

DATE OF MEETING | June 15, 2020 |

AUTHORED BY | SADIE ROBINSON, PLANNING ASSISTANT, CURRENT PLANNING |

SUBJECT | **DEVELOPMENT PERMIT APPLICATION NO. DP001171 –
3258 STEPHENSON POINT ROAD** |

OVERVIEW

Purpose of Report

To present for Council’s consideration, a development permit application to authorize the construction of a single residential dwelling within the watercourse setback at 3258 Stephenson Point Road. |

Recommendation

That Council issue Development Permit No. DP1171 at 3258 Stephenson Point Road with the following variance:

- reduce the minimum watercourse setback from 30m to 6.9m as measured from the top of bank of Cottle Creek in order to permit the construction of a proposed single residential dwelling and site improvements. |

BACKGROUND

A development permit application, DP1171, was received from Doug Jarvie, to reduce the watercourse setback from the top of bank of Cottle Creek to allow construction of a single residential dwelling on the subject property.

Subject Property and Site Context

<i>Zoning</i>	Single Dwelling Residential (R1)
<i>Location</i>	The subject property is located on the south side of Stephenson Point Road, approximately 33m east of the Pacific Biological Station.
<i>Total Area</i>	2,217m ²
<i>Official Community Plan (OCP)</i>	Map 1 – Future Land Use – Neighbourhood Map 3 – Development Permit Area No. 1 – Watercourses (Cottle Creek)

The subject property is an undeveloped ocean-fronting lot in an area primarily characterized by single residential dwellings. The site contains mature trees and slopes to the south, dropping approximately 21m in elevation from Stephenson Point Road to the natural boundary of the sea.

The subject property was created through subdivision in 1995 in compliance with the watercourse protection regulations in place at that time. A Fish and Wildlife Covenant (EJ95044) was registered at the time of subdivision to prevent development within 7.5m of the top of bank of Cottle Creek and 7.5m from the natural boundary of the sea. At the time the lot was created the City did not have a Watercourses Development Permit Area in place and the

“City of Nanaimo Zoning Bylaw 1993 No. 4000” required a setback of 15m from the natural boundary of Cottle Creek for buildings and structures. The lot was created prior to the enactment of Provincial Riparian Areas Regulation (RAR), which includes allowances for development to occur on lots that were created under a prior regulatory regime.

Nearly the entire property (except 15m²) is located within the city’s watercourse setback. The west side of the lot is bounded by Cottle Creek and is subject to City bylaws, as follows:

- “City of Nanaimo Zoning Bylaw 2011 No. 4500” (the “Zoning Bylaw”) – Schedule C requires a 30m leave strip as measured from the top of bank of Cottle Creek, based on the RAR simple assessment methodology (2006);
- Official Community Plan – Watercourses Development Permit Area (DPA1) requires a Development Permit to authorize development within the 30m leave strip.

In order to achieve a functional building envelope and use the existing driveway to minimize disturbance, the applicant proposes to reduce the watercourse setback requirements of the Zoning Bylaw.

DISCUSSION

The proposed development includes the construction of a single residential dwelling and site improvements to the existing driveway and landscaping within the watercourse setback. The proposed building footprint is 320m², or 14% of the total lot area. The building footprint is sited on the east side of the lot away from Cottle Creek, in the area with the fewest trees, and is more than 15m away from the natural boundary of the sea.

In accordance with the City’s Watercourses Development Permit Area (DPA1) Guidelines and the RAR requirements, a Detailed Assessment was completed by a Qualified Environmental Professional (QEP) to determine the Streamside Protection Enhancement Area (SPEA) necessary to protect fish habitat and riparian function. The report concluded that fish cannot access Cottle Creek from the ocean due to excessive grades, but Cottle Creek does support resident fish that largely originate from Cottle Lake upstream. The SPEA was determined to be 10m as measured from high-water mark of Cottle Creek (6.9m as measured from top of bank). The Province has reviewed and accepted the QEP’s detailed assessment and the defined SPEA.

The applicant proposes to reduce the City’s watercourse setback from 30m (from top of bank of Cottle Creek) to 6.9m (from top of bank) to align with the RAR 10m SPEA while ensuring the new dwelling is sited without negatively impacting riparian form and function. There would be some minor intrusion into the 1995 Fish and Wildlife Covenant (EJ95044) area for the existing driveway, but this intrusion would not extend into the 10m SPEA setback. The SPEA will also be protected by permanent post and rail fencing and habitat protection signage, to be installed as a condition of this development permit.

