



## COUNCIL REPORT

To: Mayor and Council

Date: July 27, 2021

From: Paul Gipps, CAO

File No: DP 20-35, FEX 21-01

Subject: **DP 20-35, FEX 21-01; Development Permit with Variance and Floodplain Exemption; 631 Westside Road**

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### RECOMMENDTION

**THAT** Council authorize the issuance of an Aquatic Ecosystem, Hillside, and Sensitive Terrestrial Ecosystem Development Permit for the demolition and subsequent re-construction of a single detached dwelling at 631 Westside Road with a variance to S.10.4.5(g).3 of Zoning Bylaw No. 0154 to reduce the minimum setback to the interior parcel boundary from 1.5 m to 0.1 m; and

**THAT** Council approve a Floodplain Exemption to S.3.24.3(c) of Zoning Bylaw No. 0154 to permit a foundation to be located at a 3.5 m horizontal distance from the natural boundary of a stream, on the condition that the applicant enter into an indemnity covenant with the City, and in accordance with the attached permit (*Attachment 1*).

### STRATEGIC AREA OF FOCUS

Economic Development and Prosperity (Council's Strategic Priorities 2020-2022)

### BACKGROUND

This applicant is seeking an Aquatic, Terrestrial, and Hillside Development Permit to demolish and subsequently reconstruct a single family dwelling located adjacent to Luluwap Creek and Okanagan Lake. Although located further away from the creek than the existing foundation, at 3.5 m, the proposed foundation requires a floodplain exemption replacement as it is within 15 m from the natural boundary of the creek. The dwelling is also proposed to be expanded opposite the creek, therefore a variance is requested to reduce the minimum setback to the interior parcel boundary from 1.5 m to 0.1 m.

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PROPERTY DETAILS	
Address	631 Westside Road
PID	066-226-523
Folio	36414533.036

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<b>Lot Size</b>	2,387 m <sup>2</sup>		
<b>Owner</b>	Todd Simpson	<b>Agent</b>	N/A
<b>Current Zoning</b>	Single Detached Residential (R1)	<b>Proposed Zoning</b>	N/A
<b>Current OCP</b>	Single Family Residential	<b>Proposed OCP</b>	N/A
<b>Current Use</b>	Singe Detached Dwelling	<b>Proposed Use</b>	Demo and construction of Single Detached Dwelling
<b>Development Permit Areas</b>	Hillside, Aquatic, Terrestrial		
<b>Hazards</b>	Aquatic and Terrestrial, Hillside		
<b>Agricultural Land Reserve</b>	No		

#### ADJACENT ZONING & LAND USES

<b>North</b>	^	Parks and Open Space / Raymer Regional Park (P1)
<b>East</b>	>	Okanagan Lake
<b>West</b>	<	Bear Creek Road
<b>South</b>	v	Single Detached Residential (R1)

#### NEIGHBOURHOOD MAP



#### PROPERTY MAP



## **Legislative Requirements**

### **Local Government Act**

S.498 of the *Local Government Act* enables Council to issue a development variance permit that varies, in respect of the land covered in the permit, the provisions of the Zoning Bylaw.

S.524 of the *Local Government Act* enables Council to grant an exemption to development from the requirements of a floodplain setback 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, subject to consideration of particular factors (i.e. Flood Hazard Assessment). Under this authority, local governments may also impose conditions considered necessary or advisable.

### **Community Charter**

The *Community Charter* stipulates that where construction on lands subject to flood are proposed, a Building Inspector may require reporting by a qualified professional stating that the land may be used safely for the use intended. The Inspector is required to withhold issuance of a Building Permit where a qualified professional determines the said use is not safe.

### **Provincial Flood Hazard Area Land Use Management Guidelines**

Provincial guidelines state that the local government has the authority to alter any bylaw condition to best match the flood hazard provided the level of protection is not altered. The guidelines stipulate acceptable parameters respecting consideration of hardship conditions which may warrant local government agreement 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**

### **Background**

The subject property is located at 631 Westside Road and is accessed by a private lane that intersects the adjacent Raymer Regional Park lands to the north. The property contains steep hillsides, Luluwap Creek, and is directly adjacent to Okanagan Lake to the east.

