



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: May 25, 2020

SUBJECT: Development Permit Application (DP-20-01)
T. Robinson (Owner), 7379 Fintry Delta Road
Lot 86, District Lot 686, Osoyoos Division Yale District, Plan 15329
Central Okanagan West Electoral Area

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

Purpose: To consider issuance of a Development Permit for works associated with the construction of a single family dwelling, detached garage, and septic field.

Executive Summary:

The subject property is located within a Sensitive Aquatic Development Permit Area under the Rural Westside Official Community Plan (OCP). As outlined in the 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.

The property owner has submitted a development permit application for the construction of a single family dwelling, detached garage, and septic system. A number of technical reports prepared by qualified professionals have been received with respect to this property. The Environmental Advisory Commission does not recommend support for the development permit application as proposed, and Westbank First Nation has requested an archaeology assessment be completed as a condition of their consent. The Province does not recommend approval for the development as it does not meet the terms of the Riparian Areas Protection Regulation.

RECOMMENDATION:

THAT Development Permit Application DP-20-01 not be approved.

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

Prepared by: Brittany Lange, Environmental Planner

Implications of Recommendation:

Strategic Plan: Refusing the Development Permit application complies with the strategic priority “Environment” and the Regional Board’s action to reduce development activities within higher risk floodplain areas.

Policy: Refusing the Development Permit application complies with:

- Regional Growth Strategy Bylaw No. 1336
- Rural Westside Official Community Plan Bylaw No. 1274
- Riparian Area Protection Regulation

The application was submitted and processed in accordance with the RDCO Development Applications Procedures Bylaw No. 944.

Legal/Statutory Authority: The *Local Government Act*, 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.

Site Context:

The subject property is located in the community of Fintry Estates within the Rural Westside OCP. The Fintry Estates subdivision plan was approved by the Provincial Ministry of Transportation on June 9, 1965 prior to the incorporation of the Regional District of Central Okanagan in 1967.

The area consists of a mix of developed and vacant (residential) lots with limited community services and infrastructure. The parcel is bounded by Shorts Creek and Fintry Provincial Park to the north and east, Fintry Delta Road to the west, and residential housing to the south. The parcel is affected by Sensitive Aquatic and Wildfire Interface Development Permit Areas.

The subject property is characterized as an undeveloped, vacant lot with minimal vegetation in a rural subdivision and is immediately adjacent to Shorts Creek. The applicant is proposing to construct a single family dwelling, detached garage, and septic field in a proposed buildable area of approximately 389m².

Policy Considerations:**Regional Board Strategic Priorities 2019-2022****Environment**

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

Regional Growth Strategy Bylaw No. 1336

- Policy No. 3.2.8.3 “Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems”.

Rural Westside Official Community Plan Bylaw No. 1274:**Chapter 3 Natural Environment**

- 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”.

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”.

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. Active floodplains require leavestrips that start at the outer edge of the feature.

Appendix 6 – Kokanee Shorespawning Zones

- The mouth of Shorts Creek is considered a ‘red zone’ with very high habitat value. These areas are essential for the long term maintenance of fish and/or wildlife and are considered integral to the recovery and maintenance of Okanagan Lake Kokanee salmon populations.

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.

Environmental Considerations:**Okanagan Climate Projections Report**

The Regional Districts of the Okanagan Valley partnered with the Pacific Climate Impacts Consortium to develop a Climate Projections report for the Okanagan. This report provides the scientific foundation to make informed decisions that support community action and to better prepare for climate variations over the next 30 and 60 years. Wildfire, flooding, and drought have already tested local infrastructure, caused economic losses, and posed health risks to communities.

Based on these changes, there is a need to plan for a greater likelihood of more intense and hotter fires, increasing water shortages, and spring flooding. Findings indicate that the Okanagan can expect significant changes including:

- Warmer temperatures year-round;
- Summers will be considerably hotter;

- Increased duration of growing season;
- Warmer winter temperatures;
- Increased precipitation; and,
- Summer is expected to remain the driest season, and become drier.

The report indicates precipitation increases can be expected across all seasons, except summer. The largest increases in precipitation will take place during the spring and autumn months. This can lead to more frequent flooding and stress to ecosystems and infrastructure.

