

# REPORT TO COUNCIL



**Date:** August 26<sup>th</sup> 2019  
**To:** Council  
**From:** City Manager  
**Department:** Development Planning – Suburban, Rural  
**Application:** Non-Farm Use Application A19-0003    **Owner:** Trine and Ryan Markewich  
**Address:** 3019 Leader Road    **Applicant:** OTG Development Concepts  
**Subject:** Application to the ALC for a Non-Farm Use Permit for Commercial Use

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## 1.0 Recommendation

THAT Agricultural Land Reserve Appeal No. A19-0003 for Lot A, Section 16, DL 131, Township 26, ODYD, Plan KAP61419, located at 3019 Leader Road Kelowna, BC, for a non-farm use in the Agricultural Land Reserve pursuant to Section 20.1(2)(a) of the Agricultural Land Commission Act attached as 'Schedule A' to the Report from the Development Planning Department dated August 26th 2019 NOT be supported by Council;

AND FURTHER THAT Council directs Staff NOT to forward the subject application to the Agricultural Land Commission for consideration

## 2.0 Purpose

To consider a Staff recommendation to NOT support an application to the ALC for a Non-Farm Use Permit to allow a commercial landscaping business to operate on the subject property for up to a maximum of five (5) years.

## 3.0 Development Planning

Development Planning staff do not support the proposal for a commercial landscaping business to operate on a temporary basis on the subject property located within the Agricultural Land Reserve (ALR) as it is not consistent the objectives of the Official Community Plan and Agricultural Plan. In order to protect and enhance local agriculture the policy of the Official Community Plan provides support for non-farm use applications only where the proposed use meets the following criteria:

- i. Consistent with the Zoning Bylaw and OCP;
- ii. provides significant benefits to local agriculture;
- iii. can be accommodated using existing municipal infrastructure;
- iv. minimizes impacts on productive agricultural lands;
- v. will not preclude future use of the lands for agriculture; and,
- vi. will not harm adjacent farm operations

*i. Consistent with the Zoning Bylaw and OCP:*

The proposal to operate a commercial landscape company for 5 years is not consistent with the Official Community Plan (OCP) as the OCP states that Temporary Use Permits outside the Permanent Growth Boundary may be considered on lands designated Resource Protection Area, with a stated time period considerably less than the maximum three (3) year time limit. The City's Agriculture Plan recommends using Temporary Use Permits for non-farm use applications within the ALR/A1 zones if the proposed development is temporary in nature. Examples may include commercial use of a portion of the ALR that is ancillary to farming. The City's Agriculture Plan also recommends support for non-farm uses in farm areas only that have a direct and ongoing benefit to agriculture and restrict and/or prohibit non-farm uses that do not directly benefit agriculture.

*ii. Provides significant benefits to local agriculture:*

There are no significant benefits to local agriculture as a result of the proposed application. The subject site is an active agricultural operation and is a successful example of how productive agriculture can be achieved on a relatively small-site (the property is 5.7 acres). The main benefit to agriculture in this circumstance is that leasing a portion of the property to a landscape company has contributed to the financial viability of the farming operation (ie. supplemental income).

*iii. Can be accommodated using existing municipal infrastructure:*

The proposal has no impact on municipal infrastructure.

*iv. Minimizes impacts on productive agricultural lands:*

The impact to the agricultural land is limited to approximately 600sqm of land used for the storage of vehicles, trailer and equipment.

*v.vi. will not preclude future use of the lands for agriculture will not harm adjacent farm operations:*

There is potential to preclude future use of the land for agricultural purposes as a temporary use permit can be renewed and re-applied for which would allow for the use to become entrenched on the agricultural parcel. There is potential for harm to adjacent farm operations as approval of one commercial landscape company may encourage others to risk operating on agricultural land. The City has consistently enforced regulations that restrict landscaping companies on agricultural land most notably in 2016 an agricultural and enforcement strategy was successful in gaining bylaw compliance with several landscaping companies operating on agricultural land in the Benvoulin Road area.

#### **4.0 Proposal**

##### **4.1 Background**

The subject property is a 5.7 acre (2.3 ha) property located at the intersection of Leader Road and KLO Road. There is an existing single detached house and two agri-accessory structures on the property. Approximately 3.3 acres of the property is being farmed to grow perennials, shrubs, trees and organic vegetables.

A landscaping company is currently operating on the subject site and the owners and now the focus of bylaw enforcement action against the property owner. To legitimize the operation the owner has applied for a Non-Farm Use Permit to allow the business to continue to operate for a maximum of 5 years.

The Non-Farm Use permit must be approved by Agricultural Land Commission (ALC). If council does not support the Non-Farm use application the application will not be forwarded to the ALC for consideration. If the Non-Farm use Permit were supported by Council and approved by the ALC the property owners would be required to apply for a Temporary Use Permit from the City of Kelowna.

Temporary Use Permits are intended to apply to operations that are temporary in nature and the do not fit into the specific uses permitted by the Zoning Bylaw for a property. Council may, by resolution, issue a Temporary Use Permit and specify the conditions under which the temporary use be carried on. Upon the expiration of a Temporary Use Permit, the permitted uses revert to those outlined in the City of Kelowna Zoning Bylaw. Conditions such as appropriate landscaping, screening and buffering can be included as conditions of the permit to protect adjacent land uses. A property owner can apply to renew a Temporary Use Permit for up to 3 years (6 years total) and re-apply for a temporary use permit after the permit has expired.

