

# REPORT TO COUNCIL



**Date:** June 13<sup>th</sup> 2016

**RIM No.** 1250-30

**To:** City Manager

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

**Application:** Z16-0009/LUC16-0001      **Owner:** James Emil Sharko  
Maureen Anne Atrens-Sharko

**Address:** 5080 Lakeshore Road      **Applicant:** James Sharko

**Subject:** Rezoning Application

**Existing OCP Designation:** S2RES - Single / Two Unit Residential

**Existing Zone:** A1 - Agriculture 1

**Proposed Zone:** RR2c - Rural Residential 2 with Carriage House

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## 1.0 Recommendation

THAT Application No. LUC16-0001 to discharge LUC77-1012 from Lot C, Section 23, Township 28, SDYD, Plan 30063, located on 5080 Lakeshore Road, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z16-0009 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot C, Section 23, Township 28, SDYD, Plan 30063, located on 5080 Lakeshore Road, Kelowna, BC, from the A1 - Agriculture zone to the RR2c - Rural Residential 2 with Carriage House be considered by Council;

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

AND THAT Council consider a resolution to discharge LUC77-1012 from Lot C, Section 23, Township 28, SDYD, Plan 30063, located on 5080 Lakeshore Road, Kelowna, BC,

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 June 13<sup>th</sup> 2016.

## 2.0 Purpose

To consider an application to discharge the existing Land Use Contract and rezone the subject property from the A1 - Agriculture to the RR2c - Rural Residential 2 with Carriage House to facilitate a carriage house.

## 3.0 Community Planning

The applicant is seeking to convert the accessory building, under construction, on the south end of the property to a carriage house. However, the property is currently under regulation of a Land Use Contract which does not permit the development of a carriage house. The existing Land Use Contract (LUC) on the subject property was created in 1976 to allow for one single family residential dwelling per lot on Lakeshore Road with the possibility of an additional structure as an accessory building. Community Planning supports the request for the LUC discharge and rezoning as it complies with the 2014 amendment of the Local Government Act. The LUC will be discharged through the rezoning process, in accordance with Council Policy No. 282.

Land Use Contracts will be dissolved by 2024 and Local Governments must have the appropriate underlying zoning in place by 2022 (see Land Use Contract process & history in the Background section). Due to this requirement of the Local Government Act, Staff are recommending whenever a property owner applies to discharge a Land Use Contract, that staff initiate the process to eliminate the whole LUC. Eliminating LUC77-1012, in this case, triggers terminating the LUC and rezoning the two adjacent parcels (5064 and 5076 Lakeshore Road). This approach will help alleviate the future work load of eliminating and rezoning all LUC's at one time.

As a result of the recommended process, Staff are proposing to terminate LUC77-1012 on 5064 and 5076 Lakeshore Road as well as rezone those properties to RR2 - Rural Residential. Terminating a LUC is different from discharging a LUC (discharged is proposed for 5080 Lakeshore Road). Terminating a LUC eliminates the contract one year after Council adopts the bylaw whereas discharging the LUC eliminates the contract immediately after Council adopts the bylaw.

Overall, Staff are supportive of increasing rental housing options through the additions of carriage houses. Staff are supportive of carriage houses in the front yard when properties are large in size and are fronting onto Okanagan Lake. Additional variances will appear in the Development Permits for both the carriage house and the beach pavilion. Should Council support the proposed zoning change, the variances will come forth to Council for formal consideration with the Development Permit. The variances are outlined in the 4.4 Zoning Analysis Table.

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

## **4.0 Proposal**

### **4.1 Background**

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, 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

