



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: June 28, 2021

SUBJECT: Development Permit Application (DP-21-06)
Narasak Holdings Ltd. & K. Souter (Owner) c/o S. Souter (Agent)
Lot 1, District Lot 3842, ODYD, Plan KAP56666 – 7174 Fintry Delta Rd
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 relocation of an existing unauthorized accessory structure and habitat restoration.

Executive Summary:

The applicant is attempting to rectify the current non-compliance regarding an existing unauthorized accessory structure placed within the required floodplain setback along the foreshore of Okanagan Lake. While the application was precipitated due to a Stop Work Order, the landowner ceased construction and submitted the appropriate applications in order to comply with RDCO bylaws. As works will be conducted in the Sensitive Aquatic and Sensitive Terrestrial Development Permit area under the OCP, a Development Permit application is required.

An environmental report and habitat restoration plan has been prepared by a qualified environmental professional. The Environmental Advisory Commission recommends conditional support of the application, and the Province of BC has identified historic unauthorized placement of fill material along the foreshore of Okanagan Lake. Staff have reviewed the proposal and conclude that the proposed relocation of the accessory structure and associated habitat restoration adheres to the Aquatic Ecosystem Development Permit Objectives and Design Guidelines of the Rural Westside Official Community Plan.

RECOMMENDATION:

THAT the Regional Board conditionally approve Development Permit application DP-21-06 for applicant Narasak Holdings Ltd. & K. Souter located at Lot 1, District Lot 3842, ODYD, Plan KAP56666.

AND THAT the Permit be subject to the following conditions specified in 'Schedule A':

Schedule 'A'

Adherence to Development Plans:

- 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 Areas 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.
- No further buildings, structures or improvements of any kind shall be constructed nor located within the 15m setback from the High Water Mark of Okanagan Lake. Any works proposed within the 15m setback may require approvals from the Province in accordance with the *Riparian Areas Protection Regulation*. And further, there shall be no removal or disturbance of any soil, vegetation, or trees (with the exception of noxious weeds) from within the 30 m setback area without first obtaining the written consent of the RDCO.
- Further modifications including changes in and about a stream, 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).
- Development Permit (DP-21-06) has been issued exclusively for works associated with the relocation of the existing accessory structure, removal of concrete stairs and wooden walkway along the foreshore, removal of artificial turf lawn, as well as associated environmental monitoring and habitat restoration works.

Professional Reports:

- All construction, mitigation, and restoration activities must be completed as per the March 16, 2021 Environmental Assessment and Habitat Restoration Report prepared by Arsenault Environmental Consulting Ltd.

Monitoring:

- The land owner shall obtain the services of an Environmental Monitor to ensure the recommendations of the Development Permit are implemented and in accordance with the following schedule and conditions:
 - Pre-construction meeting with the contractor, owner, and Environmental Monitor;
 - Submit monitoring reports to RDCO as indicated by the Environmental Monitor;
 - Prepare a substantial completion report and submit to RDCO upon completion of construction and restoration works indicating substantial completion of the conditions and requirements of the Development Permit have been carried out;
 - In the event that greater disturbance occurs due to unforeseen circumstances, the Environmental Monitor will recommend further measures to protect/restore the natural integrity of the site and report on these measures to the RDCO.

Security:

- The applicant shall post a letter of credit or bank draft in the amount of \$2,825.00 in order to ensure completion of works and associated remediation landscaping within 1 year of the issuance of the Development Permit. Ninety per cent (90%) of this amount is refundable upon completion of said works and receipt of a substantial completion report signed by a registered professional, and to the satisfaction of Regional District Community Services staff.
- The remainder of the bond shall be held for a minimum of two (2) years (growing seasons) to ensure that the required mitigation has been fully implemented and demonstrated to function (ecologically or as designed). The maintenance bond may be held for longer periods if, throughout the initial 2-year period the persistent failure of the works is documented.

Further Conditions or Restrictions:

