



## COUNCIL REPORT

To: Paul Gipps, CAO

Date: July 27, 2021

From: Carla Eaton, Planner III

File No: DP 21-03

Subject: **DP 21-03 with variances, Development Permit with Variances, 2802 Smith Creek (Stage 2)**

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### RECOMMENDATION

**THAT** Council authorize the issuance of a Hillside, Wildfire and Sensitive Terrestrial Ecosystem Development Permit (DP 21-03) to facilitate the proposed fifty-five (55) lot subdivision consisting of site preparation/grading and construction of fifty-four (54) single family lots and one remainder lot on Lot A, District Lot 3478, ODYD, Plan KAP56155, Except Plans KAP56156 and KAP57629 (2802 Smith Creek Road) subject to the conditions outlined in the attached Permit; and

**THAT** Council authorize the following variances to City of West Kelowna Zoning Bylaw No. 0154 in accordance with Schedule 'D' included as part of the Development Permit:

- i. S.10.4.5(g).1 to reduce the front parcel boundary setback:
  - a. On Lots 18 – 20 and 41 - 43 for garage or carport having vehicular entry from the front from 6.0 m to 3.5 m; and for house from 4.5 m to 3.5 m, providing that 6.0 m is maintained from garage to laneway or back of curb/sidewalk;
  - b. On Lots 44 and 45 for a garage or carport having vehicular entry from the front from 6.0 m to 4.5 m, providing that 6.0 m is maintained from garage to laneway or back of curb/sidewalk; and
- ii. That the required minimum frontage for Lots 5 to 15 be varied to allow frontage less than 10% of the perimeter of the parcel as per exemptions permitted by *Local Government Act*, section 512(1), where the required minimum parcel frontage is still greater than the required 16.0 m for the Single Detached Residential (R1) Zone; and

**THAT** issuance of the Development Permit be withheld pending receipt of security for the proposed landscaping restoration in the amount of \$41,500.00; and

**THAT** if the Development Permit with Variances has not been issued within one year from the date of approval, the Permit and Variances shall be deemed to have been refused and the file closed.

### STRATEGIC AREA(S) OF FOCUS

Economic Development and Prosperity (2021-2022 Strategic Priorities)

## BACKGROUND

The subject property is located at the north end of Smith Creek Road. The application is for the proposed Stage 2 development as part of the residential zoned lands located to the south of the Smith Creek CDP. Stage 1 subdivided 33 lots off the subject property (SUB 17-12), leaving this remainder parcel which includes a long strip above Smith Creek Road as well as the proposed Stage 2 development area. As part of an early in-stream review of the Development Permit in March 2021, the applicant was permitted to complete interim clearing only within an identified portion of the site to avoid the bird nesting window and before burning restrictions. Follow-up conditions are being refined through this full permit review. A concurrent subdivision application (SUB 21-05) is also being reviewed with the Development Permit.

PROPERTY DETAILS			
<b>Address</b>		2802 Smith Creek Rd	
<b>PID</b>		023-304-138	
<b>Folio</b>		36414703.285	
<b>Lot Size</b>		9.78 ha (24.1 acres)	
<b>Owner</b>	0746031 BC LTD 0746043 BC LTD 1068059 BC LTD E12K Systems Inc.	<b>Agent</b>	Protech Consulting
<b>Current Zoning</b>	R1 Single Detached Residential Zone	<b>Proposed Zoning</b>	-
<b>Current OCP</b>	Single Family Residential	<b>Proposed OCP</b>	-
<b>Current Use</b>	Vacant	<b>Proposed Use</b>	-
<b>Development Permit Areas</b>		Hillside, Sensitive Terrestrial, & Wildfire Interface	
<b>Hazards</b>		-	
<b>Agricultural Land Reserve</b>		No	

ADJACENT ZONING & LAND USES			
<b>North</b>	^	Rural Resource Zone (RU5)	
<b>East</b>	>	Single Detached Residential Zone (R1)	
<b>West</b>	<	Institutional and Assembly Zone (P2)	
<b>South</b>	v	Rural Residential Small Parcel Zone (RU2) & Large Parcel Single Detached Residential Zone (R1L) & Black Canyon Park	

## NEIGHBORHOOD MAP



## PROPERTY MAP



## LEGISLATIVE REQUIREMENTS

### Local Government Act

Section 498 of the *Local Government Act* (LGA) 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. Council has the authority under Part 14 (section 490) of the LGA to issue a development Permit.

