



COUNCIL REPORT

To: Paul Gipps, CAO

Date: February 9, 2021

From: Hailey Rilkoff, Planner II

File No: DP 20-29 &
FEX 20-01

Subject: **DP 20-29 & FEX 20-01, Aquatic Development Permit & Floodplain
Exemption Application, 1905 Jennens Road**

RECOMMENDATION

THAT Council authorize the issuance of an Aquatic Development Permit (DP 20-29) for Lot C, DL 434, ODYD, Plan EPP5742 (1905 Jennens Road) for a proposed single detached dwelling and restoration works within the identified Streamside Protection and Enhancement Area subject to the following conditions:

- A Site Alteration Permit from Archaeology BC be approved prior to recommencement of any work on the property, including proposed restoration works; and

THAT issuance of DP 20-29 be withheld pending the receipt of a landscape security for the proposed restoration plan attached to DP 20-29 within Schedule C in the amount of \$12,033; and

THAT Council approve the Floodplain Exemption (FEX 20-01) to S. 3.24 of Zoning Bylaw No. 0154 for Lot C, DL 434, ODYD, Plan EPP5742 (1905 Jennens Road) for the construction of a single detached dwelling subject to the following conditions:

- A minimum of 12.3 m setback is provided from the top of bank of McDougall Creek to the foundation of the proposed dwelling; and
- The underside of the floor system shall meet or exceed 344.2 m; and further

THAT issuance of FEX 20-01 be withheld pending the registration to title of an indemnity covenant.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity - Quality, innovative urban development. (Council's 2020-2022 Strategic Priorities).

The applicant has applied for an Aquatic Development Permit and Floodplain Exemption to permit the construction of a new single detached dwelling on the subject property. Development is proposed within the 30m Riparian Assessment Area of Okanagan Lake and McDougall Creek, which includes both the construction of the new home as well as riparian restoration due to historical unauthorized site disturbances. A Floodplain Exemption is required to reduce the required horizontal setback from McDougall Creek for the home, which will meet the Flood Construction Level required by the City's Floodplain Regulations and the submitted Flood Hazard Assessment.

ADJACENT ZONING & LAND USES		
North	^	R1 – Single Detached Residential
East	>	R1 – Single Detached Residential
West	<	R1 – Single Detached Residential
South	v	W1 - Recreational Water Use (Okanagan Lake)

PROPERTY MAP



DISCUSSION

Subject Property

The subject property is just under 1 acre and was historically developed with a single detached dwelling. The property is adjacent to Okanagan Lake and McDougall Creek runs adjacent to and partially through the property. The mouth of McDougall Creek at Okanagan Lake is at the south-west corner of the property. A majority of this property is within the Riparian Assessment Area and the City's Aquatic Development Permit Area due to the adjacent creek and lake.

History

The owner, through agents, has been discussing redevelopment proposals for the property with City staff since 2012. The subject property has had significant disturbance within the streamside protection and enhancement areas (SPEA's) of both Okanagan Lake and McDougall Creek without the required municipal or provincial approvals.

Historical Disturbances

It was noted by City staff in 2012 that tree/vegetation removal around the mouth of McDougall Creek had taken place sometime in 2011. No enforcement action was taken at that time.

In 2017, a complaint was submitted in relation to an excavator working adjacent to McDougall Creek on the subject property. A Natural Resource Violation (NRV) was issued by the Ministry of Forests, Lands and Natural Resource Operations and Rural Development (FLNRORD) for significant works in stream of McDougall Creek and infill of the foreshore of Okanagan Lake without authorization under the *Water Sustainability Act*. It is understood by staff that a ticket was not issued by the Province in regard to the violation.

The City's Bylaw Enforcement Department was also involved in 2017 due to the works completed without an Aquatic Development Permit (DP). The owner was directed to work with City staff in order to obtain a Development Permit for the works completed without a permit and future desired landscaping works.



Figure 1 - Works along McDougall Creek in 2017

DP 18-19 & FEX 18-02

In 2018, an application was submitted for an Aquatic DP and Floodplain Exemption for removal of the existing single family dwelling/garage and construction of a new single family dwelling, garage, pool & cabana within 15m of McDougall Creek.

As part of the application for DP 18-19 in 2018, an Environmental Impact Assessment (EIA) was submitted which recommended a restoration area of 1,155 m² to enhance areas within the SPEA's of Okanagan Lake and McDougall Creek that were subject to the historic disturbances.

The application progressed through the technical review process and was being prepared for consideration of Council, but was ultimately withdrawn by the applicant.

2020 Demolition and Building Permits

A Demolition Permit was issued in March 2020 (BP2019-0271) for the existing dwelling. No environmental monitoring or riparian area protection measures were required as a condition of the Demolition Permit.