The applicant has been in discussion with the City since 2018 to address issues related to a failing foundation. Originally, a joint application was submitted with the adjacent property, 639 Westside Road; however, due to timing, the owner/applicant of 631 Westside Road has decided to advance their application independent of their neighbor.

Submission of the original application in 2019 included geotechnical and environmental reports, as well as structural and floodplain hazard assessments. All of the reports, as well as multiple staff site visits, indicated evidence that the dwelling was experiencing

significant settlement. The reports have recommended removal and replacement of the foundation rather than remediation.

### Proposal

This application is proposing to demolish the existing dwelling, including foundations, and reconstruct a single family dwelling within an Aquatic, Hillside and Terrestrial Development Permit Area. Due to the limited developable area, the applicant is requesting a variance to the interior parcel boundary setback from 1.5 m to 0.1 m, the boundary shared with the Raymer Regional Park. The proposal also includes replacing and relocating the building foundation from 1.4 m to 3.5 m (horizontal distance) from the natural boundary of the creek. This requires a floodplain exemption as the new foundation, although sited a further distance from the creek, is less than the minimum 15.0 m required by the City's Zoning Bylaw (*Figure 1, Attachment 2*).

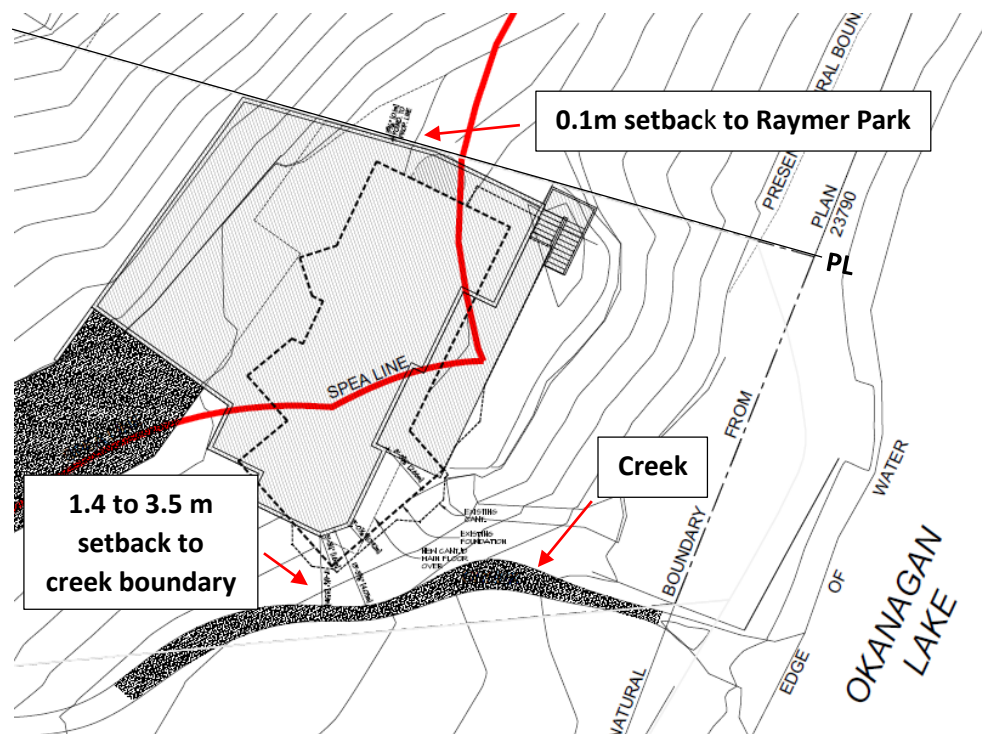


Figure 1: site plan

### Policy and Bylaw Review

#### **Official Community Plan Bylaw No. 0100**

The proposed use is consistent with the OCP's Land Use Designation of Single Family Residential, which is intended to serve a diversity of low density housing types appropriate to areas in which they are located.

The subject property is contained within the City's Aquatic and Sensitive Terrestrial Ecosystem Development Permit Areas (DPAs), as it is a waterfront property. This DPA is in line with Provincial Riparian Areas Protection Regulations (2019) and prioritizes the protection and preservation of riparian areas in order to maintain healthy watercourse

environments, as well as protect private property from flooding and potential loss of land due to channel erosion and instability.