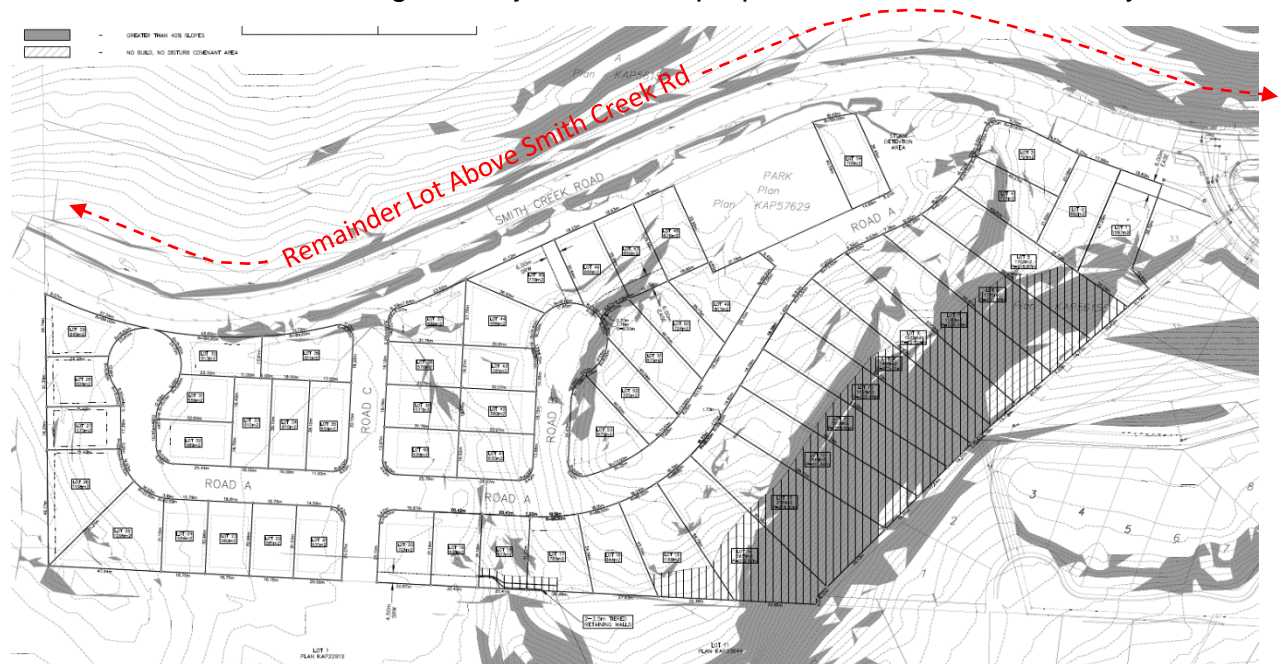
Section 512 of the LGA enables Council to exempt a parcel from the statutory or bylaw minimum frontage.



## DISCUSSION

### Development Permit Proposal

The applicant is seeking the issuance of a Hillside, Sensitive Terrestrial, and Wildfire Interface Development Permit with variances to facilitate a fifty-five (55) lot subdivision, consisting of 54 single family residential lots on the south side of Smith Creek Road and one remainder lot (See Figure 1 below). The remainder lot is proposed as a long linear lot on the north side of Smith Creek Road, where minor grading works are proposed to facilitate the improvements to Smith Creek Road (alignment and urbanization). The proposed site grading for the development area south of Smith Creek Road includes significant cut and fill slopes over the site, as well as transition grading into existing Aspen Park and a two-tier retaining wall adjacent to the proposed access to Black Canyon Park.