A Building Permit was issued in April of 2020 for a renovation of the existing dwelling. Subsequently, no environmental monitoring or riparian area protection measures were required as a condition of the Building Permit. In August of 2020, construction on the property was halted as the scope of work for the renovation had changed from the approved building permit. In addition, it was determined an Aquatic Development Permit was required.

Proposal

The current application proposes to construct a new house on the existing foundation (*Attachment 3*). An Aquatic DP is required for works within 30m of McDougall Creek. A Floodplain Exemption is required as the existing foundation does not meet the 15.0 m horizontal floodplain setback requirement from McDougall Creek.

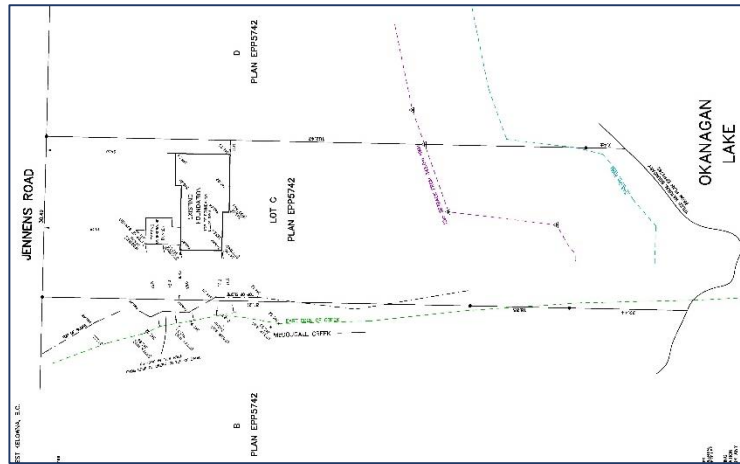


Figure 2 - Proposed Site Plan

Policy & Bylaw Review

Provincial Flood Hazard Area Land Use Management Guidelines

The Province allows local governments the authority to grant flood hazard area land development exemptions if the exemptions are consistent with the provincial guidelines. Under the guidelines, setback requirements should not be reduced unless a serious hardship exists and no other reasonable option are available. The proposed redevelopment will not increase the non-conforming floodplain setback, as the new house is proposed to be redeveloped on the existing footprint/foundation of the historic single detached dwelling.

Riparian Areas Protection Regulation

The proposal is subject to the Provincial Riparian Areas Protection Regulation (RAPR). Under RAPR a proposed development meets the riparian protection standard if no development occurs within the Streamside Protection and Enhancement Area (SPEA) and appropriate measures to protect the SPEA are applied. The Environmental Impact Assessment (EIA) submitted has identified the SPEA for the subject property to be 15.0 m from the High Water Mark of Okanagan Lake and 10.3 m from McDougall Creek.

Site disturbance is proposed within 30m of McDougall Creek, but is not proposed within the SPEA. The existing access road within the McDougall Creek SPEA is identified in the EIA as an area of human disturbance which can be grandfathered and continued to be used. Restoration is proposed within the McDougall Creek SPEA to address unauthorized vegetation removal in the past.

Official Community Plan Bylaw No. 0100

The Subject Property is within the City's Aquatic and Terrestrial Development Permit Areas (DPA's). The DPA Guidelines encourage intact ecosystems to be maintained where possible and a leavestrip for the protection and restoration of the riparian ecosystem to remain undisturbed near watercourses. The guidelines aim to protect native vegetation by requiring a re-vegetation plan prepared by a Qualified Environmental Professional (QEP) where a site has previously been cleared. The guidelines call for plans for restoration where the riparian area has been damaged by previous development and removal of invasive weeds.

Zoning Bylaw No. 0154

Section 3.24 of the Zoning Bylaw speaks to development located within floodplain areas. The underside of a floor system or top of any pad supporting any space or room that is used for dwelling purposes, business, or the storage of goods which are susceptible to damage by floodwater shall be located a minimum of 343.66 metres above Geodetic Survey of Canada (GSC) for a parcel abutting Okanagan Lake and 1.5m above the natural boundary of any stream.

The regulations also require setbacks of 15.0 m from the natural boundary of Okanagan Lake or a stream for any landfill required to elevate a floor system to the required elevations. The existing foundation is located at a distance of 12.3 m from McDougall Creek.