#### 4.2 Project Description

The proposed landscaping company is currently operating on the property. The company has several employees and shares the property with the farming operation. The amount of land being used solely for the landscaping company is approximately 600sqm. The non-farm use of the property includes storage of vehicles/trailers and equipment and one sea-can storage container.

The application is to allow the landscaping business to operate on the subject property on temporary basis up to a maximum of five (5) years. The applicants are proposing to apply for a time-specific approval in order to bring the property into compliance over the next five years. The application letter notes that the owner is in the process of selling the business but is not including the sale of the subject property in an effort to facilitate that the business relocate to a more suitable property if it transfers to new owners.

#### 4.3 Site Context

The majority of the subject property is designated REP – Resource Protection Area in the City’s Official Community Plan. The property is zoned A1 – Agriculture 1 and is located within the Agricultural Land Reserve. The subject property lies within the South Padosy – KLO City Sector. The property is adjacent to Mission Creek to the East this area is designated as Park in the Official Community Plan. The land to the south of the property is designated Recourse Protection Area, Zoned A1, and within the ALR. The area to the north and west of the property is designated Single/Two Unit Residential - S2RES, Zoned A1, and being used predominantly for single detached housing.

#### **Subject Property Map:**



Figure 1- Subject Property Map

## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

#### Chapter 4: Future Land Use 4.10

#### Temporary Use Permits (TUP)

- Temporary Use Permits outside the PGB may be considered on lands designated Resource Protection Area, with a stated time period considerably less than the maximum three (3) year time limit. A Temporary Use Permit on lands in the ALR will require the approval of the Agricultural Land Commission.
- All Temporary Use Permits must conform to other policy direction in this OCP, including fit within the character of the neighbourhood and surrounding uses. Appropriate landscaping, screening and buffering will be included as conditions of the permit to protect adjacent land uses.

#### Chapter 5: Development Process

#### Objective 5.33 Protect and enhance local agriculture Policy .1 - Protect Agricultural Land.

Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

### Objective 5.33 Protect and enhance local agriculture Policy .6 - Non-farm Uses.

Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operation

## 5.2 Kelowna Agriculture Plan

### Official Community Plan recommendations

Recommendations to strengthen the OCP include:

- **Temporary Use Permits.** Continue to consider using TUPs for non-farm use applications within the ALR/A1 zones if the proposed development may be temporary in nature. Examples may include commercial use of a portion of the ALR that is ancillary to farming.
- **Prohibit non-farm use.** Support non-farm uses in farm areas only that have a direct and ongoing benefit to agriculture. Restrict and/or prohibit non-farm uses that do not directly benefit agriculture.

## 6.0 Technical Comments

### 6.1 Development Engineering Department

- No Comment.

### 6.2 Ministry of Agriculture

- See Attached Letter

## 7.0 Application Chronology

Date of Application Received:	February 19 <sup>th</sup> 2019
Date Public Consultation Completed:	N/A
Agricultural Advisory Committee	May 9 <sup>th</sup> 2019

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on May 9<sup>th</sup> 2019 the following recommendation was **defeated**:

*THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A19-0003 for the property located at 3019 Leader Road for a Non-Farm Use Permit to allow a commercial landscaping business to operate on the subject property for up to a maximum of five (5) years.*

The following recommendations were **carried**:

*THAT the Agricultural Advisory Committee recommends that Council support a Temporary Use Permit for the property located at 3019 Leader Road for a maximum of (3) years.*

*THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A19-0003 for the property located at 3019 Leader Road for a Non-Farm Use Permit to allow a commercial landscaping business to operate on the subject property for up to a maximum of three (3) years.*

The following anecdotal comments from the Agricultural Advisory Committee were provided:

*The Agricultural Advisory Committee strongly believes the maximum time period for the transition of the Non-Farm Use for a landscaping business should be to have it removed in less than 3 years*

#### **8.o Alternate Recommendation**

THAT Agricultural Land Reserve Appeal No. A19-0003 for Lot A, Section 16, DL 131, Township 26, ODYD, Plan KAP61419, located at 3019 Leader Road Kelowna, BC, for a non-farm use in the Agricultural Land Reserve pursuant to Section 20.1(2)(a) of the Agricultural Land Commission Act attached as 'Schedule A' to the Report from the Development Planning Department dated August 26th 2019 be supported by Council;

AND FURTHER THAT Council directs Staff to forward the subject application to the Agricultural Land Commission for consideration.

<b>Report prepared by:</b>	Alex Kondor, Planner Specialist
<b>Reviewed by:</b>	Dean Strachan, Suburban and Rural Planning Manager
<b>Reviewed by:</b>	Terry Barton, Development Planning Department Manager
<b>Approved for Inclusion:</b>	Ryan Smith, Divisional Director, Planning & Development Services

#### **Attachments:**

Schedule A: ALC Non-Farm Use Application

Attachment A: Site Plan

Attachment B: Letter of Rational from Applicant