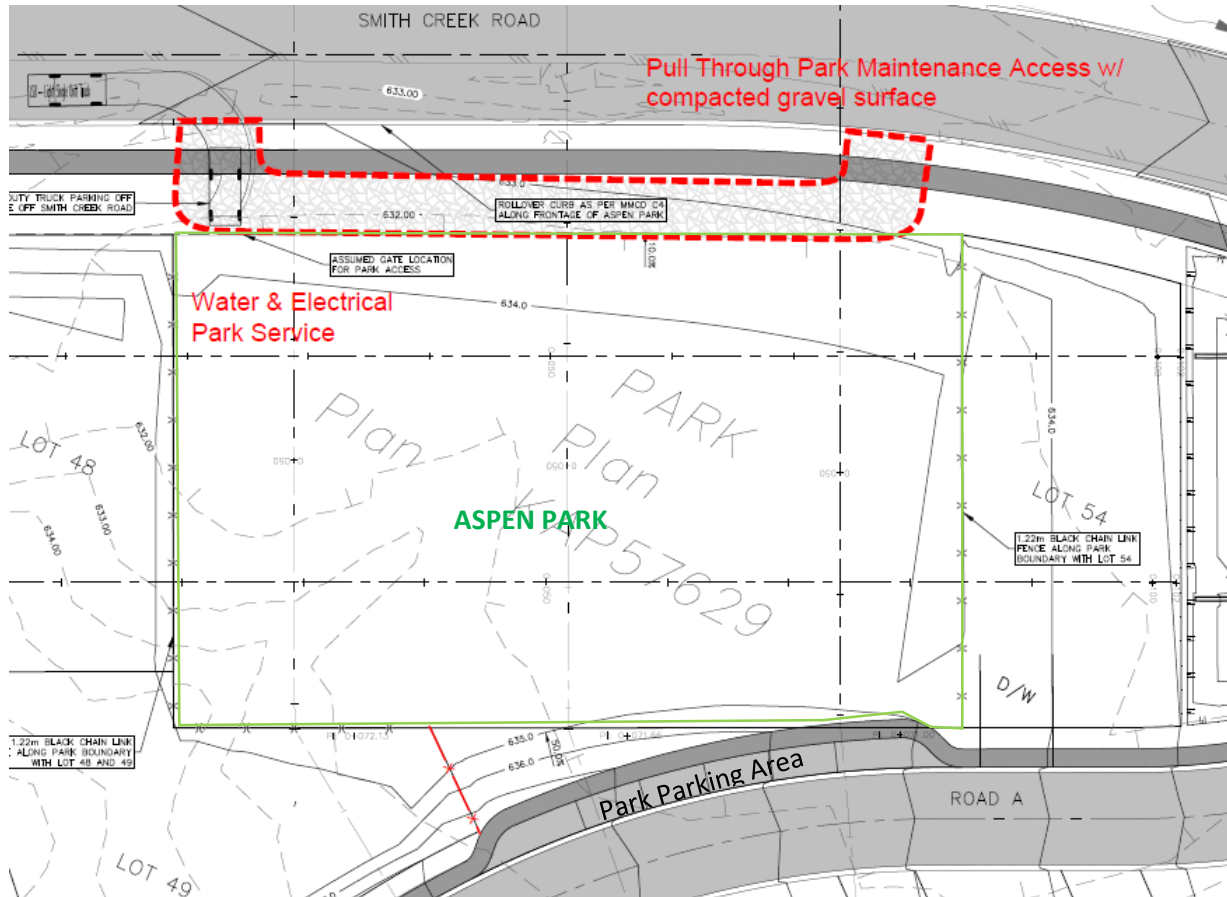


**Figure 1: Preliminary Lot Layout – 54 Single Family Lots Plus 1 Long Linear Remainder Lot**

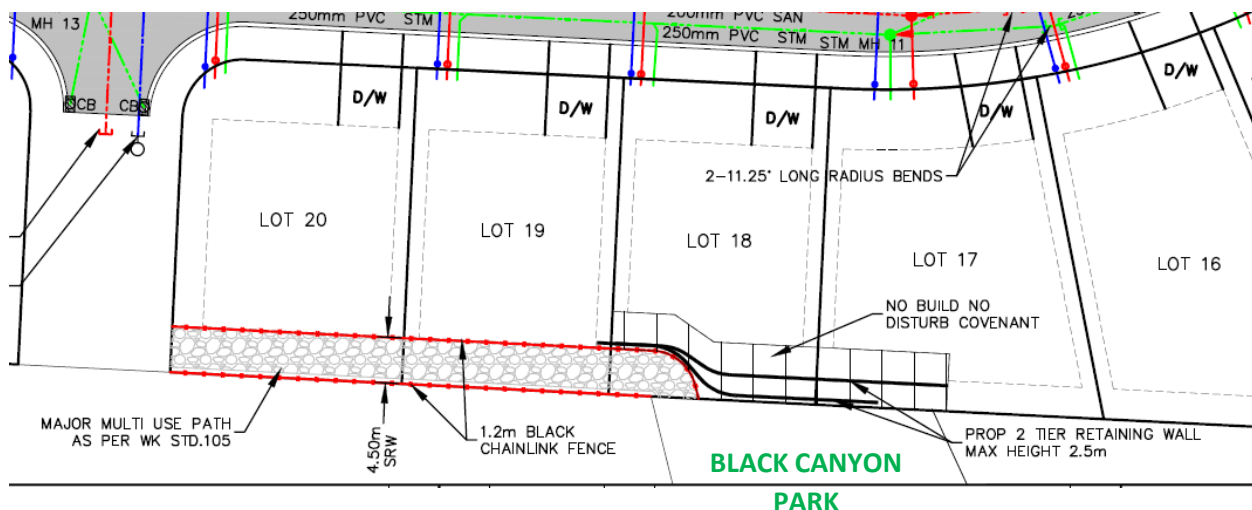
The proposal includes restoration landscaping over steeper slopes primarily along the southern perimeter of the site where grading transitions to undisturbed natural hillside, and/or hydro-seeding over smaller slopes, the storm detention area, and re-graded Aspen Park. A covenant has been proposed to protect the steep forested slope along the eastern edge of the development area which is to remain undisturbed.

