



RESORT MUNICIPALITY OF WHISTLER

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STAFF REPORT TO COUNCIL

PRESENTED: March 21, 2023 **REPORT:** 23-028
FROM: Planning - Development **FILE:** 2450-20-0158
SUBJECT: CM000158 – 6427 BALSAM WAY – COVENANT MODIFICATION FOR
FLOODPROOFING

RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the Director of Planning be endorsed.

RECOMMENDATION

That Council approve the modification of Covenant J89733 for 6427 Balsam Way, to change the minimum required flood construction level specified in the covenant to state that no area used for habitation, business or storage of goods damageable by floodwaters shall be located within any building at an elevation such that the underside of the floor system thereof is less than 1.5 metres above the high water level of Alta Creek, and in accordance with the recommendations contained in the professional geotechnical engineers report referencing Project No. KP-221344-00 prepared by Kontur Geotechnical Consultants, dated September 20, 2022.

PURPOSE OF REPORT

This report presents covenant modification application CM000158, an application to amend Covenant J89733, applicable to 6427 Balsam Way, to reduce the flood construction level for the parcel from 3.0 metres above the high water level of Alta Creek (also known as River of Golden Dreams) to 1.5 metres above the high water level of Alta Creek. This amendment will bring the flood construction level for 6427 Balsam Way into alignment with the floodproofing requirements contained in Zoning and Parking Bylaw No. 303, 2015 (Zoning Bylaw).

This report provides Council with an analysis of the application and recommends that Council approve the application.

Information Report

Administrative Report (Decision or Direction)

DISCUSSION

Background

The property at 6427 Balsam Way is subject to a covenant that contains floodproofing requirements that are more restrictive than the floodproofing requirements contained in the Zoning Bylaw, and the

owners have applied to modify the subject covenant such that the floodproofing requirements are consistent with the Zoning Bylaw.

The subject property is located at 6427 Balsam Way in the Tapley's Farm neighbourhood close to Alta Creek (See Site Location Map attached as Appendix A). The lot is zoned RS1 (Residential Single Family One) and is developed with a detached dwelling.

The property is governed by the floodproofing requirements of the Zoning Bylaw, which require, in this case, that no areas used for habitation or storage of goods damageable by floodwaters shall be less than 1.5 metres above the high water mark of any relevant watercourse.

In addition to the floodproofing requirements of the Zoning Bylaw, the property is also subject to Covenant J89733 that was registered against the title of the parcel in 1981 and specifies that no area used for habitation shall be located with the underside of the floor system less than 3 metres above the high water level of Alta Creek. In cases such as this, when there are multiple provisions, the more restrictive requirement applies, thus the covenant requirement is applicable.

The property is occupied by a detached dwelling originally authorized by a building permit in 1983. Records indicate that the building was constructed to comply with floodproofing requirements consistent with the Zoning Bylaw regulations, rather than the covenant. A building permit application has recently been submitted (BP005542) to construct additions to the existing dwelling including expansion of the ground floor to include a bedroom and ensuite. This application requests consideration to amend Covenant J89733 to be consistent with the requirements of the Zoning Bylaw to permit the proposed ground floor additions to be at the same floor elevation as the existing dwelling approved in 1983 rather than a split-level layout, as described in the owner's rationale letter, attached as Appendix B.

Analysis

Section 524 of the *Local Government Act* (LGA), provides the regulatory framework for consideration of exemptions to flood requirements contained in zoning bylaws. In this case, the applicant is proposing construction that is in compliance with the flood requirements under the Zoning Bylaw, but not in compliance with the more restrictive requirement under the specific covenant. Thus a floodproofing exemption under Section 524 of the LGA is not needed, however, Section 524 provides a valid framework to apply to the covenant modification, and is the basis for the analysis of the proposed development.

To support this application for the proposed modification, the applicant has provided a signed report from a professional geotechnical engineer. The engineer's report contains an analysis of site conditions and project parameters and recommends that a Flood Control Level (FCL) of 637.2 metres, consistent with the Zoning Bylaw requirement of 1.5 metres above the high water mark of Alta Creek, is appropriate for the subject property, and that the subject property is safe for the intended residential use. This is the assurance that is required when considering an exemption under Section 524 of the LGA, and is consistent with Provincial recommendations for considering relaxations to flood construction requirements.

