

# REPORT TO COUNCIL



**Date:** May 14<sup>th</sup> 2018

**RIM No.** 1250-30

**To:** City Manager

**From:** Community Planning Department (AC)

**Application:** Z18-0007/LUC18-0001      **Owner:** Mark Fipke

**Address:** 5064 Lakeshore Road      **Applicant:** Jordan Hettinga

**Subject:** Rezoning and Land Use Contract Discharge Application

Existing OCP Designation: S2RES – Single / Two Unit Residential

Existing Zone: LUC 77-1012 (A1 – Agriculture 1 is the underlying zone)

Proposed Zone: RR2C – Rural Residential 2 with Carriage House

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## 1.0 Recommendation

THAT Application No. LUC18-0001 to discharge LUC77-1012 from Lot A, Section 23, Township 28, SDYD, Plan 30063, located on 5064 Lakeshore Road, Kelowna, BC, be considered by Council;

AND FURTHER THAT the City of Kelowna Zoning Bylaw No. 8000 change the zoning classification of Lot A, Section 23, Township 28, SDYD, Plan 30063, located at 5064 Lakeshore Road, Kelowna, BC from the A1 – Agriculture zone to the RR2c – Rural Residential 2 with Carriage House zone NOT be considered by Council;

## 2.0 Purpose

To consider an application to discharge the existing Land Use Contract and to consider a staff recommendation to NOT rezone the subject property from the A1 – Agriculture zone to the RR2 – Rural Residential 2C – Rural Residential 2 with Carriage House.

## 3.0 Community Planning

The subject property's land uses are currently governed by a Land Use Contract (LUC77-1012) created in the late 1970s. The neighbouring property at 5080 Lakeshore Road successfully discharged the same Land Use Contract and rezoned their property in 2016 to construct a carriage house. In accordance with Council Policy 282 "Strategy for Elimination of Remaining LUCs", staff initiated the process to terminate the entire Land Use Contract, which in this specific case the only property remaining was the subject property.

The property owner is interested in legalizing an already constructed 'accessory building' on-site as a carriage house and has applied to the City for rezoning to RR2C – Rural Residential 2 with Carriage House. While Staff are generally supportive of most carriage house applications, in this case Staff are not recommending

support for the carriage house due to the scale of the associated variances. The height and size of the 'accessory structure' is significant and more closely resembles a second dwelling than a carriage house. The large accessory building was originally constructed in 2009-2011. The owner labelled the accessory structure as a 'horse stable'. The applicant labelled different areas within the structure for different purposes:

- 90m<sup>2</sup> for upstairs liveable area;
- 84.6m<sup>2</sup> for the upstairs office space; and
- 213.7m<sup>2</sup> bottom floor area used as storage for the principal dwelling.

The City's carriage house regulations provide limitations on liveable area at 90m<sup>2</sup> and do not define other spaces. In total, there would be three variances required to legalize the structure:

- i. Reduced front yard setback
- ii. Increase building height
- iii. Increase upper floor massing

The variances are outlined in the Section 4.4 Zoning Analysis Table and would be discussed comprehensively within a Development Variance Permit should Council support the applicant's proposed zoning change (Alternative Recommendation in Section 8.o).

Staff have in the past suggested to the applicant that the property be rezoned to RU6 – Two Dwelling Housing as this would permit two houses on-site. Staff feel the size of this structure warrants labelling it as a second house versus a carriage house. This would result in the owner paying for frontage fees for curb, gutter, and sidewalk along the subject property's frontage as well as full DCCs. By contrast, rezoning to RR2C does not include frontage fees and has a reduced DCC rate (i.e. \$2500). The property owner declined to pursue this option.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation by individually contacting the surrounding neighbours within a 50 metre radius.

## 4.0 Proposal

### 4.1 Background

Prior to 2009, the property contained a single family dwelling (See Image 1). The property was sold to the current owner in August of 2008. A new building permit to replace the existing home occurred in May 2009 and the demolition permit was applied for in June 2009. The final inspection for the demolition took place in December 2009. Construction of the new house occurred immediately after and the owner received occupancy permit June 29<sup>th</sup> 2011 (See Image 2). The original building permit included an accessory building that was labeled a horse stable (See Figure 3).

The original building permit (BP38435) conditions stated that the upstairs was shown as unfinished and any finishing required a building permit. Further, the conditions stated that the building needs to adhere to Development Permit waiver (DPW09-0113) which essentially said this building must not be used as a dwelling. There have been no building permits since to finish the interior.

The neighbouring property at 5080 Lakeshore Road successfully discharged the Land Use Contract and rezoned their property in 2016 in order to construct a carriage house. In late 2017, Staff initiated the process to terminate the entire Land Use Contract and the owner of the subject property took the opportunity to apply to legalize the 'horse stable accessory building' they built in 2009-2011 into a 'carriage house'. The applicant has stated they only use the structure for family and they have no plans to rent the dwelling unit. Officially, there should not be any kitchens (as a kitchen, sleeping space, & bathroom make a dwelling unit) in either the 'horse stable' or the basement within the principal dwelling. There have been no bylaw enforcement complaints to date in regards to the carriage house or the basement. There are no subsequent building permits on file to convert the basement or the accessory building to a secondary dwelling unit.

On January 12<sup>th</sup> 2011 the owner originally applied for a Land Use Contract Discharge, Rezoning, Development Permit, and Development Variance Permit to convert the 'accessory building' into a carriage house. The application was forwarded to the May 3<sup>rd</sup> 2011 Public Hearing agenda. However, at the applicant's request the application was removed from the agenda. Staff contacted the applicant and they declined to disclose the reason for removing the application and also declined to tell Staff how they wished to proceed.

