



# Regional Board Report

**TO:** Regional Board

**FROM:** Todd Cashin  
Director of Community Services

**DATE:** January 27, 2020

**SUBJECT:** Development Permit Amendment Application (DP-18-14)  
Forest House Preserve Ltd., Inc. No. BC0120410 (owner)  
Kenneth and Lynn Ganden (applicant)  
9185 Westside Road  
Central Okanagan West Electoral Area

**Voting Entitlement:** Custom Vote – Electoral Areas Only – Simple Majority – 1 Director, 1 Vote

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**Purpose:** To consider the issuance of a Development Permit Amendment for works associated with an addition to an existing cabin.

## Executive Summary:

Development Permit DP-18-14 (DP) was originally issued for an addition to the existing A-frame dwelling unit, restoration areas, and associated enhancement work. A portion of the addition is located within the original footprint of the structure that previously encroached into the required 15 m setback from Okanagan Lake, with a small portion; 7.4 m<sup>2</sup> (79.6 ft<sup>2</sup>) at the south end of the structure extending beyond the original footprint. During routine monitoring which was a condition of the DP, the Environmental Monitor observed that unauthorized works had taken place which included an extension to the lower concrete deck and placement of concrete deck stairs further into the setback than originally approved. As such, an amendment application was submitted by the applicants to address the as-built encroachments. Furthermore, as a result of the unauthorized works, an additional 38 plants are proposed to be included in the original mitigation planting plan, restoration areas, and associated enhancement work.

Planning staff conclude that the development does not conform to the Aquatic Ecosystem Development Permit Objectives and Design Guidelines of the Rural Westside Official Community Plan and does not meet the terms of the Riparian Areas Protection Regulation (RAPR).

## RECOMMENDATION:

**THAT** Development Permit Amendment Application DP-18-14 not be approved as the development does not comply with the Aquatic Ecosystem Development Permit Objectives and Design Guidelines of the Rural Westside Official Community Plan Bylaw No. 1274 and as it does not meet the terms of the provincial Riparian Areas Protection Regulation.

Respectfully Submitted:



Todd Cashin  
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

Prepared by: Danika Dudzik, Senior Planner

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### Implications of Recommendation:

Strategic Plan:	Refusing the Development Permit Amendment supports the 2019-2022 Strategic Priorities Plan with respect to the "Environment" and the Regional Board's action to reduce development activities within higher risk floodplain areas.
Policy:	Refusing the Development Permit Amendment complies with: <ul style="list-style-type: none"><li>• Regional Growth Strategy Bylaw No. 1336</li><li>• Rural Westside Official Community Plan Bylaw No. 1274</li><li>• Riparian Areas Protection Regulation</li></ul>
Legal/Statutory Authority:	The <i>Local Government Act</i> , Part 14, Section 488 (Designation of development permit areas) provides the legislative authority for an OCP to designate development permit areas for the protection of the natural environment, its ecosystems and biological diversity and protection of development from hazardous conditions. The OCP provides the direction and guidelines to be adhered to when considering a development permit.

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### Background:

As outlined in the Rural Westside Official Community Plan (OCP), a Development Permit (DP) must be approved before land undergoes construction, addition to or alteration of a building, structure, or clearing of land for the protection of the natural environment, its ecosystems, and biological diversity.

### Previous Development:

Prior to the recent addition approved under DP-18-14, a pre-existing dwelling unit occupied the site which also contained two sheds, upper and lower lawn areas, parking and vehicle access area, concrete retaining wall along the western boundary, terraced rock garden with a partial brick retaining wall, and a shoreline wall. A stairway intersected the terraced rock garden and connected the parking and vehicle access area north of the structure with the lower lawn area.

The subject property known as "Forest House Preserve" has been developed as part of a paper lot subdivision. Since the development of the 8 dwelling units, extensive foreshore modifications have taken place over time.

A covenant is registered on Lot 1, Plan KAP22569, District Lot 2197, ODYD which includes provision of a non-disturbance zone where no buildings, structures or improvements of any kind shall be constructed nor located within 15 meters of the high water mark or natural boundary of Okanagan Lake, except for any buildings, structure or improvement that is already in place as of the date of the Covenant (August 2016). Further, the covenant identifies that written consent is to be obtained by the Transferee for any future proposed works within the identified area.