This report has been reviewed and accepted by the RMOW Building and Infrastructure Services departments in support of the flood construction level change. The engineer's report will be attached to the covenant modification and site development will be subject to the terms and conditions of the engineer's report.

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

This application requires Council's consideration of approval as it is not eligible for delegated approval in the municipality's "Land Use Procedures and Fees Bylaw No. 2205, 2022" because the covenant requested to be modified was enacted prior to the *Flood Hazard Statutes Amendment Act, 2003*.

Zoning and Parking Bylaw No. 303, 2015

The subject parcel is zoned RS1 (Single Family Residential One). The proposed covenant modification to facilitate the proposed additions to the existing detached dwelling is in compliance with the floodproofing requirements contained in the Zoning Bylaw.

Corporate Plan

The RMOW Corporate Plan is updated annually and articulates strategic direction for the organization. This section identifies how this report links to the plan.

Council Focus Areas

- Community Balance
*Effectively **balance resort and community needs** through deliberate planning, partnerships and investment*
- Climate Action
*Provide leadership to **accelerate climate action and environmental performance** across the community*
- Housing
*Advance strategic and innovative initiatives to enable and **deliver additional employee housing***
- Pandemic Recovery
*Leadership and support for **community and tourism recovery and sustainability** – priority focuses are where recovery needs intersect with other Council focus areas*
- Not Applicable

Corporate Goals

- Community character and mountain culture is reflected in municipal initiatives
- Municipal decision-making supports the effective stewardship of natural assets and ecological function
- Corporate policies and operations ensure continuous excellence in infrastructure, facility and program management
- A high level of accountability, transparency and community engagement is maintained

- Corporate financial health is optimized to ensure long-term community success
- A vibrant local economy and safe, resilient resort community is effectively reinforced by organizational activities

Community Vision and Official Community Plan

The Official Community Plan (OCP) is the RMOW's most important guiding document that sets the community vision and long-term community direction. This section identifies how this report applies to the OCP.

The recommended resolution included within this report is consistent with the goals, objectives and policies included within “OCP Bylaw No. 2199, 2018.”

BUDGET CONSIDERATIONS

There are no budget considerations with this application. Covenant Modification application fees provide for recovery of costs associated with the processing of this application.

LÍLWAT NATION & SQUAMISH NATION CONSIDERATIONS

The RMOW is committed to working with the Líl'wat People, known in their language as *L'il'wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumixw* to: create an enduring relationship; establish collaborative processes for Crown land planning; achieve mutual objectives; and enable participation in Whistler's resort economy.

There are no specific considerations to include in this report.

COMMUNITY ENGAGEMENT

Level of community engagement commitment for this project:

- Inform Consult Involve Collaborate Empower

Comment(s)

There are no consultation requirements for this type of application. This application was received prior to adoption of “Land Use Procedures and Fees Bylaw No. 2205, 2022” requiring a notification sign be posted for a covenant modification application.

REFERENCES

Location: 6427 Balsam Way
Legal: PID: 006-129-935, LOT 28 BLOCK A DISTRICT LOT 3862 PLAN 19202

Owners: GERHARD MICHAEL SCHMIDT; JULIA YVONNE SCHMIDT
Zoning: RS1 Zone (Single Family Residential One)

Appendices: Appendix A – Site Location Map
Appendix B – Project Rationale

SUMMARY

This report recommends that Council approve covenant modification application CM000158 to amend Covenant J89733, applicable to 6427 Balsam Way, to reduce the flood construction level for the parcel from 3.0 metres above the high water level of Alta Creek to 1.5 metres above the high water level of Alta Creek based on the analysis and recommendations contained in the professional geotechnical engineer's report submitted with the application. The engineer's report will be incorporated within the covenant. This covenant amendment will bring the flood construction level for 6427 Balsam Way into alignment with the floodproofing requirements contained in the Zoning Bylaw.

SIGN-OFFS

Written by:

Brook McCrady,
Planning Analyst

Reviewed by:

Melissa Laidlaw,
Manager of Development Planning

Mike Kirkegaard,
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Virginia Cullen,
Chief Administrative Officer