

REPORT TO COUNCIL



Date: August 29, 2016

RIM No. 1210-21

To: City Manager

From: Community Planning Department (TY)

Application: A16-0002 **Owner on Lease :** 678923 B.C. LTD.
(Neway Landscape & Irrigation Ltd)

Address: 3740 Casorso Road **Applicant:** Urban Options Planning & Permits

Subject: Non-Farm Use Application to the Agricultural Land Reserve

Existing OCP Designation: REP - Resource Protection Area

Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve Appeal Application No. A16-0002 for The East ½ Lot C District Lot 133 ODYD Plan 1829, located at 3740 Casorso Road, Kelowna, BC for a Non-Farm Use of agricultural land in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act, NOT be supported by Council;

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

2.0 Purpose

To consider a Staff recommendation NOT to seek a resolution from the Agricultural Land Commission for a Non-Farm Use to allow a farm yard footprint to be used for non-farm uses of retail sales of non-farm products and landscape construction business on the subject parcel.

3.0 Community Planning

The applicant is requesting a Non-Farm Use application under Section 20(3) of the Agricultural Land Commission (ALC) Act to allow a farm yard footprint for two non-farm uses on the subject property. The two non-farm uses proposed are a) retail sales of non-farm product in an area 490 sq.m. in size and b) operation of a landscape and irrigation construction business on the subject property.

The ALC Non-Farm Use application is required as:

- Retail sales of non-farm product (when accompanied by retail sales of farm product) may not exceed 150 sq.m. in size, and

- Operating a landscape & irrigation construction company is not a permitted land use on Agricultural lands.

The Non-Farm Use application is to seek the appropriate provincial and municipal approvals. In order to permit the following uses, on the subject parcel the applicant proposes to:

Register a Farm Yard Footprint of 4,120 sq.m as shown on Attachment A of this report. The purpose of this footprint is to establish an area on the parcel where the two non-farm uses (A & B below) may occur, including:

- A. Nursery Related Retail Sales of Non-Farm product of mulch and decorative rock sales, and garden accessories such as but not limited to soil additives, spades, gardening gloves etc.; and
- B. Operation of Landscape & Irrigation Construction Company *Neway Landscape & Irrigation Ltd*, solely used for office space and storage of vehicles and equipment.

According to Zoning Bylaw No. 8000 "Greenhouses and Plant Nurseries" expressly does not include landscaping operations, and as such, are not a permitted use in the A1 - Agriculture 1 zone^{1 2}.

In addition, the proposal does not correspond or support with the following Official Community Plan Policies:

- Increase local food production ³;
- Protect Agricultural Land ⁴; or
- Urban Uses - Direct urban uses to lands within the Permanent Growth Boundary ⁵.

The uses of landscaping companies (general contractors), and outdoor storage is permitted in the I2 - General Industrial zone and the I6 - Low Impact Transitional Industrial zone. Staff shares the Agricultural Advisory Committee (AAC) concern with the proposal regarding precedent for other operations, and notes that the use is legal in other zones within the city.

4.0 Proposal

4.1 Background

Neway Landscape & Irrigation Ltd has leased the parcel from the Property owners since 2003. In this time, Neway has operated with a Business Licence of "Landscaping/Garden including the sale of shrubs" which is permitted in Kelowna's A1 - Agriculture 1 Zone and meets ALC regulations. Since 2003, the business expanded, creating non-conforming uses on the parcel which include the retail sales of imported non-farm product (topsoil, mulch, gravels) as well as landscape construction equipment storage and granular material stockpiling.

In 2015, the applicant was notified that the extent of the commercial operation (rock and mulch sales, outdoor storage and storage of heavy equipment) on the property exceeded the original business license and allowable uses by the ALC and Kelowna Zoning Bylaw No. 8000. Neway was instructed to terminate operations or apply for a non-farm use to legalize the non-conformity on the site.

¹ City of Kelowna Zoning Bylaw No. 8000 Section 2.1 p. 2-19

² City of Kelowna Zoning Bylaw No. 8000 Section 11 p. A1-1

³ City of Kelowna 2030 Official Community Plan Development Process Chapter p. 5.14

⁴ City of Kelowna 2030 Official Community Plan Development Process Chapter p. 5.35

⁵ City of Kelowna 2030 Official Community Plan Development Process Chapter p. 5.35

Non-Farm Use application A16-0002 was applied for in January of 2016. In May 2016, a site plan was presented to the AAC (see *Attachment B: May 2016 Site Plan*).