- The landowner/applicant must apply for and receive a building permit to the satisfaction of the RDCO Building Inspection Services.
- The landowner/applicant must apply for and receive the appropriate approvals from the Province of BC in accordance with the BC *Water Sustainability Act* (Section 11).
- The property owner is responsible for complying with the conditions outlined in all covenants and statutory right of ways registered on title.
- The riparian setback area must be surveyed, staked, and clearly delineated to prevent encroachment.
- Prior to any disturbance on site, the contractor is required to install silt fencing around the development footprint adjacent to the foreshore area to provide erosion and sediment control.
- Construction debris and materials must not be stored or deposited within the riparian setback and must be removed from the property on a regular basis.
- A Site Survey / Building Location Certificate is required to be submitted to the RDCO once the structure relocation has been completed.
- Best Management Practices are to be used as a means to protect the riparian area of Okanagan Lake.
- A detailed and formal landscape plan that includes additional plantings in the riparian area must be prepared by a qualified professional and submitted to and approved by the RDCO prior to commencement of any landscape works.
- Should clearing activities be required during the identified avian nesting period (March 31 – August 15), pre-clearing surveys must be conducted by the EM to identify active nests and other critical habitat features. Clearing and other construction activities must be conducted within 72 hours following the completion of the pre-clearing nest surveys. Additional buffers and no-disturbance zones may be required at this time.
- All individuals (e.g., owners, developers, equipment operators, landscapers) involved in land-altering activities 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.
- All individuals (e.g., owners, developers, equipment operators, landscapers) involved in land-altering activities must ensure they do not block access into and out of the Fintry Community Park and boat launch during the construction works.
- 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.

Respectfully Submitted:



Todd Cashin, Director of Community Services

Approved for Board Consideration



Brian Reardon, CAO

Prepared by: Brittany Lange, Environmental Planner

Implications of Recommendation:

Strategic Plan:	Conditional approval of 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 and support efforts to reduce our environmental footprint.
Policy:	<p>Conditional approval of the Development Permit application complies with:</p> <ul style="list-style-type: none">• Regional Growth Strategy Bylaw No. 1336• Rural Westside Official Community Plan Bylaw No. 1274• Central Okanagan Lake Foreshore Plan <p>The application was submitted and processed in accordance with the RDCO Development Applications Procedures Bylaw No. 944.</p>
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.

Site Context:

The subject property is located within the community of Fintry Estates. The area consists of a mix of developed and vacant (residential) lots and is within the North Westside Fire Protection Area. The parcel is bounded by Westside Road, Okanagan Lake to the east, Fintry Community Park and Fintry Delta Road to the north, and residential housing to the south.

The parcel is affected by Sensitive Aquatic, Sensitive Terrestrial, Hillside, and Wildfire Interface Development Permit Areas 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.

History:

The Fintry Estates subdivision plan was approved by the Ministry of Transportation and Infrastructure in 1965 prior to the incorporation of the Regional District of Central Okanagan in 1967. The subject property was developed in the early 1970’s and historic mapping indicates that the foreshore at this location has been altered overtime with the placement of fill, construction of rock retaining walls, fire pit, rock groyne, and a cement staircase. RDCO staff understand that the existing dock has a license for private moorage, however, the rock groyne and fill is trespassing on Crown land and has not been authorized by the Province.

In June of 2020, RDCO staff received complaints that recent construction had occurred very close to Okanagan Lake. Subsequently, Building Inspections staff visited the subject property and issued a Stop Work Order along with multiple Bylaw Offence Notices. The property owners were advised to take the appropriate steps required to conform to RDCO Bylaws. As such, an application for a Development Permit was submitted for works within a sensitive aquatic area.

Proposal:

Currently, the property is developed with a house, detached garage, water pump house, and unauthorized accessory structure (sauna). The disturbance footprint associated with the sauna, deck, and stairs is approximately 35m² and currently located 6m from the natural boundary of the Lake.

Under the current proposal, the owner intends to remove the unauthorized structure built within the required floodplain setback of Okanagan Lake. The sauna is proposed to be relocated outside of the required 15m setback to an area of previous disturbance and the size of the building reduced. The staircase is proposed to remain within the riparian setback area to provide beach access. Approximately 21m² of the disturbed riparian area will be restored with native tree and shrub plantings.

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

The Regional Board has identified and prioritized protection of the environment through various regional plans and actions, including:

- Prioritizing a reduction in new construction in higher risk floodplain areas; and,
- Supporting efforts to reduce our environmental footprint and adapt to climate change.

Regional Growth Strategy Bylaw No. 1336

The following policies of the RGS are applicable to the proposal:

- 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:

Various objectives and policies on the OCP address a core principle for this unique area which is to retain, protect, and enhance the current rural character. The following policies and guidelines of the OCP are applicable to the proposal:

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”.

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”.

Appendix 2 – Aquatic Ecosystem Development Permit Objectives and Design Guidelines

- Riparian vegetation should be maintained where it is present, and restored where it has been lost.
- 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.

Central Okanagan Lake Foreshore Plan

The Central Okanagan Lake Foreshore Plan outlines the objectives and policies laid out by the local community and water resource agencies for the management, development, and use of Okanagan Lake shoreline, including:

- When development is proposed adjacent to the foreshore and is situated within a designated floodplain, it shall adhere to Provincial floodplain regulations and to Regional District setbacks and flood elevations.
- Within development areas, shorelines shall be maintained in a predominantly natural state with natural riparian tree cover and ground vegetation.
- Developments shall avoid the use of retaining walls at the water's edge and introduce more natural treatment, including rocks and native riparian plantings set into a stable slope (2:1 maximum).