#### Background – Land Use Contracts

The province first experimented with contract zoning in 1971. The Land Use Contract was a tool that entered into use in the 1970's before it was eliminated on November 15<sup>th</sup> 1978. The purpose of the tool was to allow local governments to arrive at agreements with specific developers to grant development rights over and above what was allowed under current zoning. This was typically done in exchange for commitments by developers to help finance the infrastructure costs of development.

However, issues have arisen, specifically with the continued application of land use contracts as they supersede any subsequent bylaw dealing with land use and development including: Zoning Bylaws,



Image 1

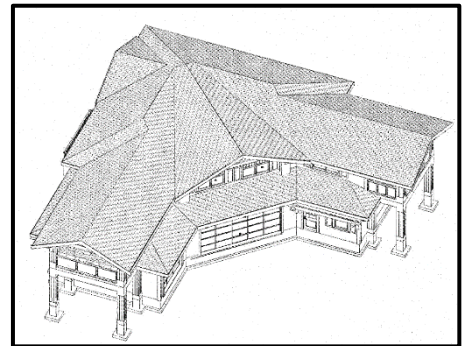


Image 2

Development Cost Charge Bylaws, and Development Permits. From 1978 to 2014, municipalities or the owners of the land could not unilaterally discharge, cancel, or modify the land use contract without the other party's consent. The Local Government Act was amended in 2014 stating all land use contracts in the province will be terminated as of June 30<sup>th</sup> 2024. Land use contracts will remain in force until that date. This provides property owners with ten years to complete any development authorized by their land use contract unless the LUC is terminated prior to that date. By June 20<sup>th</sup> 2022, local governments must have appropriate zoning regulations in place to replace land use contracts upon their termination.

In addition, local governments must provide notice to each owner that the termination of land use contract is occurring 1 year after adoption and must provide notice of what the new zoning regulations are that apply to the land.

#### 4.2 Project Description

The applicant is seeking to legalize an already constructed carriage by rezoning to RR2c – Rural Residential 2 with Carriage House. To legalize the carriage house, the current LUC will be discharged and a number of variances will need to be considered. A Development Variance Permit will be reviewed by Council subsequent to adoption of the LUC discharge and rezoning application.

#### 4.3 Site Context

The subject property abuts Lakeshore Road on the northwest side. The property is designated S2RES – Single/Two Unit Residential in the Official Community Plan and the surrounding area is low density residential. The subject property is approximately 1.25 acres. Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	W1 – Recreational Water Use	N/A
East	RR2 – Rural Residential 2	Single family residential
South	RU1 – Large Lot Housing	Single family residential
West	RR2 – Rural Residential 2	Single family residential

Subject Property Map: 5064 Lakeshore Road

4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	ZONE REQUIREMENTS	PROPOSAL
Development Regulations		
Carriage House		
Floor Area	90 m <sup>2</sup>	90 m <sup>2</sup>
Height	4.8 m	4.1 m facing up-slope 6.97 m facing down-slope ❶*
Front Yard	Min. 12 m	8.44 m ❷
Side Yard (east)	Min. 3 m	3.04 m
Side Yard (west)	Min. 3 m	3.29 m
Rear Yard	Min. 9 m	63.0 m
Max. Upper Story Floor Area Relative to Bottom Story	75%	81.7 % ❸
❶ * Carriage House – Increase Maximum Height (depending on walkout exemption) ❷ Carriage House – Front Yard Setback decrease ❸ Carriage House – Increase Upper Story Floor Area		

## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

#### Development Process

**Compact Urban Form.**<sup>1</sup> Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

### 5.2 Council Policy No. 282 – Strategy for Elimination of Remaining Land Use Contracts

**Council Policy No. 282.**<sup>2</sup> Includes the following statements:

- That a Land Use Contract be discharged for any contract where there has been a change in use or density from what it was originally intended by the Land Use Contract;
- That the City of Kelowna initiate proceedings to discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by council with regard to affected contracts;
- That priority be given to terminate Land Use Contracts having a significant financial impact or those Land Use Contract that enable development contrary to the fulfilment of community objectives.

## 6.0 Technical Comments

### 6.1 Building & Permitting Department

- No Comment.

### 6.2 Development Engineering Department

- See attached report dated February 12, 2018

### 6.3 Fire Department

- No Comment.

## 7.0 Application Chronology

Date of Application Received: January 22, 2018

Date Public Consultation Completed: January 23, 2018

## 8.0 Alternate Recommendation

THAT Application No. LUC18-0001 to discharge LUC77-1012 from Lot A, Section 23, Township 28, SDYD, Plan 30063, located at 5064 Lakeshore Road, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z18-0001 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, Section 23, Township 28, SDYD, Plan 30063, located at 5064 Lakeshore Road, Kelowna, BC from the A1 – Agriculture zone to the RR2c – Rural Residential 2 with Carriage House zone be considered by Council;

<sup>1</sup> City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

AND THAT the Land Use Contract Discharge and Zone Amending Bylaws be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the outstanding conditions of approval as set out in Attachment "A" attached to the Report from the Community Planning Department dated March 26, 2018.

<b>Report prepared by:</b>	Adam Cseke, Planner Specialist
<b>Reviewed by:</b>	Terry Barton, Urban Planning Manager
<b>Approved for Inclusion:</b>	Ryan Smith, Community Planning Department Manager

**Attachments:**

Development Engineering Services Memo  
Site Plan  
Conceptual Elevations