The AAC did not recommend Council support to legalize the existing operation which included a nursery, landscape and irrigation construction company, and retail sales of non-farm product.

AAC Comment Summary:

- Concerns with other surrounding non-compliant properties.
- Acknowledged the applicant has made effort to bring the property closer to compliance.
- Concerned with setting a precedent for others in the area (allowing non-compliance).
- Concerned with non-farm uses spread over a large, non-contiguous area.
- Strongly encouraged the applicant to reconfigure the uses on site to increase agriculture, bringing all non-farm uses to the front property line.

The applicant considered the AAC recommendation and has submitted a revised Proposed Site Plan (See Image 2) based on AAC comments. The current proposed site plan increases nursery, decreasing the area of non-farm retail product.

4.2 Agricultural Land Capability

The soils are improvable (via ditching and irrigation) to Class 2 which is considered prime agricultural land and relatively rare in the Okanagan.

4.3 Project Description

The applicant is proposing one contiguous farm yard footprint for all proposed non-farm uses. This footprint as proposed in Image 2 (*Attachment A*) is 30 % of the property and would include drive aisles, parking, storage sheds, retail for non-farm product, artificial putting green, storage of heavy equipment and materials for the nursery and landscape and irrigation construction company.

The remainder of the property outside of the farm yard footprint is proposed for farm uses only. On the subject parcel the farm use as proposed is ornamental plant nursery, such as greenhouses, indoor or outdoor plant inventory and a potting areas.

As part of this application, no storage or stockpiling of any equipment or material for the nursery or landscape construction company are permitted outside the farm yard footprint.

Although the proposed site plan does take AAC comments into consideration, there are a number of City of Kelowna and ALC Regulations and Policies that are not met with the application as proposed and therefore are before Council for consideration. The Zoning Analysis Table identifies where the application meets or does not meet ALC and City of Kelowna regulations and policies. Section 5.0 of this report provides further details on these current development policies.

4.4 Agricultural Use Analysis Table

| CRITERIA | PERMITTED | PROPOSED | ACHIEVES |
|---|---|--|----------|
| AGRICULTURAL LAND COMMISSION REGULATION | | | |
| <i>A Agricultural Activities</i> | Ornamentals (floriculture, horticultural, nursery crops) | Ornamentals (floriculture, horticultural, nursery crops) | ✓ |
| <i>B Permitted Farm Uses</i> | Farm Retail Sales (of farm product listed above) (Maximum 150 sq.m.) | Farm Retail Sales (of farm product listed above) (Maximum 150 sq.m.) | ✓ |
| | Non-Farm Product Retail Sales: • Accessory to farm retail sales • maximum 150 sq.m. | • Accessory to farm retail sales • 490 sq.m. (more than 3 times the allowable area) | ✓ X |
| <i>C Permitted Uses</i> | | Landscape and Irrigation Construction (Construction business is not a permitted use on ALR land) | X |
| AGRICULTURAL LAND COMMISSION GUIDELINES | | | |
| Farm Yard Footprint | For Single Family Dwelling & Associated Accessory Buildings | Non-Farm Uses | X |
| CITY OF KELOWNA A1 ZONE REGULATION | | | |
| Lot Area | 2.0 HA / 4.9 ACRE | 1.3 HA / 3.3 AC | |
| Lot Width | 40.0 m | 90.3 m | |
| A1 Zone Principal Uses | Greenhouses and Plant Nurseries | Greenhouses and Plant Nursery | ✓ |
| A1 Zone Secondary Uses | | Landscape / Irrigation Construction (Construction business is not a permitted use in the A1 Zone) | X |
| CITY OF KELOWNA POLICY | | | |
| Farm Yard Footprint | Contain all non-farm uses in a contiguous area | Contiguous | ✓ |