### **Environmental Considerations**

The subject property fronts a Kokanee Shore Spawning Zone (identified in the OCP as a “Yellow” zone) which has experienced more intensive development disturbance and pressures. However, these areas still maintain habitats that are important for fish and wildlife. Yellow zones require a minimum setback or leavestrip of 15 metres from the high-water mark of Okanagan Lake, which corresponds with the Riparian Areas Protection Regulation.

As outlined by the Qualified Environmental Professional (QEP) in the original environmental report dated November 2018, the subject site was sparsely vegetated with ornamental and native plants. The SPEA area was reported to include eastern white pine, yew, ornamental perennials and annuals, pine grass, bunch grass, ponderosa pine, and one Douglas-fir. A juvenile Douglas-fir was also noted near the southern boundary.

As required in the OCP, Environmentally Sensitive Areas (ESAs) are prioritized for protection. The QEP identified the SPEA area as ESA-1 high habitat value due to the two large Douglas-fir, providing shade and leaf litter for fish and potential raptors with perching and nesting opportunities.

The environmental report outlined thirteen wildlife species at risk have the potential to inhabit the subject property, including five species that are red-listed and nine that are blue-listed. An identified red-listed Ecosystem at Risk within the subject area include Black Cottonwood-Douglas-fir/Common Snowberry/ Red-Osier Dogwood.

Within the original environmental report, the QEP concluded that due to the absence of aquatic vegetation and large woody debris in the sand and gravel foreshore, multiple docks and retaining walls, and limited leaf litter present, the overall quality of fish habitat in the foreshore of the subject property was limited.

### **Development Permit DP-18-14**

Development Permit DP-18-14 was originally issued on January 23, 2019 by the Director of Community Services for an additional footprint to be added to the existing a-frame dwelling unit totaling 66.2 m<sup>2</sup> (712.5 ft<sup>2</sup>), restoration areas and associated enhancement work. A portion of the proposed works (outside of the existing development footprint), approximately 7.4 m<sup>2</sup> (79.6 ft<sup>2</sup>) were to occur within the 15 metre leavestrip (floodplain area). The works were considered subject the biophysical assessment, existing site constraints, and previous development footprint of the subject area.

Recommendations provided by the QEP in the assessment were focused toward minimizing the impact of the work on aquatic resource values and water quality. The original environmental report concluded that the impacts of the proposed works on the environment would be low and the associated mitigation would enhance the overall riparian condition using a 5:1 compensation planting ratio for a total of 38 plants including a minimum of 18 native trees and 20 native shrubs throughout a total of three planting areas. The report identified the proposed plant species have been selected to help re-establish the ecosystem at species at risk.

As a condition of the DP, an environmental monitor was required to oversee works and ensure the mitigation as outlined in the report would be carried out and reported to RDCO, providing assurance that the proposed works would not impact fish habitat on the subject property, nor impede the riparian area leavestrip, and would result in an improvement in habitat quality.

#### **Development Permit DP-18-14 Amendment 1**

During routine monitoring which was a condition of the DP, the environmental monitor identified four main roots of a Douglas fir located within 1 m of the excavated foundation were exposed and damaged. At that time, the applicants submitted an amendment application to the original DP to provide mitigation for the removal of the tree.

The amendment to DP-18-14 was approved on August 8, 2019 to compensate for the removal of the large Douglas fir and increase the planting area with an addition of 5 plants.

#### **Development Permit DP-18-14 Amendment 2 (Current Application)**

During routine monitoring which was a condition of the DP, the environmental monitor observed that unauthorized works had taken place which included an extension to the lower concrete deck and placement of concrete deck stairs for a total of 26 m<sup>2</sup> (279.8 ft<sup>2</sup>) further into the leavestrip than originally approved. At the time of the works, the additional disturbance was permitted by the construction manager to prevent the slope sides from collapsing onto the lower deck.

The original permit allowed for a setback of 9.8 m (32.1 ft) to the high water mark (retaining wall) as determined by the QEP. To accommodate the unauthorized works, the setback has been determined by Russell Shortt Land Surveyors as 4.53 m (14.8 ft) to the identified high water mark (retaining wall).