The property is also subject to a Hillside DPA as it contains slopes greater than 20%. This requires a geotechnical review prior to site development and a permit to commit development to site-specific recommendations during construction.

#### **Zoning Bylaw No. 0154**

The subject property is zoned Single Detached Residential Zone (R1), which accommodates low density single detached dwelling residential use on parcels of land that are 550 m<sup>2</sup> and larger.

S.10.4.5(g).3 of the Zoning Bylaw requires that all buildings and structures are setback from the interior parcel boundary by minimum 1.5 m. Due to the topography and sensitive aquatic habitat contained within and adjacent to the property, the applicant is requesting a variance to this section of the bylaw to reduce the interior setback from 1.5 m to 0.1 m to maximize the building envelope furthest from the existing aquatic features.

All parcels abutting a body of water are subject to the City's Floodplain Regulations. S.3.24.1 of the Zoning Bylaw states that:

*The underside of any floor system, and 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 above the following levels:*

- a) 343.66 m above Geodetic Survey of Canada datum of parcel abutting Okanagan lake; and*
- b) 1.5 m above the natural boundary of any stream.*

S. 3.24.3 states that any landfill placed to elevate a floor system or pad to achieve levels specified in Section 3.24.1 shall be sited at least:

- a) 15.0 m from the natural boundary of Okanagan Lake; and*
- b) 15.0 m from the natural boundary of any steam.*

The existing dwelling has been identified to be above the required 343.66 m elevation and at exactly 1.5 m above the natural boundary of a stream; however, the proposed replacement and relocation of the foundation will be less than the minimum 15 m distance from the natural boundary of Luluwap Creek, at 3.5 m. Therefore a floodplain exemption is proposed.



## Technical Review

### Environmental Assessment

Due to development proposed within an Aquatic and Terrestrial Development Permit Area, an Environmental Assessment was submitted with the application that identified the location of the existing dwelling to be within the Streamside Protection and Enhancement Area (SPEA) and therefore legally non-conforming as it relates to existing provincial regulations and the City's Official Community Plan. Regardless, the Environmental Assessment concluded that removing the existing foundation was found to be the least invasive to the environment. An additional assessment was undertaken in 2020 to confirm if the development was eligible for hardship under the newly established Riparian Areas Protection Regulation (RAPR), which it was found not to be. In subsequent discussions with the Province and a review of the calculations based upon legal restricted areas and new information from a geotechnical engineer supports a hardship case. In addition the applicant has agreed to remove the dwelling outside the SPEA as much as possible given hillside and other site constraints (*Figure 2*).

