



COUNCIL REPORT

To: Mayor and Council

Date: April 11, 2023

From: Paul Gipps, CAO

File No: A 23-01

Subject: **A 23-01; Non-Farm Use Application; 2901 Boucherie Road**

Report Prepared By: Yvonne Mitchell, Planner II

RECOMMENDATION to Consider and Resolve:

THAT Council not support the Non-Farm Use Application for the construction of a tea house at 2901 Boucherie Road; and

THAT Council direct staff to close the file.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity

BACKGROUND

The subject property is in the Lakeview Heights neighbourhood. It is approximately 0.2 hectares and was subdivided in 2002 as part of a home site severance application. The remaining farm is addressed as 2910 Britt Road and is approximately 4 hectares. The subject property is currently developed with a single detached dwelling and detached garage (See Attachment 1). No agricultural use is currently operated on the parcel, and evidence has not been found that previous agricultural use occurred on the parcel.

PROPERTY DETAILS			
Address	2901 Boucherie Road		
PID	025-540-050		
Folio	36414167.131		
Lot Size	0.474 acres (1918.21m ²)		
Owner	James Reimer and April Reimer	Agent	April Reimer
Current Zoning	Agricultural Zone (A1)	Proposed Zoning	Commercial Zone <i>(separate application required)</i>
Current OCP	Agricultural	Proposed OCP	Commercial <i>(separate application required)</i>

Current Use	Single Detached Dwelling	Proposed Use	Restaurant
Development Permit Areas	Commercial (<i>separate application required</i>)		
Hazards	Impacts to agricultural lands		
Agricultural Land Reserve	Yes		

ADJACENT ZONING & LAND USES

North	^	Agricultural Zone (A1)
East	>	Agricultural Zone (A1)
West	<	Agricultural Zone (A1)
South	v	Agricultural Zone (A1)

NEIGHBOURHOOD MAP



PROPERTY MAP



Legislative Requirements

Under Section 20 of the *Agricultural Land Commission Act (ALCA)* an owner may apply to the Agricultural Land Commission (ALC) for a non-farm use. Under Section 34.1 of the ALCA such application must not proceed to the ALC for consideration unless authorized by a resolution of the local government.

Proposal

This application is for a non-farm use in the agricultural land reserve. The proposal is to demolish the existing single detached dwelling and detached garage and build a tea house on the subject property. The tea house is proposed to be two storeys and 2,708 ft² with accessory structures including a pergola, small garden, and greenhouse (See Attachment 2). In addition to the structures, a parking area would be required to be constructed.

Applicant's Rationale

Please see the applicant's application to the Agricultural Land Commission for a rationale for the proposal (Attachment 3).

DISCUSSION

Policy and Bylaw Review

Official Community Plan Bylaw No. 0100

Land Use Designation

The Land Use Designation for the subject property is Agricultural. The built form/land use for the Agricultural Land Use Designation is a range of farming, crop cultivation, and other food-related production activities and other agricultural uses. The purpose of the Agricultural Land Use Designation is to support the community's agricultural heritage and foster a local food system for greater self-sufficiency, economic development, and local food security.

The OCP identifies a key objective for parcels within the Agricultural Land Use Designation (LUD):

- Support the preservation and enhancement of the agricultural land base through land use decisions consistent with identified agricultural policies, Agricultural Land Commission policies and decisions where applicable, and the Agricultural Plan when completed.

This proposal is not considered to be consistent with the Agricultural Land Use Designation in the Official Community Plan. An Official Community Plan amendment may be required to change the Land Use Designation to Commercial if the non-farm use application is approved.

Development Permit Areas

No Development Permit Areas are currently applicable to the subject property. If a tea house is to be constructed on the subject property, a Commercial Development Permit would be required for this commercial use.

Zoning Bylaw No. 0265

The subject property is zoned Agricultural (A1). The A1 Zone permits principal uses, including agriculture, alcohol production facility, kennels, greenhouse or plant nursery, mobile or modular home, riding stable, and single detached dwelling. Secondary uses include agricultural worker dwelling, agri-tourism, and bed and breakfast (see Attachment 4 for A1 Zone). The proposal is for a restaurant as the principal use which is not permitted in the A1 Zone. A Zoning Bylaw amendment would be required if the non-farm use application is approved.

A full Zoning Bylaw review will be completed if this proposal advances, which may identify further Zoning Bylaw amendment or variance requirements. For example, as per s.3.25 of the Zoning Bylaw a 15-metre setback with a six metre landscape buffer is to be maintained from a non-farm use to land within the ALR or A1 Zone. As the subject property is approximately 30 metres in width, a variance would likely be required to reduce the agricultural buffer required.

Agricultural Plan

One of the recommendations in the Agricultural Plan is Recommendation 11: “Protection of Agricultural Land”. The plan includes a variety of policies to achieve this recommendation, including the following:

- The City of West Kelowna supports the protection of agricultural land in the City by ensuring that removal of land from the Agricultural Land Reserve or land zoned A1, or boundary adjustments result in no net loss of agricultural land within the District and the same agricultural value of land is maintained in accordance with the provisions of the *Agricultural Land Commission Act*.
- The City of West Kelowna encourages the valuation of agricultural land based on farm capability and value for agricultural use.

