

REPORT TO COUNCIL



Date: May 9, 2022
To: Council
From: City Manager
Subject: Proposed Amendments to Permit Second Residences in the ALR
Department: Development Planning

1.0 Recommendation

THAT Council receives, for information, the report from the Development Planning Department dated May 9, 2022, with respect to amending the Official Community Plan and Zoning Bylaw to allow for second residences on properties in the Agricultural Land Reserve;

AND FURTHER THAT Council direct staff to bring forth changes to the 2040 Official Community Plan Bylaw No. 12300 and Zoning Bylaw No. 8000 as outlined in the report from the Development Planning Department dated May 9, 2022.

2.0 Purpose

To facilitate a discussion with Council regarding the recent changes to the ALC Act and Regulations for second residences in the Agricultural Land Reserve and review options to regulate residential uses within the Agricultural Land Reserve.

Background:

On July 12th, 2021, the Province introduced new legislation to allow increased housing flexibility within the ALR, which is intended to help both farmer and non-farmers support families and businesses. Effective December 31st, 2021, the new ALR Use Regulation permits property owners in the ALR to have an additional residence (e.g. carriage house, garden suite, manufactured home, etc.) conditional upon the size of the principal dwelling and the size of the property as outline below, without an application to the Agricultural Land Commission (ALC). Proposals that deviate from these restrictions will continue to be required to submit a Non-Adhering Residential Use Permit Application to the ALC.

- For properties up to 4oha and that have a principal dwelling that is less than 500m², a 90m² additional residence is permitted.
- For properties that are over 4oha, a second residence up to 186m² is permitted. There are conditions associated with the size of the principal dwelling.

The Provincial intent is that the additional residence can be used for several purposes including rental (long or short term), agri-tourism accommodation, family, or farm-help. There is no longer a requirement that the additional residence must be used by the landowner or immediate family members.

As the ALR Use Regulation allows local governments to regulate or prohibit residential uses within the ALR, provided that those regulations are not more permissive, a decision needs to be made on if and how these new regulations will be applied in Kelowna.

Residential Housing Regulations in Kelowna

On ALR properties, the City’s current Zoning Bylaw regulations permit one principal dwelling up to 500m² (as defined by the ALC), which may include a secondary suite. A mobile home (9.0m wide) for immediate family members is also permitted if the owner resides on the same lot. The mobile home must be removed when it is no longer occupied, and the land is to be restored to a condition suitable for agricultural use.

Standard Development Regulations for setbacks, site coverage and height of dwellings apply. This Development Regulations within the A1 – Agriculture 1 zone can be seen below:

Use	Gross Floor Area	Front Yard Setback	Side Yard Setback	Rear Yard Setback	Height
Single-Family Dwelling	500m ²	6.0m	3.0m	10.0m	9.5m or 2 ½ storeys
Mobile Home	300m ² / max. 9.0m wide	6.0m	3.0m	10.0m	4.8m

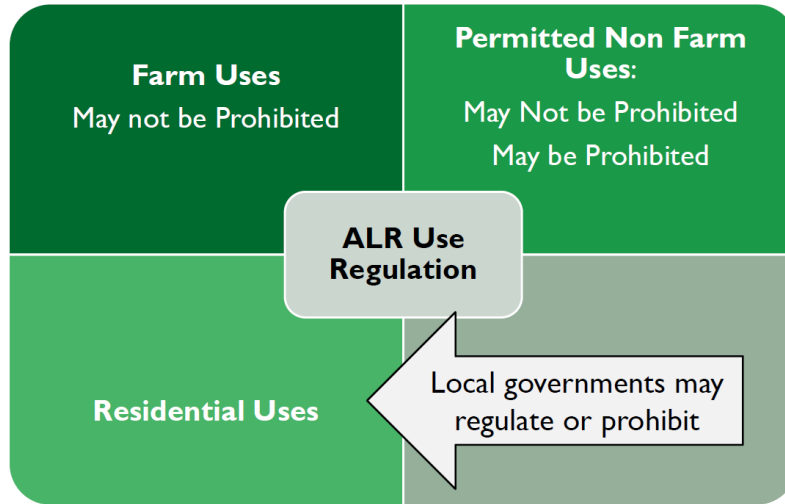
To best follow the policies of the ALC and Ministry of Agriculture, in order to preserve agriculture and home plating, Staff require a Farm Residential Footprint Covenant to be placed on Title for any new residential development. This covenant outlines a 2,000m² (0.2ha) area for residential uses, with an additional 1,000m² (0.1ha) for a mobile home. All new residential development will have to be contained within the defined covenant area. The mobile home must also be on a non-permanent foundation without basement excavation, and to qualify, the owner must also live on the same lot.

Property owners that vary from these regulations must apply for an ALC Non-Adhering Residential Use Permit Application, which is reviewed by Staff, the Agricultural Advisory Committee (AAC) and Council. If supported, the application is forwarded to the ALC for the final decision.