Image 2 - Proposed Site Plan

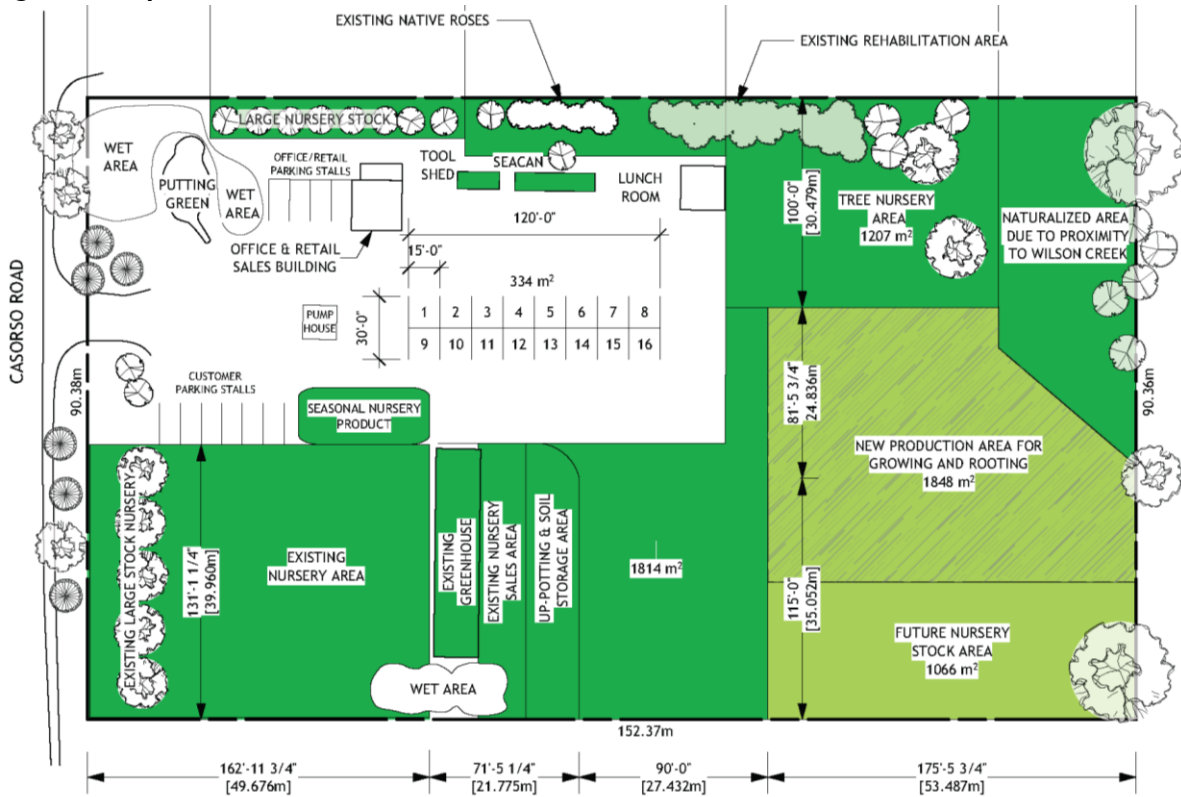
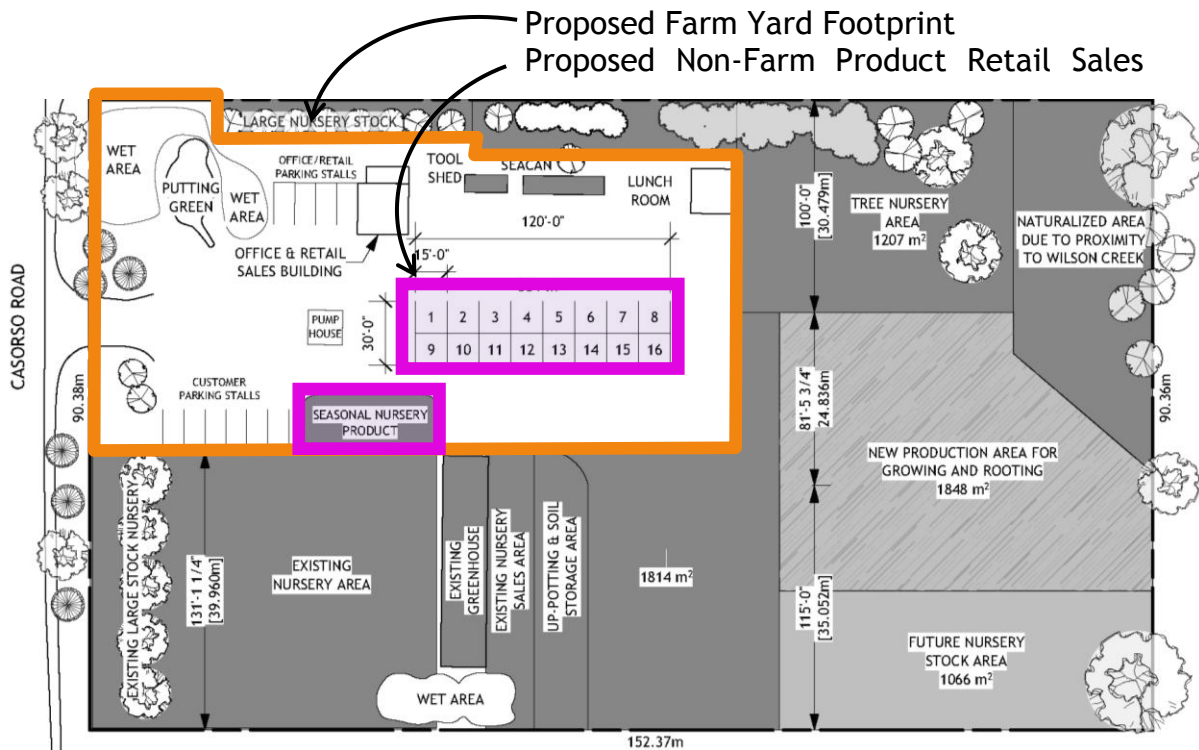