An amendment application was submitted by the applicants to address the as-built encroachments. As a result of the unauthorized works, an additional 38 plants have been added to the original mitigative planting plan, for total of 81 plants consisting of 27 trees, 22 shrubs, and 32 forbes covering 130 m<sup>2</sup>. The QEP indicates that most of the trees are to be planted in the largest planting area - P1, located along the northern property boundary (see attachment Site Plan DP-18-14 Amendment 2). Specific recommendations for the plantings have been provided by the QEP in the subsequent environmental report.

#### **Monitoring and Security:**

As a condition of the issuance of the original permit, an environmental monitor was to be retained for the duration of the proposed development to ensure compliance with the recommendations presented in the environmental report and subsequent monitoring reports, and a substantial completion report was to be provided to the RDCO indicating the conditions and requirements of the development permit have been carried out.

Further, bonding was required as set out in Bylaw No. 944 (Procedures Bylaw). The bond amount is based on the estimate provided by the QEP and is required prior to issuance of the Development Permit. A total amount of \$5,587.50 was received for the works associated with the original permit (38 plants). A subsequent amount of \$192.50 was received for the works associated with the first amendment to DP-18-14. The QEP has estimated the costs associated with the current amendment application for additional mitigative plantings (38 plants) in the amount of \$1970.00.

## **Regional Board Strategic Priorities 2019-2022**

### **Environment**

- Support efforts to reduce our environmental footprint and adapt to climate change.
- Reduce new construction in higher risk floodplain areas.

### **Regional Growth Strategy Bylaw No. 1336**

- Policy No. 3.2.3.1 “Consider water resources in land use planning decisions”.
- Policy No. 3.2.8.3 “Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems”.
- Policy No. 3.2.8.6 “Encourage and support coordinated efforts to protect and enhance the Region’s forests, environmentally sensitive and significant areas”.

### **Rural Westside Official Community Plan Bylaw No. 1274:**

#### **Chapter 3 Natural Environment**

- Policy No. 3.2.1.1 “The Regional District will continue to protect Environmentally Sensitive Areas on private land through the Development Permit process”.
- Policy No. 3.2.1.2 “Provide and protect vegetated leave areas to water courses, control soil erosion and sediment in run-off water, control the rates of run-off to minimize impacts on the lake, prevent the discharge of deleterious substances into the lake”.
- Policy No. 3.2.1.3 “Protect Kokanee spawning grounds located in the OCP area”.

#### **Chapter 13 – Development Permit Areas**

- Policy No. 13.1.1 “Development within designated Development Permit Areas will be reviewed by the Regional District in consideration of the objectives and guidelines identified in this Section. Conditions or restrictions may be imposed on the development accordingly”.
- Policy No. 13.1.2 “In accordance with the *Local Government Act* of the Province of BC, the Regional District will require funding to ensure the completion of landscaping, environmental rehabilitation, or other conditions for which security may be held”.
- Policy No. 13.1.3 “Development Permit Areas are designated and Development Permits are required in accordance with sub-sections 13.2 through 13.9”.

#### **Appendix 2 – Aquatic Ecosystem Development Permit Objectives and Design Guidelines**

- A leavestrip for the protection and restoration of the riparian ecosystem is to remain undisturbed near watercourses. The intention is that the leavestrip will be untouched by development and left in its natural condition, or, if damaged by previous use or construction, the ecosystem restored or enhanced.
- Riparian vegetation should be maintained where it is present, and restored where it has been lost.
- Maintain natural flow regimes. Deforestation, removal of vegetation, or increased impervious surfacing can result in significant increases in the size, duration, and frequency of floods. Bank erosion can also worsen.

### **Riparian Areas Protection Regulation**

#### **Division 2 - Riparian Protection Standard**

- 10 (1) A proposed development meets the riparian protection standard if the development
- (a) will not occur in the streamside protection and enhancement area, and

(b) in the case of a detailed assessment, will not result in any harmful alteration, disruption or destruction of natural features, functions and conditions in the streamside protection and enhancement area that support the life processes of protected fish.

#### Site Context:

The subject property is located on a portion of a shared lot south of Killiney Beach within the Central Okanagan West Electoral Area in a developed rural residential area.

The subject property is affected by the Rural Westside Official Community Plan Aquatic Ecosystems and Wildfire Development Permit Areas. The provincial Riparian Areas Protection Regulation are also applicable.