Regional Floodplain Management Plan

Flooding is a serious concern for the Central Okanagan and its developed areas and will only become more with the effects of climate change. In response to this risk, the three-phase Regional Floodplain Management Plan has been initiated with the purpose of reducing flood risk, improving emergency response, and increasing resiliency to climate change.

Shorts Creek is an active channel and is identified as one of the major watersheds within the Central Okanagan. While Shorts Creek has yet to be mapped and analysed for flood hazards and risk, it is considered a priority stream requiring further assessment.

Small Lot Rural Subdivision Environmental Assessment

In 2016, the Regional District engaged Ecoscape Environmental Consultants Ltd. (Ecoscape) to complete an overview environmental assessment of the Fintry Subdivision. The purpose of this assessment was to refine the existing Aquatic Ecosystem and Terrestrial Development Permit areas. The purpose was not to delineate site specific setbacks; however, Riparian Area Regulation (RAR) setbacks were determined for two different segments of Shorts Creek and recommended several 'No Build Areas' consistent with RAR determined setbacks.

It was recommended at the time that because of the immediate adjacency of Lots 86, 87, and 88 to Shorts Creek, and the potential for flooding in this area, the lots would be best served as preservation areas where natural floodplain regimes and riparian habitat could be restored.

Emergency Operations Centre

The Central Okanagan Emergency Operations Center (EOC) has responded to localized flooding of Shorts Creek along the Fintry Delta fan on several occasions, including the spring of 1997, June of 2012, May of 2017, and most recently in May of this year (2020). The flooding in 2017 resulted in evacuation orders for Fintry Provincial Park and evacuation alert for 90 properties located along Fintry Delta Road, Shorts Road, and Morden Road.

In 2012, the Regional Board was presented with a flooding update from the EOC Emergency Plan Coordinator along with a report completed by Don Dobson of Urban Systems regarding the on-going erosion of the south banks of the Shorts Creek channel. Immediate concerns included the risk of erosion impacting Fintry Delta Road, the only access in and out for residents in the area (see attached report).

Dobson's report concluded that the erosion was considered a high risk to public safety and urgent response was needed. As such, in 2013 the EOC was provided funding through the Province to construct permanent flood protection works along a section of Shorts Creek to protect the road infrastructure and the immediate lots adjacent to Fintry Delta Road.

Technical Considerations:

In 2016, a preliminary setback assessment was completed by Ecoscape to supplement the pending sale of the subject property. The report identified considerable environmental constraints which would result in limited development potential at the site. The assessment noted that due to the recent flooding/erosion control works, the course of Shorts Creek has been altered.

The assessment further identified a preliminary building envelope and recommended that further hydrogeological review was required prior to development of the site.

According to the February 2020 Environmental Assessment prepared by Ecoscape, the parcel currently has low ecological value and a high potential for riparian restoration. Furthermore, as per the May 14, 2020 updated site plan the proposed development footprint has been reduced, and will result in an approximately 18m² encroachment into the Streamside Protection and Enhancement Area (SPEA). Ecoscape has prescribed a riparian restoration planting plan for the area located outside of the proposed development footprint. Ecoscape concludes that, provided mitigation measures are adhered to, impacts on the aquatic resource values as a result of proposed works would be negligible and result in a net gain to riparian habitat.

Furthermore, a recent Floodplain Development Assessment was completed by Dobson Engineering Ltd. (Dobson) intended to address the recommended minimum setback of the dwelling from Shorts Creek and flood construction levels. According to the assessment, the report recommends a minimum flood construction level of 350.4m (3.5m above the surveyed natural boundary) which is higher than what is prescribed under Zoning Bylaw No. 871 (1.5m above the surveyed natural boundary) to provide appropriate flood protection. The floodplain setbacks as stipulated in the Zoning Bylaw would be met as the proposed dwelling is to be located beyond 15m from the present natural boundary of Shorts Creek.

Dobson's report further recommends that the residence be located towards the eastern portion of the lot so that the septic field can be placed as far from Shorts Creek as practical. Oland Engineering Ltd. has been retained to provide professional oversight and design for the on-site sewerage system at the subject property.