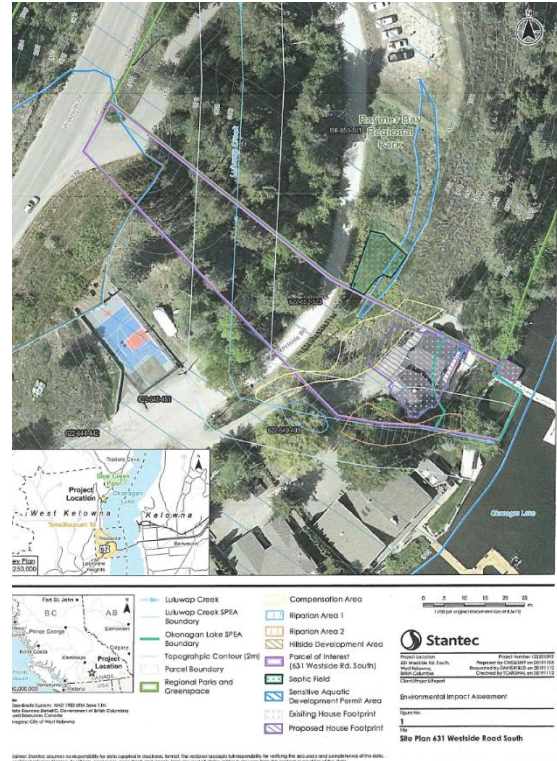


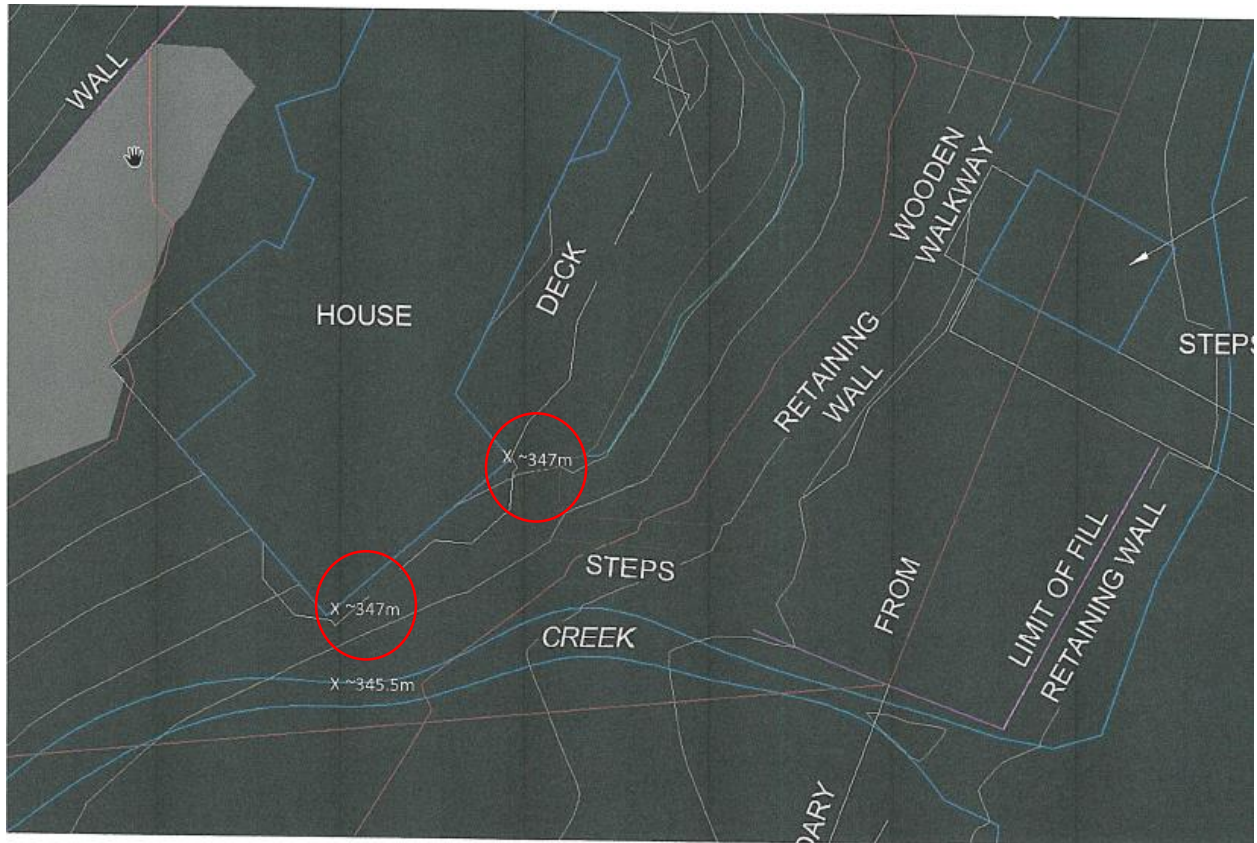
Figure 2: environmental assessment site plan

The applicant has also provided a landscape remediation plan that would be applied to any disturbed area of the site and would be required to restore hillside or riparian areas that have been disturbed by the location of any pre-existing structures. Landscaping would be a condition of the development permit (*Attachment 1*).

