1,000 spawning fish have been observed, and are essential for the long-term maintenance of kokanee productivity in Okanagan Lake. Furthermore, the Aquatic Habitat Index class for the respective segment of shoreline is ranked as 'Very High' for relative habitat value.

A Best Management Practices guide, "A Resource for Okanagan Lakeshore Living" has been specifically developed to offer practical solutions on how property owners along the shoreline of Okanagan Lake can help to protect natural areas and enhance our regions resiliency to climate change. The guide also promotes and encourages stewardship actions that can be taken to improve the shoreline while supporting flood preparedness. It is advised that the owner of the upland property review this resource and become familiar with the content.

Furthermore, should the existing accessory structure be used for any purpose other than a boathouse, a floodplain exemption would be required. Planning staff intend to follow up with the private upland property owner regarding the siting of the boathouse to ensure conformance with Regional District bylaws.

Inspections Services staff advise that building permits were completed for the single detached house in 1994 (#94/3335) and subsequent renovations in 2001 (#01/8817). Furthermore, the boathouse was constructed prior to the single family dwelling in 1988 and received a building permit for non-residential use of the accessory structure (#88/6779).

RDCO Environmental Advisory Commission recommends non-support of the proposed referral application as presented.

Anecdotal Comments:

- The Environmental Management Plan (EMP) does not include vegetative planting requirements and compensation for works along the foreshore. The commission recommends requiring a revised EMP that includes native vegetative plantings to enhance the riparian area and Kokanee habitat.
- The engineer's recommendation to use rip rap boulders does not conform to the habitat requirements of shore spawning Kokanee.
- It appears that the boathouse was constructed out of conformance with original approvals from the RDCO and the Province. As such, supporting the proposal would set an unwanted precedent that building within a higher risk flood zone is acceptable.
- The Commission recommends that the boathouse be decommissioned or relocated to meet setback requirements.

AGENCY REFERRAL COMMENTS:

Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Okanagan Shuswap Resource District staff provide non-support for the referral application pending acknowledgment that the following issues have been addressed:

- A legal survey must be completed to delineate the present natural boundary of Okanagan Lake in relation to the boathouse and concrete apron.
- Provincial staff indicated the requirement that an engineer must assess the concrete apron and building foundations to make the case that the apron is necessary for the buildings integrity. The case presented by Interior Testing Services Ltd is not compelling.
- The boathouse must not be used for habitation or storage of goods damageable by floodwaters. It appears that the boathouse is being used for habitation.

Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Ecosystems Branch note that any environmental and/or species-at-risk concerns will be addressed via the proponent's required application for authorization under Section 11 of the *Water Sustainability Act*.

Unaffected Agencies include the City of Kelowna, City of West Kelowna, Westbank First Nation, BC Hydro, Shaw Cable, Telus, Fortis B.C., Interior Health Authority, and the Ministry of Transportation and Infrastructure.

Unaffected RDCO departments include Engineering Services, Parks Services, and Fire Services.

External Implications:

Jurisdiction for approving the application lies with the Province of BC. FrontCounter BC did not advertise this application; it is noted that no formal RDCO notification process is required for Crown land referrals.

Alternative Recommendation:

THAT the Regional Board conditionally support FrontCounter BC referral application 3413329 for the issuance of a License of Occupation to permit an existing concrete apron on the foreshore of Okanagan Lake, subject to the following being addressed prior to issuance of, or applied as conditions to, approval:

- The applicant receives a legal survey plan from a certified B.C. Land Surveyor to delineate the present natural boundary of Okanagan Lake in relation to the boathouse and concrete apron;
- The applicant brings the existing boathouse into compliance with the conditions of DP-88-327 and Zoning Bylaw No. 871, and registers a restrictive covenant on title indicating the structure will not be used for habitation or for the storage of goods damageable by floodwaters; and,
- The Environmental Management Plan prepared by Ecoscape Environmental Consultants Ltd. is revised to include a native vegetative replanting plan and appropriate mitigation.

Considerations not applicable to this report:

- Financial
- Organizational
- External
- Legal/Statutory Authority

Attachment(s):

- Subject Property Map
- 2016-2017 Foreshore Images
- Appendix 'A' March 14 Ministry of Environment Letter
- Appendix 'B' March 6, 2018 Site Plan
- Appendix 'C' Proposed Boat Launch Removal