A key consideration of these policies is the intent to ensure that agricultural land is protected from other uses.

Another recommendation is Recommendation 16: “Agritourism and Culinary Tourism”. The plan includes a variety of policies to achieve this recommendation, including the following:

- The City of West Kelowna encourage activities that contribute to farming income, such as agritourism and culinary tourism.

A key consideration of this policy is the intent that agritourism and culinary tourism can assist the agricultural sector with further diversity and expansion.

This policy does not apply to the current proposal. Although the applicant has indicated they plan to produce some items for the tea menu onsite (see Attachment 3), the principal use proposed is a commercial restaurant, which is not considered agritourism.

The proposal is not consistent with the City's Agricultural Plan.

Agricultural Land Commission Act and Agricultural Land Reserve Use Regulation

As per s.20 of the *Agricultural Land Commission Act* a person must not use land within the Agricultural Land Reserve (ALR) for a non-farm use unless permitted under the *Agricultural Land Reserve Use Regulation*. The proposed use is not a non-farm use permitted in the Agriculture Land Reserve, and the applicant has applied to the commission for permission.

Exceptions

Pursuant to Section 23(1) of the *Act*, certain properties within the ALR are permitted to operate a non-farm use if the parcel is less than 2 acres and was subdivided prior to 1972. It should be noted the Section 23(1) exception does not provide a complete exemption from the ALCA or its regulations. For example, municipalities cannot restrict certain farm uses on such properties and limits on subdivision still apply.

An example of this exemption is located to the west of the subject property at 2850 Boucherie Road (Figure 1). This property is within the ALR but operates a non-farm use. The non-farm use is a brewery that does not meet the conditions, thresholds, or other requirements for an alcohol production facility under the ALC regulations. This property is less than 2 acres (property is 0.56 acres) and was subdivided prior to 1972 (subdivided in 1967).

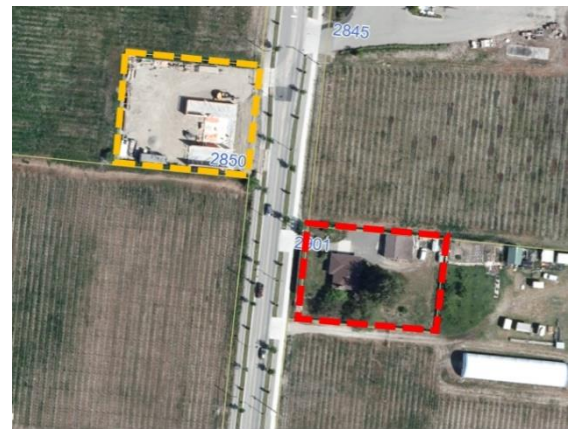


Figure 1 – subject property shown in red, 2850 Boucherie Road shown in yellow.

Referral Comments

The application was referred to various external agencies and internal departments. The referral comments received did not include any objections to the application.

Agricultural Advisory Commission (AAC)

The AAC considered the application on February 8, 2023, and carried the following motion:

“THAT the Agricultural Advisory Committee not support application A 23-01; Non-Farm Use Application; 2901 Boucherie Road, due to lack of compliance with Zoning Bylaw, Official Community Plan, ALR regulations and buffer distance.

Discussion among the AAC members included that this application sets a precedent for future applications and that this application is not the right mechanism for this property.

CONCLUSION

The proposal is not consistent with policies and objectives within the City's Agricultural Plan, Zoning Bylaw and Official Community Plan. The AAC did not support the application and raised concerns regarding setting a precedent with other smaller agricultural properties. The proposed use does not directly contribute to agricultural activities and is considered a restaurant which is a commercial use. The Zoning Bylaw does not permit restaurants in the A1 Zone, and a Zoning Bylaw Amendment would be required if the application was approved. In addition, non-farm uses require large setbacks from agricultural uses to limit interface issues and likely require a variance.

ALTERNATE RECOMMENDATION to Consider and Resolve:

1. **THAT** Council direct staff to forward the application to the Agricultural Land Commission for formal consideration.

Should Council choose this motion, a local government report will be sent to the ALC advising that Council does not wish to support or deny the application. By forwarding the application, Council is deferring to the ALC for a formal decision.

2. **THAT** Council support the Non-Farm Use Application for the construction of a tea house at 2901 Boucherie Road; and

THAT Council direct staff to forward the application to the Agricultural Land Commission for consideration.

Should Council choose this motion, a local government report will be sent to the ALC advising that Council supports the requested non-farm use.

REVIEWED BY

Chris Oliver, Planning Supervisor

Corinne Boback, Legislative Services Manager / Corporate Officer

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes No

Attachments:

1. Photos of current site conditions
2. Development Plans
3. ALC Application
4. Agricultural (A1) Zone