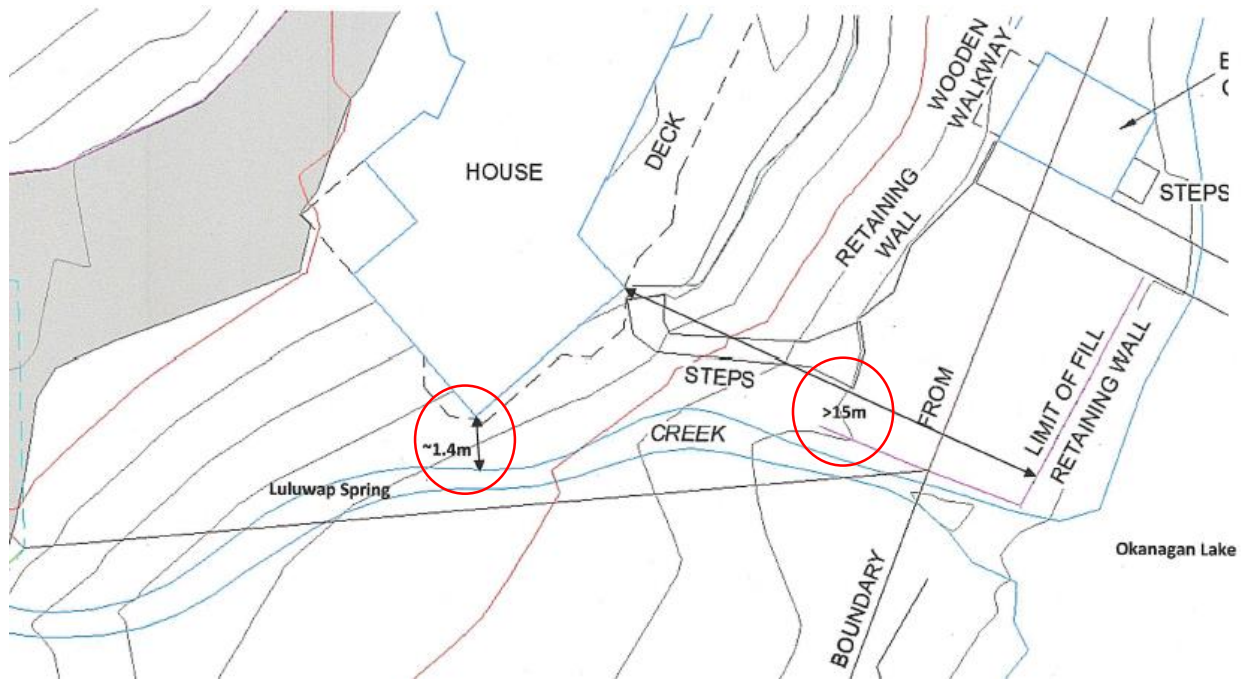
### Flood Hazard Assessment

A Flood Hazard Assessment Report was submitted with the application, prepared by Dobson Engineering Ltd. The report concluded that the existing dwelling is located greater than 15 m from Okanagan Lake and the underside of the floor system was located above the minimum 343.66 m elevation and 1.5 m above the natural boundary of the creek, as required by the City's floodplain regulations (*Figure 3 and 4*). However, the report indicated that the proximity of the existing foundation to Luluwap Creek was at 1.4 m, whereas 15 m is required under S.3.24.3 of Zoning Bylaw No. 0154. The report is supportive of the proposal to replace the existing foundation on the condition that the underside of the foundation is no less than 1.5 m above the natural boundary of the creek, and the setback from the natural boundary of the creek is no less than the existing dwelling (currently 1.4 m), given the constraints of the site. As evidenced by the site plan

(Attachment 2, Figure 1), the dwelling is proposed to be setback back 3.5 m from the south corner of the structure.



**Figure 3:** existing elevations from flood hazard assessment report (Dobson, 2019)



**Figure 4:** existing setbacks from Okanagan Lake and Luluwap Creek (Dobson, 2019)

### Geotechnical Report

Two geotechnical reports were submitted with the application from Interior Testing Services Ltd. The initial report (June 2019) included the results of comparing spot elevations of both the main floor and the basement of the dwelling, which indicated a maximum variation of 188 mm for both the main and basement slab. The standard geotechnical objectives for new construction is on the order of 25 mm, which concludes that significant movement has occurred. The report recommends that the home is rehabilitated in the form of supporting piles, remediation, or removal and replacement of foundation. Complete demolition and replacement was noted as being the most cost effective.

The second geotechnical report (October 2019) considers the preferred remediation option of removal and replacement of the building foundation. The report provides a slope stability analysis and construction recommendations related to foundation design, site preparation and grading, and drainage. The report concludes that the site is suitable for residential construction and safe residential occupation is possible. These recommendations will be included in the Development Permit (*Attachment 1*).