Dobson's report concludes that since the construction of the flood protection works completed by the EOC in 2013, the flood risks to the subject property are currently low. The report also notes that Shorts Creek is considered a fish-bearing stream with a unique run of Kokanee salmon. No works are proposed below the high water mark, as such; fisheries timing windows and works in and around a stream are not applicable to this proposal.

Additional Information:

Owner/Applicant:	T. Robinson
Legal Description:	Lot 86, District Lot 686, ODYD, Plan 15329
Address:	7379 Fintry Delta Road
Lot Size:	+/- 0.22 acres (890m ²)
Zoning:	R1 – Single Detached Housing
OCP Designation:	Residential – low density
Sewage Disposal:	Septic System
Water Supply:	Lower Fintry Delta Water Supply (Private)
Existing Use:	Vacant
Surrounding Uses:	North: Shorts Creek, Fintry Provincial Park South: Rural Residential East: Shorts Creek, Fintry Provincial Park West: Fintry Delta Road, Rural Residential
Fire Protection:	North Westside Fire Protection Area

In accord with the Development Applications Procedures Bylaw No. 944, the applicant submitted technical reports in accordance with the Rural Westside OCP (Appendix 2 and 5) as well as the RDCO Terms of Reference for Professional Reports.

Monitoring and Security

As a condition of the issuance of a Development Permit, Qualified Environmental Professionals (QEPs) must be retained for the duration of the proposed development to ensure compliance with the recommendations presented in the environmental assessment and flood hazard assessment as well as subsequent monitoring reports.

Monitoring and security (bonding) is 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. The QEP has estimated the costs associated with the current DP application for monitoring and plantings (56 plants) in the amount of \$3,370.00.

RDCO Technical Comments:

Planning Services note that the subject property is located within an active floodplain. As per the Climate Projections Report for the Okanagan Region, climate and precipitation is changing and increased precipitation and more flooding is to be expected.

Furthermore, local governments are required to apply bylaw provisions that will ensure that riparian setback standards are 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 Regional District issue a permit for work that does not meet the regulatory standard, this is outside of the professional reliance framework.

Inspection Services staff advise that, should the Development Permit receive approval from the Regional Board, a Building Permit application would be required and the Floodplain Regulations under Zoning Bylaw No. 871 would apply to this property.

Environmental Advisory Commission (EAC) recommends non-support for the development permit application (DP-20-01).

Anecdotal Comments:

- Concerns over the long term impacts of constraining an unstable creek with adjacent development;
- Do not want to make an exception for development within the riparian area and the SPEA;
- The property should be designated as a no-build zone, and as such, the RDCO should explore options to purchase adjacent lands along Shorts Creek;
- Insufficient information regarding septic system and concerns over phosphorus entering Shorts Creek; and,
- The issue of phosphorous should be addressed at a higher level by Interior Health Authority and/or the Provincial Health Authorities for any new septic system going in near a watercourse.

Agency Referral Comments:

Westbank First Nation advise that conditional approval is provided for the project provided that Regional District of Central Okanagan is able to meet the following conditions:

- To have WFN archaeology conduct assessment prior any development or ground disturbance (see attached letter).

Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Archaeology Branch note that according to Provincial records, there are no known archaeological sites recorded at the subject property. However, data is not currently available to the Province that describes the potential for previously unidentified archaeological sites to occur in the area. There is always a possibility for previously unidentified archaeological sites to exist on the property.

Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Ecosystems Branch noted that they cannot recommend approval of this development as proposed, as it does not meet the standards of the Riparian Areas Protection Regulation (RAPR). Encroachment into the Streamside Protection and Enhancement Area (SPEA) is not consistent with the RAPR except in cases of undue hardship. The latter is to be determined by the variance protocol outlined in the regulation (see attached letter).

Interior Health Authority staff reviewed this application and have no objections from the viewpoint of IHA policies and BC regulations. When a system is located less than 30m from a source of drinking water, IHA usually require a report from a hydrogeologist to support that the system will not cause a health hazard. This system is located greater than 30m from Shorts Creek and the Authorized Person has designed it in accordance with standard practice. At this time, IHA staff indicate their interests remain unaffected.

Ministry of Transportation and Infrastructure indicated their interests are unaffected by this proposed development permit as it is a residential proposal under 4,500 square meters in size and is setback over 4.5 metres from the Provincial road.