The internal roads will be urbanized to a Hillside Local Road standard with sidewalk (one side), curb, gutter, and streetlights. Improvements to Smith Creek Road include sidewalk (one side), curb, gutter, and streetlights, along with realignment of the road. The proposal also includes a pull-through access from Smith Creek Road to Aspen Park for park maintenance vehicles, fencing along two sides of Aspen Park, as well as an electrical and water service, and a small pull out parking section on the south side of the park next to the internal Road 'A' (See Figure 2 below). A 4.5 m access to Black Canyon Park will be constructed as a Major Multi-Use Path with compacted gravel finish to allow maintenance

vehicle access to the edge of the park through a statutory right of way. To accommodate this access and to allow for a reasonable buildable area on the adjacent lots, a two-tier retaining wall is proposed along the southern boundary of three lots lying next to the park and park access. Each wall segment will not exceed the maximum 2.5 m height and will have a minimum 2 m separation between the walls (See Figure 3 below).



**Figure 2: Aspen Park - Grading, Access, Fencing, Services**

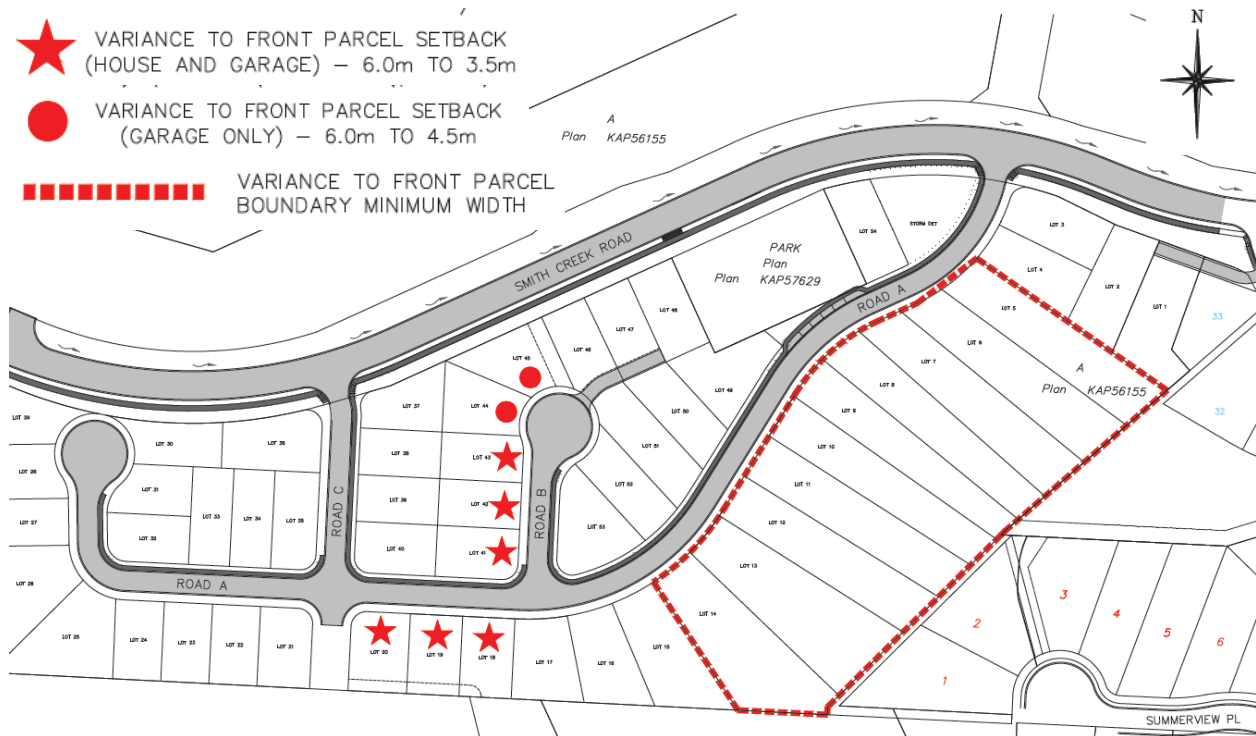


**Figure 3: Black Canyon Park – SRW Access, Fencing & Adjacent Retaining Walls**

## Proposed Variances and Frontage Exemption

The variances proposed with this application (See Figure 4 below) include the following:

1. Vary the front setback for Lots 18 – 20 and 41- 43 to allow the garage/carport and/or house to be located 3.5 m from the property line;
2. Vary the front setback for Lots 44 and 45 to allow the garage/carport to be located 4.5 m from the property line; and
3. Allow Lots 5 -15 to have frontage less than 10% of the perimeter of each lot.