Table 1 - Zoning Bylaw No. 0154 Floodplain Regulations

Floodplain Regulations	S 3.24 Requirements	Proposed
Underside of any floor system	343.66 m elevation &	<i>344.3 m proposed (344.2 m proposed FCL)</i>
	1.5 m above natural boundary of stream	
Landfill placed to elevate a floor system	15.0 m from natural boundary of Okanagan Lake	<i>~40 m from natural boundary of Okanagan Lake</i>
	15.0 m from natural boundary of a stream	<i>12.3 m from natural boundary of McDougall Creek</i>

This proposal requires a Floodplain Exemption in order to reduce the required 15 m setback from McDougall Creek to 12.3 m for the elevated floor system of the dwelling, as recommended in the Flood Hazard Assessment prepared by the professional engineer (See Technical Review and *Attachment 5*).

Technical Review

Environmental Impact Assessment

An Environmental Impact Assessment (EIA) was prepared by Karen Grainger RPBio (*Attachment 4*). The EIA indicates that site disturbance and vegetation removal activities have taken place within the 30m Riparian Assessment Area since 2019, however they have not encroached within the identified Streamside Protection and Enhancement Area's (SPEA's).

The EIA assessed the impacts of the development works done without an Aquatic DP. It was noted there were no measures to protect the riparian area from potential erosion and sediment transport and that tree/vegetation removal within the RAA (but outside the SPEA) may have disrupted migratory nesting birds as there was no nesting activity assessment completed by a qualified environmental professional (QEP).

An area of ~600 m² along McDougall Creek (Figure 3) is proposed to be restored with native plantings at a spacing of 1 plant/m (~ 600 plants) and a cost estimate has been provided for the restoration. A Security in the amount of \$12,033.01 (125% of the cost estimate provided) will be required to be provided prior to issuance of a Development Permit.



Figure 3 - Proposed Restoration Area

Flood Hazard Assessment

A Flood Hazard Assessment was prepared by Dobson Engineering Ltd., dated October 19, 2020 (*Attachment 5*). The assessment identifies two flood hazards on the property: McDougall Creek and Okanagan Lake. The assessment considers the flood risk to the proposed dwelling to be low from McDougall Creek, as the top of bank of the stream ranges between 2.1 m to 2.4 m above the natural boundary of the stream, and the left bank has been armoured with riprap and has established vegetation. The assessment considers the flood risk to the proposed dwelling to be low from Okanagan Lake, as the dwelling is setback approximately 40 m from the natural boundary.

The assessment recommends a Flood Construction Level (FCL) of 344.2 m to address the flood risks. The assessment recommends a reduced setback from the natural boundary of the creek from 15.0 m required to 12.3 m, which is the setback to the existing foundation. Access is also confirmed to be maintained by the proposal in order for equipment to safely access the creek channel during a flood event. No flood mitigation works are proposed. The elevation of the lower floor is proposed to be raised from the existing elevations shown in Figure 4 to exceed the recommended 344.2 m FCL.

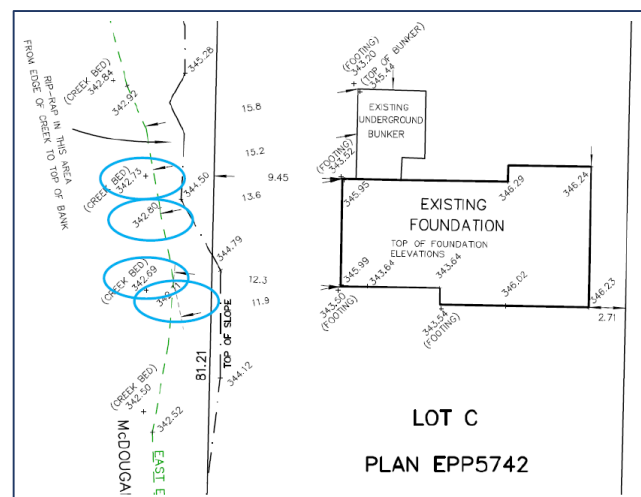


Figure 4 – Existing Foundation Setback from McDougall Creek and Elevations

A covenant will be required to be registered to the title of the subject property containing an “indemnity” clause to protect the City from the financial consequences in the event of flood damage to the proposed home. It is advisable that the covenant is registered against the title of the subject property under S. 219 of the *Land Titles Act* specifying the

conditions that would enable the land to be safely used for the use intended and granting indemnity to the City. This covenant will reference the Flood Hazard Assessment prepared by Dobson Engineering Ltd. and will essentially transfer liabilities from potential flood damage to the property owner.

Archaeological Review

A review from a Registered Professional Archaeologist was submitted at the request of staff after referral responses from the Province indicated that the property has an identified archaeological site within it. The proposed riparian restoration overlapped with the identified archaeological site area. To ensure that the proposed restoration can be completed within the site area, the applicant provided a report from a Registered Professional Archaeologist outlining the permitting requirements under the *Heritage Conservation Act* and recommendations including visual monitoring. This desktop review was prepared by Similkameen Consulting and dated January 25, 2021.