Image 3 - Proposed Site Plan - Non Farm Uses



4.5 Site Context

The subject property is located in the South Pandosy - KLO Sector of Kelowna. It is surrounded by land in the ALR and is adjacent to Wilson Creek in the southeast corner. The parcel is relatively flat, with low, wet areas to the southeast closest to Wilson Creek. As the property has little to no slope allowing water to drain, throughout the spring, fall and winter seasons water does pool around the perimeter of the property. It is outside the Permanent Growth Boundary as identified in Kelowna's Official Community Plan.

Subject Property Map 2015



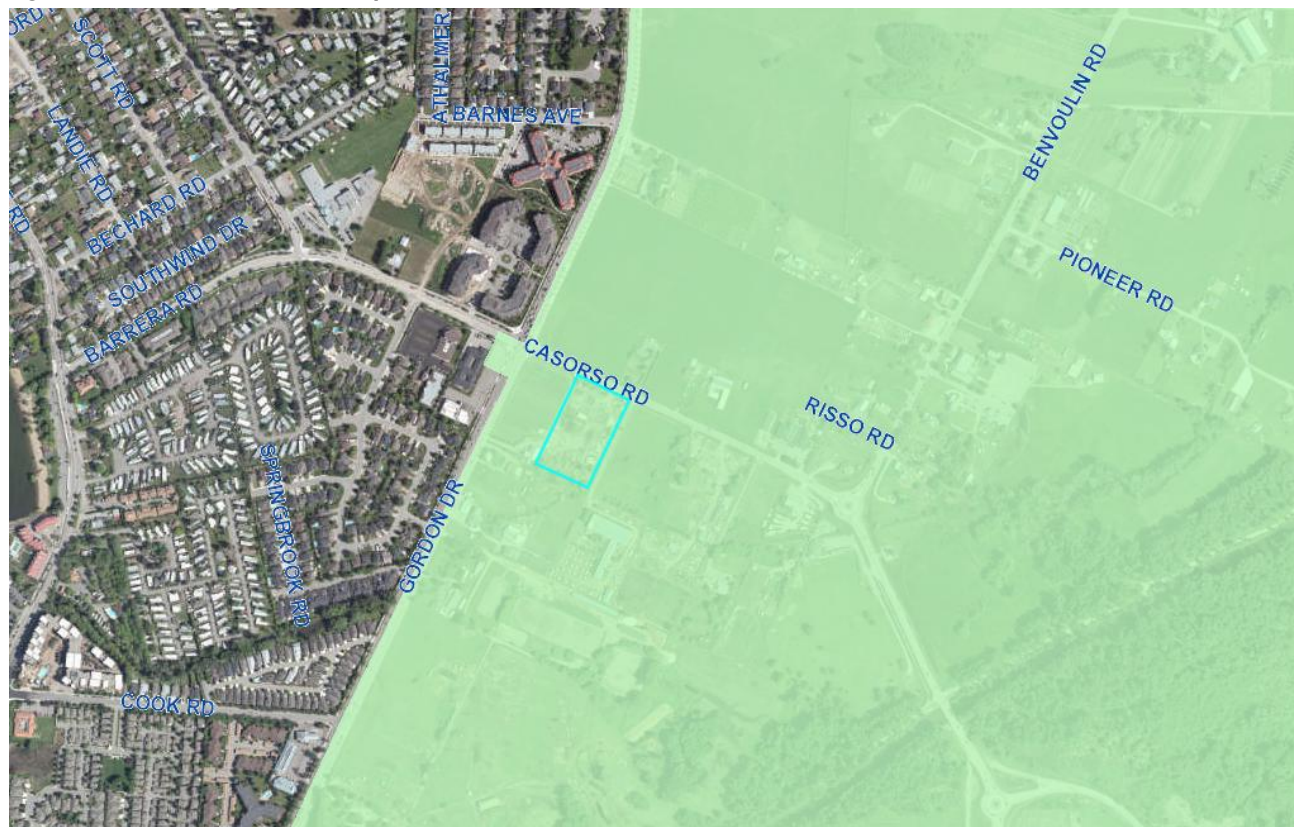
Subject Property Map 2000



Specifically, adjacent land uses are as follows:

| Orientation | Zoning | ALR | Land Use |
|-------------|--------------------|-----|-------------------|
| North | A1 - Agriculture 1 | Yes | Hay |
| East | A1 - Agriculture 1 | Yes | Pasture |
| South | A1 - Agriculture 1 | Yes | Vacant Land |
| West | A1 - Agriculture 1 | Yes | Fruit / Vegetable |

Agricultural Land Reserve Map



5.0 Current Development Policies

5.1 Kelowna Agriculture Plan (1998)

ALR Application Criteria⁶

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

5.2 Kelowna Official Community Plan (OCP)

Agricultural Land Use Policies

Objective 5.33 Protect and enhance local agriculture⁷.

⁶ City of Kelowna Agriculture Plan. 1998. P. 130.

⁷ City of Kelowna 2030 Official Community Plan: Agricultural Land Use Policies Chapter. P. 5.35.

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.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

5.3 *Agricultural Land Commission Act (ALCA)*

Purposes of the commission - Section 6 of the ALCA

The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

6.0 Technical Comments

6.1 Development Engineering Department

No comments at this time. A comprehensive report will be provided at the time of application if the Agricultural Land Commission agrees to the proposed land use on the subject property.

6.2 Bylaw Services

Should the ALC approve the continuation of this business, signage on the subject property will need to be brought into compliance which includes applying for a Sign Permit.

7.0 Application Chronology

| | |