**Figure 4: Proposed Setback Variances and Frontage Exemption**

## Applicant Rationale – Proposed Variances

The applicant has provided a Rationale Letter in support of the proposed variances and frontage exemption, noting the impacts of the proposed large undevelopable covenant area on lot layout and the site constraints affecting certain lots related to topographical changes (*Attachment 2*).

## **POLICY REVIEW**

### Official Community Plan Bylaw No. 0100

The proposed development area is subject to the Hillside Development Permit guidelines of the Official Community Plan (OCP) which include considerations for hillside mitigation, protection of natural vegetation and slope, visual and aesthetic impacts, and geotechnical safety. The Sensitive Terrestrial Ecosystem and Wildfire Development Permit requirements for the protection of environmentally sensitive areas and to reduce future wildfire hazards are proposed to be addressed through conditions of the future

subdivision and through works required as a condition of the DP. The technical review section below outlines how the development proposal addresses these DP considerations.

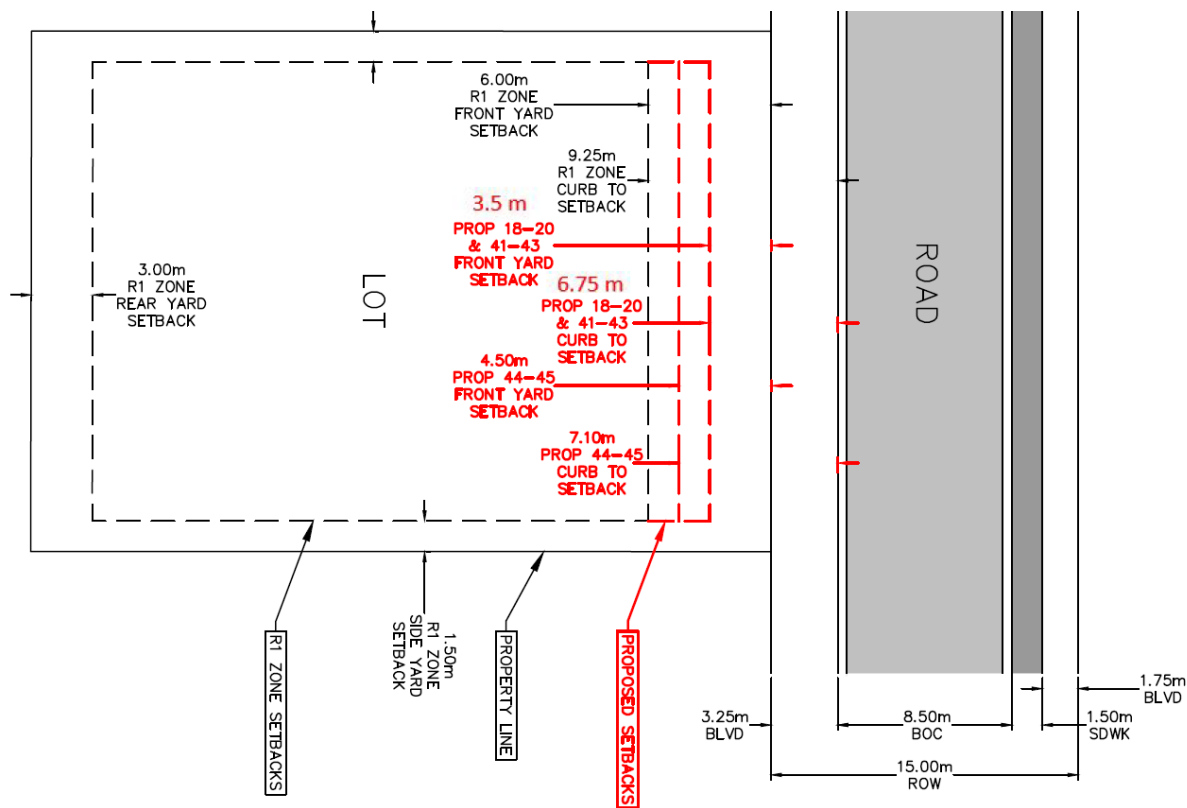
### Zoning Bylaw No. 0154

With the exception of the identified variance requests, the development proposal meets all relevant Zoning Bylaw regulations.