<b>Owner:</b>	Forest House Preserve Ltd., Inc. No. BC0120410
<b>Applicants:</b>	Kenneth & Lynn Ganden
<b>Address:</b>	9185 Westside Road
<b>Legal Description:</b>	Lot 1, Plan KAP22569, District Lot 2197, ODYD
<b>Lot Size:</b>	+/- 5.97 ha (14.75 acres)
<b>Area of Land Affected:</b>	+/- 600 m <sup>2</sup> (0.15 acres) Share Lot 2 Exclusive Use Area Class "C" Common Shares
<b>Zone:</b>	RU2 Rural 2
<b>OCP Designation:</b>	Residential – Low Density
<b>Existing Use:</b>	Rural Residential
<b>ALR:</b>	Outside of the ALR
<b>Fire Protection:</b>	North Westside Road Fire Protection Area
<b>Water Purveyor:</b>	Private System
<b>Sewage Disposal:</b>	Onsite
<b>Surrounding Uses:</b>	<b>North:</b> Rural Residential <b>South:</b> Rural Residential <b>East:</b> Okanagan Lake <b>West:</b> Westside Road

#### RDCO TECHNICAL COMMENTS:

**Inspections Services** staff advise the 990 ft<sup>2</sup> (91.9 m<sup>2</sup>) addition was permitted under Building Permit 7830/19. The extension to the lower concrete deck and placement of concrete deck stairs do not require subsequent Building Permit approval as they are not governed under the BC Building Code and are considered landscaping.

In regards to the allan block retaining wall, the manufacturer's recommendations indicate a soil trench is adequate for lateral support. The as-built concrete pad was constructed running from wall base to wall base which is not included as part of the manufacturer's recommendations.

**Environmental Advisory Commission (EAC)** recommends the application not be supported.

#### Anecdotal Comments:

- The works must be in accordance with the original DP.
- Do not want to set a precedent for future non-compliance with DP approvals.
- The builder should have been working closely with the Environmental Monitor.
- Unauthorized works cannot continue to occur across the region and should not be supported.

**Unaffected RDCO Departments** include Fire Services, Environmental Services, and Parks Services.

#### **AGENCY REFERRALS:**

**Ministry of Forests, Lands, Natural Resource Operations and Rural Development Ecosystems Sections** advises that staff cannot recommend approval of the encroaching development as it does not meet the terms of the Riparian Areas Protection Regulation (RAPR).

Local governments, where the RAPR applies, are required to apply bylaw provisions that will ensure the regulatory standard is met or exceeded. If a local government issues permits for development that has been demonstrated to not meet the standard of the regulation, they will not have met this regulatory requirement.

Should the RDCO decide to issue a permit for work that doesn't meet the regulatory standard, the RDCO is taking on that responsibility and exposure (stepping out of the professional reliance framework).

**Ministry of Forests, Lands, Natural Resource Operations and Rural Development District Okanagan Shuswap Lands Team** advise all works must be above the surveyed present natural boundary (PNB). The proposed development and planting plan may require a *Water Sustainability Act* Notification application and this would require a survey of the PNB. It is unclear if the current retaining wall is trespassing on Crown Land.

**Unaffected Agencies** include Ministry of Transportation and Infrastructure and Interior Health Authority.

#### **ALTERNATE RECOMMENDATION:**

Should the Board choose not to support the staff recommendation, the following alternate recommendation is provided for consideration:

**THAT** the Regional Board conditionally approve Development Permit DP-18-14 Amendment subject to:

- The environmental report requirements outlined by Western Water Associates;
- The receipt of additional securities for the recommended mitigation works prior to issuance of the Development Permit; and
- Any required provincial approvals.

#### ***Considerations not applicable to this report:***

- *General*
- *Financial Considerations*
- *Organizational Issues*

## Attachment(s):

- Subject Property & Orthophoto Maps
- Original Footprint
- Addition Placement Plans prepared by KK Custom Designs
- Site Plan DP-18-14
- Site Plan DP-18-14 Amendment 1
- Site Plan DP-18-14 Amendment 2 (current application)
- Site Plan prepared by Russell Shortt Land Surveyors Ltd.
- Structural Assessment prepared by Bourcet Engineering Ltd.
- DP-18-14, January 23, 2019
- DP-18-14 Amendment 1, August 8, 2019