In accordance with the Development Permit Area (DPA) guidelines, the QEP’s environmental assessment also considered the current conditions of vegetation and evidence of significant wildlife within the subject property. The QEP concluded that while there is some wildlife use (raccoon, gray squirrel, and blacktail deer), there was no evidence (e.g., significant game trails) found on site demonstrating the subject property serves as a wildlife corridor. Existing

vegetation includes forest cover consisting of mature Douglas fir, western red cedar, red alder, arbutus, and some Garry oak with an understory largely comprised of invasive species. The QEP concluded no raptor or heron nests were observed on the subject property. The SPEA is currently impacted by invasive plant species, which are impairing its proper form and function, and most of the trees within the ocean setback are covered with English ivy.

In order to restore and improve the existing riparian form and function, a Vegetation Management Plan and detailed Landscape Plan will be executed to remove the invasive species and revegetate the riparian and coastal bluff areas with species that are appropriate for the Coastal Douglas-fir Biogeoclimatic Zone. The planting plan includes approximately 1,329 indigenous plants representing 24 different species. Fourteen trees are proposed to be removed and replaced with approximately 25 new trees throughout the site. The QEP has reviewed the detailed Landscape Plan and concluded the proposed restoration strategy will improve the existing ecological conditions of the site. Additionally, proposed revegetation, drainage rock pits, and permeable driveway pavers will maintain natural flows to Cottle Creek. As a condition of the development permit, the development will be required to follow the recommendations contained in the Vegetation Management Plan and Three-Year Monitoring and Maintenance Plan (Attachment E).

Staff have confirmed the Province is agreeable to granting permission to allow the existing driveway to encroach into the existing Fish and Wildlife Covenant (EJ95044) area, given its pre-disturbed nature. Written permission for any works intruding into the covenant area, or discharge of this covenant, is required as a condition of this development permit.

Proposed Variances

Minimum Watercourse Setback

Section 6.3.1.5 of the Zoning Bylaw requires a minimum watercourse setback from Cottle Creek of 30m, as measured from top of bank. The proposed setback is 6.9m from top of bank; a proposed variance of 23.1m (Attachment C).

The 30m watercourse setback was established in 2006 utilizing the RAR-based simple assessment methodology. In order for the City to be in compliance with the RAR at the time it was instituted, the City was required to demonstrate its bylaws would meet or beat the required RAR setback requirements. The City completed an RAR simple assessment for Cottle Creek that resulted in a 30m setback. Any proposed development within the 30m setback triggers a detailed RAR assessment that defines a site appropriate SPEA. In this case, a detailed assessment was completed in accordance with the City's DPA guidelines and current RAR methodology and determined a SPEA of 10m from natural boundary (6.9m from top of bank).

The proposed setback variance would achieve a functional building envelope with measures to protect and improve the existing riparian form and function within the site. The building siting utilizes an existing driveway and is located away from Cottle Creek, with efforts made to ensure no encroachment into the ocean leave strip. The riparian restoration strategy is appropriate for the biogeoclimatic zone and will mitigate any potential impacts of the residential development, while realizing the allowable use of the parcel. The proposal meets the DPA guidelines; the conditions of the permit will ensure no negative impact on fish habitat.

This application has addressed the DPA guidelines and the proposal is approvable under the DPA guidelines. Given there is no negative impact on fish habitat and the proposed development includes improvements to the existing riparian form and function, and the recommended environmental protection measures will be secured as condition of the development permit, Staff support the proposed variance.

SUMMARY POINTS

- Development Permit Application No. DP1171 proposes a variance to reduce the minimum required watercourse setback from 30m to 6.9m from the top of bank of Cottle Creek to allow a proposed single residential dwelling, and site improvements.
- The proposed building location will be outside of the Provincially-required RAR 10m SPEA and the City-required 15m setback from natural boundary of the sea.
- The proposed variance will achieve a functional building envelope, and the riparian restoration plan will enhance the existing riparian form and function within the site.
- Staff support the proposed variance.

ATTACHMENTS

ATTACHMENT A: Permit Terms and Conditions
ATTACHMENT B: Location Plan
ATTACHMENT C: Proposed Site Plan
ATTACHMENT D: Environmental Summary
ATTACHMENT E: Vegetation Management Plan
and Three-Year Monitoring and Maintenance Plan
ATTACHMENT F: Proposed Landscape Plan and Details
ATTACHMENT G: Aerial Photo

Submitted by:

Lainya Rowett
Manager, Current Planning

Concurrence by:

Jeremy Holm
Director, Development Approvals

Dale Lindsay
General Manager, Development Services