### Front Setback Variance:

Section 10.4.5.(g).1 of the City of West Kelowna Zoning Bylaw No. 0154 specifies that the minimum front parcel boundary setback for a residence at 4.5 m and for a garage or carport having vehicular entry from the front at 6.0 m. The required setback is primarily established to ensure the minimum parking length of 6.0 is available fronting a garage or carport so that vehicles do not impede vehicular or pedestrian traffic within the adjacent road. The applicant has proposed to reduce this setback to 3.5 m for 6 lots, and to 4.5 m for 2 lots (garage only) – see Figure 4 above.

- As shown in Figure 5 below, given the width of the proposed dedicated road boulevard and location of curb or sidewalk, a minimum length of 6 m is available for parking between the proposed garage/carport locations and the back of curb or sidewalk. A minimum of 9.25 m will be available for parking on Lots 18-20 and 41-43. A minimum of 6.75 m will be available for parking on Lots 44-45.



**Figure 5: Proposed Distance Between Setback and Back of Curb Available for Parking**

- The proposed setback of the residential unit at 3.5 m is consistent with the setback established in the earlier Stage 1 development (DVP 21-01), as well as the City's Compact Single Detached Residential zones for the dwelling unit.
- The proposed setback for Lots 18 – 20 will allow for the greater flexibility in the siting of the proposed dwelling given the impact of the proposed 4.5 m statutory right of way access along the rear yards.

The proposed variances do not include reducing the required on-site parking requirements<sup>1</sup>, and do not trigger special consideration of hillside impacts other than the regular geotechnical consideration at future building permit. As a condition of the variance, it is noted that for proposed lots that have varied the garage setback, all required parking shall be provided within the legal parcel boundary of each individual lot which would typically be within a garage. No objections or conflicts are anticipated with utilities or City infrastructure located within the boulevard area shared with the proposed driveways, as adequate safety setbacks from infrastructure were already built into the road design and dedicated areas.

Should Council choose to deny the proposed variance to reduce the front setbacks, the siting of any proposed dwelling and garage/carport would need to meet the required setback of 4.5 m and 6.0 m.

#### Minimum Parcel Frontage Exemption to allow Frontage Less than 10% of the Perimeter:

As per Section 512 of the *Local Government Act*, minimum parcel frontage must be the greater of the frontage established by bylaw which in this case is 16.0 m or 10% of the perimeter of the proposed lot. This same section of the act permits Council to exempt a parcel from this requirement and the applicant has requested this exemption to allow for the proposed Lots 5 – 15 (see Figure 4 above).

- As shown in Figure 6 below, the applicant had proposed an original lot layout with a proposed park dedication along the eastern boundary that coincides with a very steep undevelopable area which did not meet the City's Park Land Acceptance Policy. Additionally, this area could not be left as a land locked parcel with no access, services or reasonable building area under the current zone.
- Based on this initial application feedback, the preliminary lot layout was revised to include the steep hillside environmentally sensitive area in a proposed covenant and to include this area as part of Lots 5 to 15 (as shown in Figure 7 below). The new layout for the longer lots resulted in the frontage that does not meet the LGA 10% of the perimeter requirement.

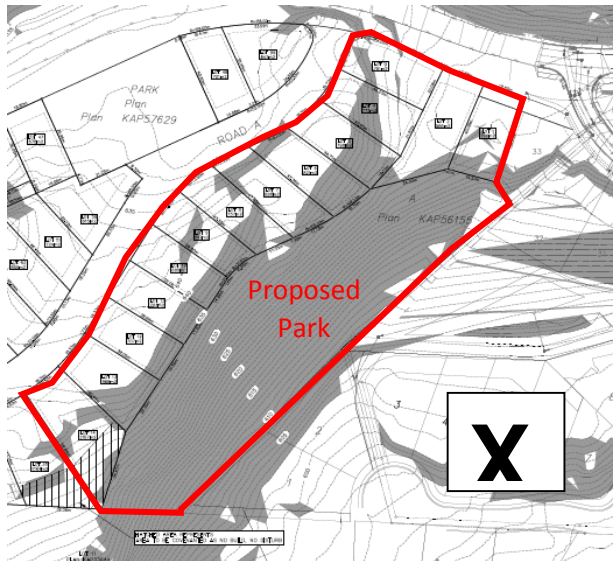
Given the site constraints affecting the lot layout and the proposed protection of sensitive areas that has been integrated in the plan, it is recommended that the exemption is permitted as requested. Should Council deny the proposed frontage exemption, the applicant will be required to amend their lot layout which will result in significantly larger parcels and a reduced number of lots. Council may wish to note that a bylaw amendment