Environmental Considerations:

Technical Considerations:

In accord with the Development Applications Procedures Bylaw No. 944, the applicant submitted technical reports in accordance with the OCP Development Permit Guidelines as well as the RDCO Terms of Reference for Professional Reports.

Environmental Assessment & Habitat Restoration Report

An Environmental Assessment and Habitat Restoration plan has been completed by Arsenault Environmental Consulting Ltd. According to Arsenault's report, the location of the existing unauthorized structure is in an area classified as having high to moderate environmental sensitivity and conservation values. The disturbance area will need to be restored however the exact extent of restoration required will not be known until the building is removed.

Furthermore, the report indicates that the specific location where the sauna will be relocated is in an area of previous disturbance and no further vegetation is expected to be removed or impacted during the construction and relocation activities.

It is Arsenault's professional opinion that, provided best management practices and mitigation measures are followed, impacts to intact ecosystems will be minimal and disturbed riparian areas will be restored to provide proper ecological function for fish and wildlife.

In association with the Development Permit, monitoring and security (bonding) is required as set out in Bylaw No. 944 (Procedures Bylaw). Arsenault has estimated the costs associated with the current DP application for environmental monitoring and mitigation plantings in the amount of \$2,825.00.

Additional Information:

Owner/Applicant:	Narasak Holdings Ltd. & K. Souter (Owner) c/o S. Souter (Agent)
Legal Description:	Lot 1, District Lot 3842, ODYD, Plan KAP56666
Address:	7174 Fintry Delta Road
Lot Size:	+/- 9.93 acres (4.0 hectares)
Zoning:	RU2 – Rural 2
OCP Designation:	Large Holding
Sewage Disposal:	Septic System
Water Supply:	Okanagan Lake
Existing Use:	Rural Residential
Surrounding Uses:	North: Fintry Community Park / Fintry Delta Road South: Residential East: Okanagan Lake West: Westside Road, Residential
Fire Protection:	North Westside Fire Protection Area

RDCO Technical Comments:

Inspection Services staff advise that, should the Development Permit receive approval from the Regional Board, a Building Permit application would be required for the demolition and relocation of the existing accessory structure.

Parks Services staff noted that Fintry community park is located directly adjacent to the subject property. Regional Parks operates the 'Fintry Access #1' as a community park and boat launch at 7200 Fintry Delta Road. The owner and their contractors must ensure they do not block access into and out of the park and boat launch with equipment and vehicles during the construction works proposed under the application.

Environmental Advisory Commission (EAC) recommends support for the development permit application with the following conditions:

- Additional plantings be incorporated into the restoration plan where the sauna and structures are removed.
- Removal of the artificial turf lawn and restoration of the area with native plant species.
- Removal of the wooden walkway past the foot wash station and restoration of the area with native plant species.
- Removal of the concrete slab stairs along the foreshore of Okanagan Lake and replace with rocks or other suitable native plant species.

Agency Referral Comments:**Ministry of Forests, Lands, Natural Resource Operations, and Rural Development:**

Okanagan Shuswap Lands Branch has advised that this work would require a Section 11 *Water Sustainability Act* application for "works in and about a stream". All structures, including footings, associated with the sauna and deck must be located behind the present natural boundary. The Provincial Lands Branch further requests that the proponent indicate their plans to address the other trespass and Crown land encroachments including the rock groyne access to the dock and the expired/abandoned tenure for foreshore fill north of the dock, stairs, rock wall(s), and concrete patio.

Archaeology Branch staff note that according to Provincial records, there are no known archaeological sites recorded at the subject property. However, archaeological modelling for the area indicates there is high potential for previously unidentified archaeological sites to exist on the property and recommends engaging an eligible consulting archaeologist prior to any land-altering activities. The waterfront location of the property also increases the potential for unknown/unrecorded archaeological deposits. If archaeological material is encountered during development, they must stop all activities immediately and contact the Archaeology Branch.

Unaffected Agencies include Interior Health Authority, Westbank First Nation, B.C. Hydro, and Shaw Cable.

Unaffected RDCO Departments include Fire Services and Environmental 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 Development Permit Application DP-21-06 not be approved.

Considerations not applicable to this report:

- *Financial*
- *Organizational*
- *External*

Attachment(s):

- Subject Property & Orthophoto Maps
- Images of Unauthorized Structure
- August 13, 2020 Survey Certificate
- January 28, 2021 Site Survey Plan
- March 16, 2021 Environmental Report