Unaffected Agencies include City of West Kelowna, Ministry of Forests, Lands, Natural Resource Operations, and Rural Development – Okanagan Shuswap Lands Branch, Fortis B.C., B.C. Hydro, Telus, and Shaw Cable.

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

Alternative Recommendation:

In consideration of the Development Permit Application, the Regional Board may approve the Development Permit with Conditions, not approve the Development Permit or defer a decision pending more information or clarification. Should the Board choose not to support the staff position, the following alternate recommendation is provided:

THAT the Regional Board conditionally approve Development Permit DP-20-01 and that the DP be subject to the following conditions:

- No further or variance in construction of, addition to or alteration of a building or structure; or alteration or clearing of land is to occur within the Development Permit Area as outlined in the Rural Westside Official Community Plan Bylaw No. 1274 without prior notification and approval by RDCO; other than that recognized and approved in this Development Permit. Any future amendments to the Development Permit may require recirculation to internal and external agencies and Regional Board approval.
- No further buildings, structures or improvements of any kind shall be constructed nor located within the 15m setback from the High Water Mark of Shorts Creek. And further, there shall be no removal or disturbance of any soil, vegetation, or trees (with the exception of weeds) from within the 30 m setback area without first obtaining the written consent of the RDCO.
- All construction, land clearing, mitigation, and restoration activities must be completed as per the recommendations contained in the Environmental Assessment prepared by Ecoscape Environmental Consultants Ltd., the Flood Hazard Assessment prepared by Dobson Engineering Ltd., and the on-site sewerage system design plans prepared by Oland Engineering Ltd..
- All individuals (e.g., owners, developers, equipment operators) involved in land-altering activities (e.g., contractors, landscaping, service installation) must be advised that if archaeological material is encountered during development, they must stop all activities immediately and contact the Provincial Archaeology Branch for direction.
- Further modifications including construction/alteration of retaining walls, groynes, and substrate modification must not occur at any time without further environmental assessment being conducted and appropriate approvals received from the Province in accordance with the *BC Water Sustainability Act* (Section 11).
- Registration of a restrictive (Floodplain) covenant under section 219 of the *Land Title Act* to limit the potential local government liability in floodplains. The covenant must restrict habitable space to no less than the recommended flood construction level of 350.4m.
- Registration of a restrictive (No-Build / No-Disturb) covenant under section 219 of the *Land Title Act*, restricting construction within the identified SPEA.
- Registration of a restrictive (Wildfire) covenant under section 219 of the *Land Title Act* to address wildfire hazard reduction measures.
- The property owner is responsible for complying with the conditions outlined in all covenants and statutory right of ways registered on title.

- Silt fencing must be installed between the proposed works/soil disturbance and adjacent sensitive areas to mitigate the risks to aquatic resources associated with runoff and sediment transport.
- The riparian and SPEA setback must be surveyed onsite by a legal land surveyor, staked, and clearly delineated to prevent encroachment. Brightly coloured snow fencing must be installed immediately adjacent the development footprint.
- Demolition debris and any fill material must not be stored or deposited within the riparian setback. Material not required for backfill must be transported offsite. All construction debris must be kept outside of the setback and must be removed from the property on a regular basis.
- In accordance with the RDCO Noxious Weed Control Bylaw No. 179, the owner or occupier of the land shall prevent the infestation of noxious weeds and cut down or otherwise destroy and mulch or remove all noxious weeds and plant with native grasses or other native vegetation.
- A detailed compensation and landscape restoration plan is to be submitted to and approved by the RDCO prior to commencement of any compensation works.

Considerations not applicable to this report:

- *Financial*
- *Organizational*

Attachment(s):

- Orthophoto & Subject Property Maps
- 1973-2017 Air Photos
- June 12, 2012 Shorts Creek Risk Assessment
- May 11, 2020 Updated Site Plan
- February 2020 Environmental & Floodplain Hazard Assessment
- August 2019 On-site Sewerage System Design
- March 2020 Preliminary Construction Drawings
- April 2, 2020 Letter from Westbank First Nation
- April 20, 2020 Letter from MFLNRORD Ecosystems Branch