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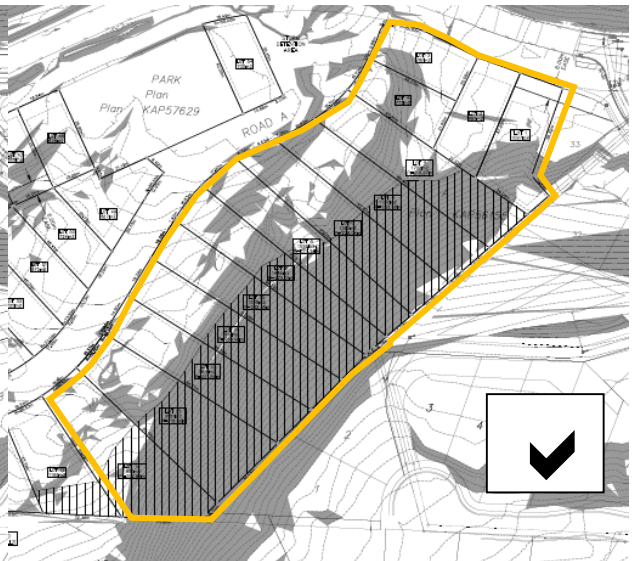
<sup>1</sup> Zoning Bylaw No. 0154, Part 4, Table 4.1 requires 2 standard parking spaces per single family dwelling unit, and Table 4.2 notes size is 2.75 m x 6.0 m



is being presented for their consideration later in this July 27th agenda (File: P21-19) regarding the potential delegation of the authority for frontage exemptions to the Subdivision Approving Officer. Given the timing of the Smith Creek subdivision, the applicant proceeded with the exemption request in advance of the exemption delegation amendment as staff could not guarantee the date of Council's consideration or the final outcome.



**Figure 6: Lot Layout with Park Dedication**



**Figure 7: Lot Layout with Covenant Area**

## Technical Review

From a Development Permit perspective, the applicant has worked with staff to ensure the following technical concerns have been addressed:

### Hillside Development Permit:

- **Geotechnical Safety** – While there are areas of over 30% slope within various portions of the site, the applicant has proposed to utilize the flatter portions of the site by re-grading of the site to support building platforms within the useable portions identified within each proposed lot. The applicant submitted a Geotechnical Investigation<sup>2</sup> that confirmed that the site is well suited to the proposed development and safe buildable sites are available for each lot. The report makes additional recommendations regarding cut/fill slopes, rock catchment areas, site preparation, drainage, foundation, paving and trenching. Should rock cuts be required, a Geotechnical Addendum will be required prior to final subdivision approval to establish the width of the rock catchment areas and to confirm setback from toe of slope/top of bank.

The Geotechnical report's recommendations, along with any applicable addendums, will be registered on title through a Section 219 covenant at time of subdivision to ensure that future development adheres to these recommendations. The covenant

<sup>2</sup> Geotechnical Investigation, prepared by Calibre Geotechnical Ltd., dated October 4, 2019

will also ensure that any rock catchment area is maintained in perpetuity and will identify No Build-No Disturb areas that includes identified steeper slopes, re-vegetated slopes and the identified setback areas (as required).

- *Site Design & Grading* – The development of this site is constrained by existing steep slope areas along the eastern and southern border. The applicant has proposed a preliminary lot layout and site grading plan that works with the area between these constraints in an attempt to:
  - reduce any further disturbance into hillside or environmentally sensitive areas,
  - minimize grading changes into the proposed covenant area while still respecting drainage patterns, maximum road grades, and recommended maximum 2:1 slopes;
  - reduce the overall amount of site disturbance outside of the proposed lots, with the exception of cuts/fills necessary for park access, road infrastructure or to support building platforms in transition areas;
  - conform to bylaw standards for road and driveway grades, as well as avoiding retaining walls to support the building platforms with the exception of two retaining walls to a maximum height of 2.5 m adjacent to Black Canyon Park and its proposed access;
  - utilize the flatter portions of the site and protect slopes over 30% where possible; and
  - to re-vegetate those areas that will be disturbed during construction.

The applicant has also submitted a site servicing plan, a sediment erosion control plan, lot cross sections and road plan/profiles (*Attachment 1*) that indicates the necessary cut and fill slopes, as well as proposed site preparation meet the Guidelines.