With the recent changes to the ALC regulations, grandfathering is permitted for any homes lawfully constructed by December 31st and they may retain in their size and footprint. For any manufactured home, they are not limited to owner or immediate family member after December 31st, 2021 but must stay the same size and footprint.

Existing Considerations for Secondary Residences

Residential uses within the ALR are different than farm uses because local governments have the ability to decide how they want to regulate them.



There are several regulations the City has in place through policy or bylaws that can help formulate the City of Kelowna’s approach to the new residential regulations.

Okanagan Basin Water Board (OBWB) - 1.0 Hectare Policy

The City’s Zoning Bylaw and Subdivision, Development & Servicing Bylaw as well as the Okanagan Basin Water Board’s Policies do not support the development of carriage houses on lots less than 1.0 hectare that rely on on-site sewage disposal. Since 2014, the Okanagan Basin Water Board (OBWB) has required grant recipients, including the City of Kelowna, to have bylaws in place restricting carriage houses to properties greater than 1.0 hectare or to properties with community sewer connections. As per the OBWB Sewage Facilities Assistance Grants’ Terms of Reference, OBWB will only fund sewage infrastructure applications in communities that comply with its 1.0 Hectare Policy.

This policy has been built into the Zoning Bylaw under **Section 9.5b.3a**:

A carriage house shall be connected to a community sanitary sewer unless the lot is at least 1.0 ha and meets the requirements of the City and the Medical Health Officer for septic disposal capacity.

Since the ALC’s new regulations for second dwellings would fall under the same size requirements, the OBWB 1.0 ha policy should be implemented to avoid conflict with any future funding opportunities.

Farm Residential Footprint Covenant

As mentioned in Section 2.2, the City of Kelowna requires Farm Residential Footprint covenants for all new residential buildings including additions to principal dwellings (exceeding 30m²) and mobile homes. This Farm Residential Footprint covenant allows the Approving Officer more discretion when permitting new residential development. The goal is to limit the residential driveway access to one, as well as create a defined Homeplate, so residential uses are spread throughout the site. This regulation has been defined in the Zoning Bylaw under **Section 11.1.6c**:

For lots 0.4ha and greater, a residential footprint must be registered on title for a residential development triggered by a Farm Protection Development Permit. The maximum residential

footprint is 2,000m². A second residential footprint up to 1,000m² may be registered for a mobile home for immediate family members.

If a new residential policy allowing second dwellings is adopted, it would be fair to adjust the above bylaw to require the Farm Residential Footprint covenant for all new residential development. The second dwelling would be required to be in a contiguous area with the principal dwelling and would instruct against having residential uses spread across the property.

Total Number of ALR Properties Affected

A GIS analysis of the City shows that there are 1946 properties that are either wholly or partially within the ALR. Total number of properties by size are as follows:

Property size	Number of properties
Less than 1 ha	617
1 ha to 40 ha	1296
> 2 ha (recommended minimum size for secondary residence)	1087
Greater than 40 ha	33

Further GIS analysis showed that of the properties that are greater than two hectares, 187 parcels have two or more dwelling units (a dwelling unit can be a suite in a principal dwelling or it can be a separate secondary dwelling). This means that should the City choose to amend its bylaws to allow for some degree of increased residential flexibility, approximately 900 parcels could be affected under a 2.0 ha minimum.

Given the approximate construction rate of carriage houses within the City’s urban areas (20-30 per year), it is estimated that about 25% or 225 units of the possible 900 would be constructed over a twenty-year period. This would likely be weighted to the first couple years and not evenly distributed over the longer term. It is anticipated that there may be 10-15 units built per year for the first few years of the policy. Due to the limited number of units, it is not considered to have any additional servicing needs from the City.

Agricultural Advisory Committee:

Staff took the item to the Agricultural Advisory Committee for review and comment on December 9, 2021. The following resolution and anecdotal comments provided below.

The report on Regulatory Options for Second Residences in the ALR was reviewed by the Agricultural Advisory Committee at the meeting held on December 9, 2021 and the following recommendation was passed:

THAT the Agricultural Advisory Committee recommend to Council that second residences **not** be supported on agriculturally zoned land.

Anecdotal Comments:

- Creates opportunities for conflict and adversely impacts the land with increases in property values and does not encourage farming the land.
- Goes against the objectives of the OCP of densifying and reducing urban sprawl of our community.
- Reminder that not allowing secondary residences still allows the ability to suite the residence for rental income without increasing the footprint into arable land. There are options for rental income already on farmland.

- Secondary residence approval is not a solution for farmers. Ministry needs to reflect how best to help farmers and not just looking at the land ownership opportunity side of the situation.
- The Committee recognizes that bonafide farmers have challenges.

Discussion:

Staff have considered the following general options to regulate secondary residences in the ALR. An outline of three general directions is provided in the table below.