In addition, the geotechnical engineer has again strongly recommended that any disturbance of the upland slope face between the house and the common driveway be limited. The slope rises at 1.5H:1V and the chance of instability greatly increases. Given this site had previous stability issues the use of the flattest part of the site is necessary.



## **Indemnities**

Where local governments wish to permit a floodplain exemption, a covenant may be registered to title and contain an “indemnity” clause to protect local government from the financial consequences of a special event (e.g. flood damage to an approved structure within the floodplain)<sup>1</sup>. It is advisable that the said covenant is registered against the title of the property under section 219 of the *Land Titles Act* as a condition of permit issuance, which specifies the following:

- The condition(s) that would enable the land to be safely used for the use intended; and
- Granting indemnity to the local government.

However, this indemnity tool may only protect the local government from a legal ruling of full liability.

## **Referral Comments**

The application has been referred to various internal and external agencies. Detailed comments have been provided to the applicant and in most cases are advisory or have been addressed to the satisfaction of City staff for the purposes of the Development Permit. The Regional District of the Central Okanagan has reviewed the application and is in support of the 0.1 m interior parcel boundary setback.

## **Public Notification**

In accordance with the *Local Government Act*, 10 notification letters respecting the proposed variance were sent to all property owners and their tenants within 100 metres of the subject property (*Attachment 3*) and a Notice of Application sign has been placed on the subject property in accordance with the Development Applications Procedures Bylaw No. 0260. At the time of writing this report, no public submissions have been received.

## **CONCLUSION**

Staff recommend Council authorize issuance of the Development Permit with Variance and Floodplain Exemption based on the following rationale:

- The single detached dwelling was constructed approximately 30 years ago and does not conform to current Floodplain regulations (legally non-conforming);
- Since construction, the dwelling has experienced significant settlement and is a safety and environmental hazard;
- Removal and replacement of the building foundation was a recommended solution from the structural and geotechnical engineer, in order to reset the lifespan of the foundation and limit disturbance outside of the building footprint;

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<sup>1</sup> *S12.14, Buholzer, William (February 2018). British Columbia Planning Law and Practice (Markham: Butterworths, looseleaf)*

- The subject property has a limited developable area, given the hillside and aquatic features, which present siting challenges respecting development;
- A report from a qualified environmental professional has provided recommendations to mitigate disturbance and will be required to be followed throughout the demolition and reconstruction process;
- The flood hazard assessment report supports the removal and replacement of the building foundations with conditions that will be included in the permit;
- Restoration of any previously disturbed areas will be a condition of the permit; and
- A reduction in the setback to the creek allows the residence to be sited further from its current 1.4 m setback to the natural boundary of the creek, resulting in a long term improvement.

**Alternate Motion:**

1. **THAT** Council postpone the issuance of an Aquatic Ecosystem, Hillside, and Sensitive Terrestrial Ecosystem Development Permit for the demolition and subsequent construction of a single detached dwelling at 631 Westside Road with a variance to S.10.4.5(g).3 of Zoning Bylaw No. 0154 to reduce the minimum setback to the interior parcel boundary from 1.5 m to 0.1 m; and

**THAT** Council postpone a Floodplain Exemption to S.3.24.3(c) of Zoning Bylaw No. 154 to permit a foundation to be located at a 3.5 m horizontal distance from the natural boundary of a stream, on the condition that the applicant enter into an indemnity covenant with the City, and in accordance with the attached permit (*Attachment 1*).

Should Council choose to postpone the application, further direction to staff is requested.

2. **THAT** Council deny the proposed Development Permit with Variance and Floodplain Exemption.

Should Council choose to deny the application, a similar application may not be considered for a period of six (6) months, in accordance with the City Development Applications Procedures Bylaw No. 0260.

**REVIEWED BY**

Brent Magnan, Planning Manager

Shelley Schnitzler, Legislative Services Manager/Corporate Officer

Powerpoint: Yes ☒ No ☐

Attachments:

1. DP 20-35 / FEX 21-01
2. Site Plan
3. Public Notification Map