#### Sensitive Terrestrial Ecosystem:

- *Protection of Undisturbed Steep Slopes* – As noted above, the site is affected by steep slopes with a large steeply sloped area of coniferous trees along the south and eastern sides. These areas include identified habitat trees flagged for protection prior to the interim clearing completed this spring and demarcation of the limits of disturbance. A No Disturb covenant area is proposed for the protection of this area to be registered at time of subdivision as a condition of the Development Permit.
- *Hillside Revegetation/Mitigation* – The applicant has submitted hillside restoration plans, which include two types of area. Along the southern edge where regrading is not avoidable over steeper finished slopes adjacent to undisturbed hillside, the proposed hillside re-vegetation plan includes specific landscaping and plant material that will be best suited to survive the existing hillside grades, proposed re-graded areas and to blend with the natural surrounding hillside vegetation to avoid visible scars when viewed from lower areas of the City. The plan includes the installation of native trees/shrubs during the fall or spring wet seasons, with removal of invasive species, ongoing weeding of the site, and temporary irrigation to improve plant viability. Additionally, they have proposed a longer maintenance period of three years to further enhance survivability. For other disturbed areas where the finished slopes do not exceed 5 m vertical and are no steeper than 2:1, the plan proposes hydro-

seeding with native grasses to reduce potential weed growth (Landscape Plan - Attachment 1).

The proposed restoration plan is consistent with the OCP guidelines. The re-vegetated areas will be further protected by a no build no disturb covenant to ensure that the works and hillside are protected in perpetuity.

- *Landscape Security* – To ensure installation of the required re-vegetative landscaping consistent with the DP guidelines, the applicant is required to provide security in the amount of \$41,500.00 prior to the issuance of the permit.

#### Wildfire Interface:

- *Hazard Mitigation Works* – The applicant provided Wildfire Hazard Assessments<sup>3</sup> which include prescriptions for wildfire mitigation work to bring the fire hazard rating to low to moderating ratings. As a condition of the previous subdivision to the east of the site, the majority of the wildfire mitigation works have already been completed on the eastern and southern slopes. However, the remaining works must be completed prior to final subdivision as a condition of the Development Permit, which include the interface areas on the north side of Smith Creek within the proposed remainder lot.

### **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.

### **PUBLIC NOTIFICATION**

In accordance with the *Local Government Act*, 60 notification letters respecting the proposed variance and exemption 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. As the time of writing this report, no public submissions have been received.

### **CONCLUSION**

It is recommended that Council authorize issuance of the Development Permit with Variance and Frontage Exemption based on the following rationale:

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<sup>3</sup> Wildfire Hazard Assessment and Prescription Report, prepared by R.J.P. Holdings Ltd., dated Jun 6, 2014 and Nov 19, 2018, and Wildfire Hazard Rating Status, dated Jan 27, 2021

- The proposal is consistent with the Hillside and Sensitive Terrestrial Ecosystem Development Permit Guidelines and supports protection of hillside and environmental sensitive areas identified during previous rezoning and subdivisions.
- The proposed re-vegetation plan will soften the visual impact of the proposed development and mitigate or restore proposed disturbances and unavoidable cut/fill slopes necessary for the site grading.
- The proposed hillside mitigation plan utilizes drought resistant species and planting methodology with overplanting and an extended three year maintenance period that will further enhance survivability of any plantings proposed for the disturbed slopes, including consideration of the limits of disturbance for the entire subject property.
- The proposed Section 219 geotechnical covenant with identified “No Build/No Disturb” covenant will ensure that the identified slopes necessary to protect building envelopes are protected in perpetuity and ensure that future owners understand that the re-vegetated slopes are restricted from development, as well as ensure any required building setbacks and rockfall catchment areas if applicable have been identified.
- The proposed front setback variance will allow for either larger dwellings on the site or will provide an opportunity for larger rear yard areas than what would otherwise be permitted with the standard setback and other site limitations.
- The requested variance will not impact travel lanes or pedestrian movement along the sidewalk as a minimum 6.0 m parking length is still being provided between the proposed house/garage and the road (back of curb/back of sidewalk).
- A similar 3.5 m front setback is utilized in the City’s Compact Residential zones (RC1, RC2, RC3 and RC4).
- The proposed frontage exemption is supported by staff given the limited options to address alternate lot layouts that would not affect proposed density in this area inconsistent with Official Community Plan policy or that would contravene the Park Land Acceptance Policy.

#### **Alternate Motion(s):**

1. **THAT** Council postpone the issuance of a Hillside, Wildfire and Sensitive Terrestrial Ecosystem Development Permit (DP 21-03) to facilitate the proposed fifty-five (55) lot subdivision consisting of site preparation/grading and construction of fifty-four (54) single family lots and one remainder lot on Lot A, District Lot 3478, ODYD, Plan KAP56155, Except Plans KAP56156 and KAP57629 (2802 Smith Creek Road); and

**THAT** Council postpone variances to City of West Kelowna Zoning Bylaw No. 0154 to reduce front parcel boundary setbacks and the frontage exemption for identified lots within the proposed subdivision of the subject property as part of the Development Permit (DP 21-03).

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

2. **THAT** Council deny the proposed Development Permit with Variance and Minimum Frontage 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**

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 Permit DP 21-03
2. Applicant Rationale
3. Public Notification Map