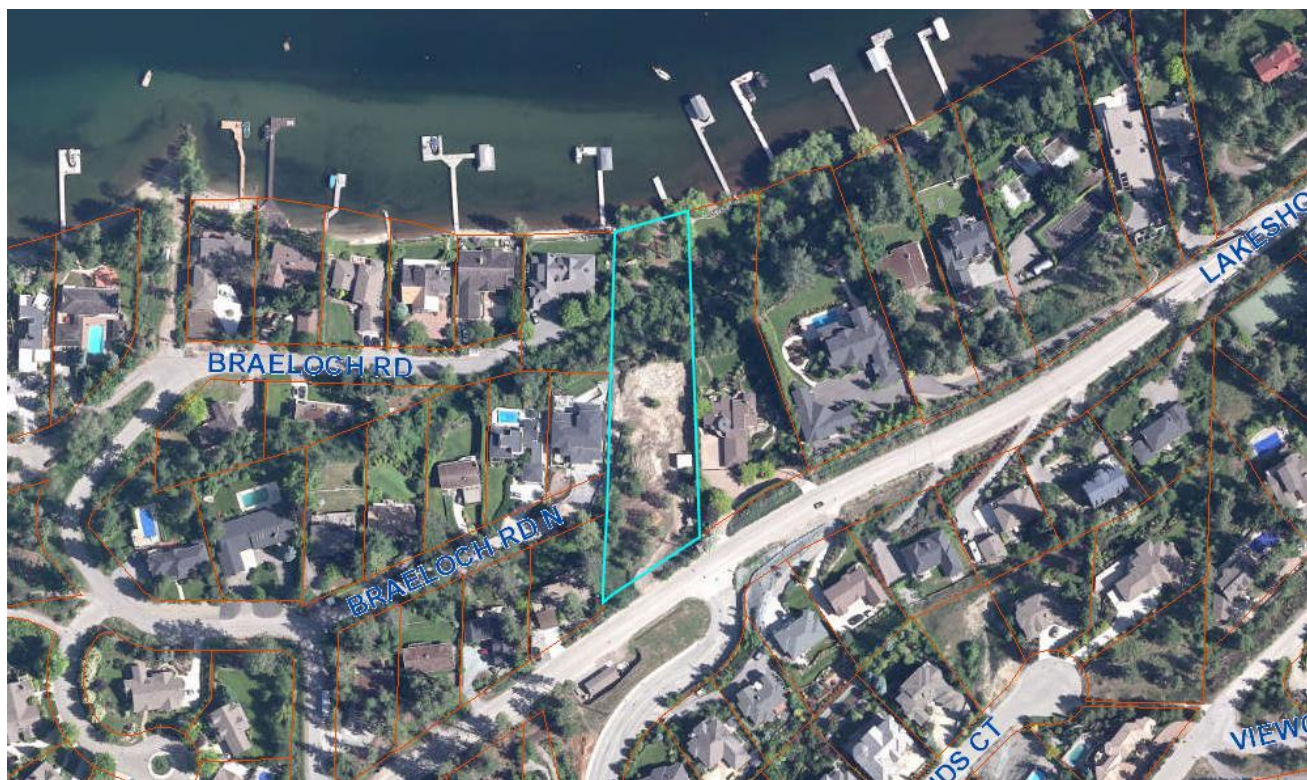
The applicant is seeking to build a dwelling with a supporting carriage house by rezoning to RR2c - Rural Residential 2 with Carriage House. To allow for this rezoning the current LUC will be discharged. The property has one dwelling and an accessory building that are under construction and is looking for an immediate discharge of the LUC for allowance to convert the accessory building to a carriage house. Further, the applicant is proposing a beach pavilion that Council will consider under the Development Permit and Development Variance Permit subject 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 4816 m<sup>2</sup>. Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	W1 - Recreational Water Use	N/A
East	LUC 77-1012 (A1 - Agriculture 1)	Single family residential
South	RU1 - Large Lot Housing	Single family residential
West	RR2 - Rural Residential 2	Single family residential

**Subject Property Map:** 5080 Lakeshore Road



#### 4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	ZONE REQUIREMENTS	PROPOSAL
Development Regulations		
Carriage House		
Location	Principle building must be between front yard and carriage house	Carriage house is located in the between the front yard and the principle building ❶
Floor Area	90 m <sup>2</sup>	90 m <sup>2</sup>
Height	4.8 m	5.89 m ❷*
Front Yard	Min. 6 m	13.56 m
Side Yard (east)	Min. 3 m	>20 m
Side Yard (west)	Min. 3 m	6.62 m
Rear Yard	Min. 9 m	116.76 m
Max. Upper Story Floor Area Relative to Bottom Story	75%	107% ❷
Regulations		
Beach Pavilion		
Height	4.5 m	3.3 m
Front Yard	6 m	112.06 m
Side Yard (east)	Min. 3 m	5.59 m
Side Yard (west)	Min. 3 m	14.09 m
Rear Yard	Min. 3 m	50 m
Okanagan Lake Sightlines	0% in 60° Sightline	100% in 60° Sightline ❶

- ❶ Carriage House Location Variance
- ❷ Carriage House – Increase Upper Story Floor Area
- ❸\* Carriage House – Increase Maximum Height (depending on walkout exemption)
- ❹ Beach Pavilion – 60 Degree Sightline Variance

## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

#### Chapter 5: 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

- 1) Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permits.
- 2) Operable bedroom windows required as per the 2012 edition of the British Columbia Building Code (BCBC 12).
- 3) Provide the City of Kelowna Bulletin #88-02 (Secondary Suites Requirements in a single family dwelling) for minimum requirements. The drawings submitted for Building Permit application is to indicate the method of fire separation between the suite and the garage
- 4) Range hood above the stove and the washroom to vent separately to the exterior of the building. The size of the penetration for this duct thru a fire separation is restricted by BCBC 12, so provide size of ducts and fire separation details at time of Building Permit Applications.

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

- 5) A fire rated exit stairwell is required from the suite to the exterior c/w fire rated doors that open into the stairwell and a fire rating on the bottom of the stairs. Please provide these details on the building permit drawing sets. Exit doors are required to swing on a vertical hinge and not a barn door style
- 6) Full Plan check for Building Code related issues will be done at time of Building Permit applications.

6.2 Development Engineering Department

- See attached report dated March 17, 2016

6.3 Fire Department

- 1) Requirements of section 9.10.19 Smoke Alarms and Carbon Monoxide alarms of the BCBC 2012 are to be met.
- 2) Access to the main house appears difficult for a fire truck.
- 3) Should a gate be built, ensure that a truck can fit through/under. A fire department lockbox is recommended for emergency access
- 4) Fire flows of 60 L/sec is required for a single family dwelling - location of hydrants should meet the subdivision bylaw.

**7.0 Application Chronology**

Date of Application Received: February 11, 2016  
Date Public Consultation Completed: April 26, 2016

**Report prepared by:**

Adam Cseke, Planner  
&

Jenna Ratzlaff, Summer Student

**Reviewed by:**

☐

Terry Barton, Urban Planning Manager

**Approved for Inclusion:**

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Ryan Smith, Community Planning Department Manager

**Attachments:**

Development Engineering Services Memo

Site Plan  
Conceptual Elevations