	<u>Regulations</u>	<u>Pros</u>	<u>Cons</u>
1. Adopt new ALR Regulations (as per provincial regulation)	<p>Permit additional residences in accordance with ALR Use Regulations for properties greater than 1.0ha in size. This would allow property owners to have 500m² principal dwelling with a secondary suite, as well as the 90m² additional residence. For properties over 40 ha, they would be permitted to build a second residence that is 186m². This would allow all the housing forms permitted within the ALC regulations:</p> <ul style="list-style-type: none"> • Carriage Homes (garden suite or guest house) • Accommodation above an existing structure • Manufactured homes 	<ul style="list-style-type: none"> - Consistent with provincial legislation - Regional consistency (West Kelowna, Lake Country, RDCO) - Provide the most flexibility for agricultural land owners and businesses 	<ul style="list-style-type: none"> - Increased number of units outside of the PGB - Most potential to impact agriculturally productive land
2. Adopt ALR Regulations with Restrictions	<p>Permit additional residences with restrictions:</p> <ul style="list-style-type: none"> • One secondary suite (within the principal dwelling) or one carriage house/mobile home will be permitted on a property; • The property must be 2 ha in size or greater; • All secondary residences must be located within the designated and covenanted residential footprint area as per the OCP's Farm Protection DP Guidelines; • The maximum floor area of the secondary residences is 90m² or 986ft²; • The maximum size of the principal dwelling must be 500m² or less; and • The secondary residence could not be subdivided or strata titled. 	<ul style="list-style-type: none"> - Limits the number of units per parcel - Limits size of unit - Creates a minimum parcel size to emphasize agricultural focus - Considers AAC comments and concerns - Allows for housing flexibility for legitimate farmers while ensuring protection of viable agricultural land 	<ul style="list-style-type: none"> - adds some additional units outside of the PGB

<p>3. Do not allow any secondary residences</p>	<p>Do not permit any Carriage Homes, manufactured homes or accommodations above an existing building.</p> <p>Would only permit a secondary suite within a Principle Dwelling</p>	<p>- Consistent with AAC recommendation</p> <p>- Provides greatest protection of agricultural land</p>	<p>- Does not allow for any housing flexibility</p> <p>- more restrictive than current regulations.</p>
---	--	--	---

Conclusion:

After review of ALC requirements, existing City policies and objectives, and discussions with the Agricultural Advisory Committee, Staff are proposing Option 2 to regulate secondary residences in the ALR. This is a compromise option which includes the following regulations and restrictions:

- One secondary suite (within the principal dwelling) or one carriage house/mobile home will be permitted on a property;
- The property must be 2 ha in size or greater;
- All secondary residences must be located within the designated and covenanted residential footprint area as per the OCP’s Farm Protection DP Guidelines;
- The maximum floor area of the secondary residences is 90m² or 986ft²;
- The maximum size of the principal dwelling must be 500m² or less; and
- The secondary residence could not be subdivided or strata titled.

Staff are proposing to permit secondary residences, with limitations, to allow for greater housing options and flexibility for the farming community while continuing to ensure protection of agricultural land remains a top priority of the City. Second residences allow for several beneficial housing options including ageing in place, housing for immediate family members, market rental or much needed farm worker housing. This directly supports local agricultural producers and agricultural businesses in the City. Potential impacts to agricultural land and capability from the proposed changes can be mitigated through existing City policy, specifically the Farm Residential Footprint requirements. All second residence options would be required to be within this footprint like what is required currently for single family dwellings and mobile homes for immediate family members. Further, a minimum lot size of 2ha helps ensure that the secondary residence will be used in supporting agricultural uses. The restrictions on residential uses aims to reduce the overall impact to productive agricultural lands.

When considered against the Official Community Plans overall growth policies and objectives, allowing secondary residences has the potential to add approximately 225 units outside of the Permanent Growth Boundary and Core Area. Most growth has been directed into the City’s urban centres and away from our rural or agricultural areas. In comparison to the total number of units anticipated in the OCP over the next 20 years, the additional units outside of the PGB is considered minimal, however is considered significant to the objectives of supporting our agricultural community. Because of the benefits to agriculture and minor impact to the City’s overall growth strategy staff are recommending supporting the secondary residences with restrictions.

Internal Circulation:

Department of the City Clerk

Considerations applicable to this report:

Legal/Statutory Authority:

Agricultural Land Commission Act, S.B.C. 2002

Agricultural Land Reserve Use Regulation, B.C. Reg. 30/2019

Considerations not applicable to this report:

Legal/Statutory Procedural Requirements

Existing Policy

Financial/Budgetary Considerations

External Agency/Public Comments

Communications Comments

Submitted by:	Tyler Caswell, Planner 1
Submitted by:	Wesley Miles, Planner Specialist
Approved By:	Dean Strachan, Community Planning & Development Manager
Approved By:	T. Barton, Development Planning Department Manager
Approved for inclusion:	R. Smith, Divisional Director, Planning and Development Services