|----------------------------------|------------------|
| Application Received: | January 28, 2016 |
| Agricultural Advisory Committee: | May 12, 2016 |
| Revised Site Plan: | July 19, 2016 |

8.0 Agricultural Advisory Committee

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on May 12, 2016 and the following recommendations was *DEFEATED*:

THAT the Agricultural Advisory Committee recommends that Council support an application to the Agricultural Land Commission under Section 25 of the Agricultural Land Commission Act for "non-farm use" on the subject property at 3740 Casorso Road legalize an existing non-conforming nursery and landscape company and proposed nursery expansion.

ANECDOTAL COMMENTS:

- The Agricultural Advisory Committee did not support the request to legalize an existing nonconforming nursery and landscape company and proposed nursery

expansion on this property, however, acknowledge that the applicant has done a lot to enhance the property.

- The Agricultural Advisory Committee raised concern with setting a precedent for others in the area that are non-compliant.
- The Agricultural Advisory Committee strongly encourages the Applicant to relook at the site and reconfigure in order to increase farmland; suggested the gravel operation be moved to the front of the property to increase the agriculture footprint.
- The Agricultural Advisory Committee recommend more resources be put towards compliance enforcement.

9.0 Alternate Recommendation

THAT Agricultural Land Reserve Appeal Application No. A16-0002 for The East ½ Lot C District Lot 133 ODYD Plan 1829, located at 3740 Casorso Road, Kelowna, BC for a Non-Farm Use of agricultural land in the Agricultural Land Reserve pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Council, subject to the ALC imposing a condition that a Temporary Use Permit application to eliminate all non-farm uses over a three-year period be considered;

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

Report prepared by: Tracey Yuzik, Planner

Reviewed by: Todd Cashin, Suburban and Rural Planning Manager

Reviewed by Ryan Smith, Community Planning Department Manager

Approved for Inclusion: Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Attachment A Current Proposed Site Plan

Attachment B May 2016 Site Plan