Having all required permits or approvals from the Archaeology Branch prior to recommencing work on the property (construction and restoration works) is a recommended condition of the Development Permit.

Building Permit Amendment

A Building Permit Amendment application is in stream to address the changes to the issued Building Permit for the development. The scope of the permit is proposed to change from a renovation to new construction and the new home will include a secondary suite. It was identified that the existing Root Cellar shown on the development drawings does not meet the recommended FCL from the Flood Hazard Assessment, which will be addressed through the Building Permit review process. Issuance of a Building Permit Amendment would be contingent upon approval and issuance of an Aquatic DP and Floodplain Exemption.

Local Government Act

The *Local Government Act* empowers local governments to exempt development from the requirements of a floodplain setback or flood construction elevation in relation to a specific parcel of land or a use, building or other structure on the parcel of land, if the local government considers it advisable. Decisions on floodplain exemptions should include consideration on the following:

- That the exemption is consistent with Provincial Flood Hazard Area Land Use Management Guidelines (Section 524(7)(a) of the *Local Government Act*); or
- The local government has received a report from a certified professional (in geotechnical engineering) that the land may be used safely for the use intended (Section 524(7)(b) of the *Local Government Act*).

Under this authority, local governments may also impose conditions considered necessary or advisable.

Provincial Flood Hazard Area Land Use Management Guidelines

The Province allows local governments the authority to grant flood hazard area land development exemptions if the exemptions are consistent with the provincial guidelines. The Guidelines are based on the policies and procedures established over the life of the provincial flood hazard management program and must be considered by local governments in making bylaws under Section 524 of the *Local Government Act* and address the following:

- Permit the local government to require engineering reports assessing flood hazards and require restrictive covenants;
- Provide guidance on whom is deemed to be a qualified professional (must have geotechnical expertise) to report on flooding hazards;
- Provide the scope of work required for flood hazard assessment reporting; and
- Stipulate acceptable parameters for conditions of hardship, which may warrant that a local government agrees to site-specific modifications to floodplain regulations. The hardship must be of a serious nature and cannot include economic circumstances or design and siting preferences.

DISCUSSION

The application is proposing restoration works to address the historical disturbance and vegetation removal on the site. The Environmental Impact Assessment (EIA) proposes 600 m² of restoration works within the Streamside Protection and Enhancement Area (SPEA) to compensate for previous development impacts.

The Aquatic DP will outline environmental protection measures for the aquatic ecosystem once construction recommences on the property and environmental monitoring will be in place. The Aquatic DP will also require approvals from the Archaeology Branch for site alteration prior to any of the proposed works to commence. The Site Alteration Permit will ensure that any required archaeological monitoring will be in place.

The Flood Hazard Assessment recommends a Flood Construction Level (FCL) 0.54m higher than what is currently regulated by the City's Zoning Bylaw, and the reduced floodplain setback is no less than where the existing foundation sits on the property (12.3 m). A covenant will be registered on the property's title indemnifying the City in the event the proposed dwelling is damaged due to a flood event.

CONCLUSION

It is recommended that Council approve the Development Permit and Floodplain Exemption to allow the construction of a new single detached dwelling. Staff have worked with the applicant to achieve a restoration plan to address the historic disturbances along McDougall Creek. The applicant has provided professional reports from a Registered Professional Biologist, Archaeologist and Professional Engineer to support their proposal and provide recommendations for the proposed works. Both Environmental and Visual Monitoring will be required during the duration of construction and restoration activities,

as well as additional permits are required from the Archaeology Branch prior to commencing the proposed restoration. A covenant will be registered to the title of the subject property indemnifying the City in the event the new home is damaged due to a flood event.

Alternate Motion:

THAT Council deny the issuance of an Aquatic Development Permit (DP 20-29) for Lot C, DL 434, ODYD, Plan EPP5742 (1905 Jennens Road); and

THAT Council deny the Floodplain Exemption (FEX 20-01) to S. 3.24 of Zoning Bylaw No. 0154 for Lot C, DL 434, ODYD, Plan EPP5742 (1905 Jennens Road).

REVIEWED BY

Brent Magnan, Planning Manager

Mark Koch, Director of Development Services

Shelley Schnitzler, Legislative Services Manager/Corporate Officer

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes ☒ No ☐

Attachments:

1. Draft DP 20-29 & FEX 20-01
2. Site Plan
3. Development Drawings
4. Environmental Impact Assessment & Restoration Cost Estimate
5. Floodplain Hazard Assessment