

APPENDIX A - SUBJECT PROPERTIES

Number	Legal Description	Address
1	LOT 38 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2855 Appaloosa Rd
2	LOT 1 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2856 Appaloosa Rd
3	LOT 2 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2876 Appaloosa Rd
4	LOT 3 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2906 Appaloosa Rd
5	LOT 37 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2909 Appaloosa Rd
6	LOT 4 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2936 Appaloosa Rd
7	LOT 7 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3020 Appaloosa Rd
8	LOT 41 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3029 Appaloosa Rd
9	LOT 8 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3036 Appaloosa Rd
10	LOT 42 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3039 Appaloosa Rd
11	LOT 9 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3066 Appaloosa Rd
12	LOT 43 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3089 Appaloosa Rd
13	LOT A SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 35661	3096 Appaloosa Rd
14	LOT 44 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3109 Appaloosa Rd
15	LOT B SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 35661	3116 Appaloosa Rd
16	LOT 11 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3128 Appaloosa Rd
17	LOT 45 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3139 Appaloosa Rd
18	LOT 12 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3156 Appaloosa Rd
19	LOT 13 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3166 Appaloosa Rd
20	LOT 46 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3169 Appaloosa Rd
21	LOT 14 SECTIONS 2 AND 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3196 Appaloosa Rd
22	LOT 47 SECTIONS 2 AND 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3199 Appaloosa Rd
23	LOT 6 SECTION 3 TOWNSHIP 23 OSOYOOS	265 Arab Ct

	DIVISION YALE DISTRICT PLAN 18861	
24	LOT 40 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	185 Arab Rd
25	LOT 36 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	210 Arab Rd
26	LOT 39 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	215 Arab Rd
27	THAT PART OF LOT 32 SHOWN ON PLAN B5251; SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 546	2870 Sexsmith Rd

# Report to Council



**Date:** February 28, 2017  
**File:** 1250-30  
**To:** City Manager  
**From:** Ryan Roycroft, Community Planning Supervisor  
**Subject:** Arab Appaloosa Public Interest Survey

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## **Recommendation:**

THAT Council receive for information the supplementary report from Community Planning dated February 28, 2017, with respect to the establishment of a Local Area Service along Arab and Appaloosa Roads;

AND THAT Council direct staff to follow the future land use and bylaw enforcement strategy as identified in the staff report attached as Schedule 'A';

AND THAT Council direct staff to prepare Official Community Plan amendments as identified in the staff report attached as Schedule 'A' regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy.

## **Purpose:**

To receive the results of the public interest survey conducted in the Arab and Appaloosa neighbourhoods and to obtain Council direction on land use and servicing for the area.

## **Background/History:**

In 2011, Council adopted the City of Kelowna Official Community Plan (OCP). The OCP designated the properties along Arab and Appaloosa Roads as being for future Industrial – Limited use.

The neighbourhood is made up of agriculturally zoned lots averaging 0.8 ha in area. Many of the properties were being used for light industrial and storage uses, not conforming to zoning restrictions of the day. The intent of the Industrial – Limited designation was to recognize the character of the neighborhood and give owners a path to conformity by allowing properties to be re-zoned for transitional industrial use.

### **2012 Consideration:**

In November of 2012, a moratorium was placed on development applications in the area, pending a resolution to servicing and land use concerns.

At the meeting, Council resolved that:

*THAT Council direct staff to report back with proposed amendments to the I6 – Low-Impact Transitional Industrial Zone to ensure consistency of intent and purpose with the Kelowna 2030 – Official Community Plan;*

*AND THAT Council direct staff to accept no further Rezoning applications to the I6 – Low-Impact Transitional Industrial Zone, pending completion of the proposed amendments to the I6 Zone.*

At a subsequent meeting on December 3, 2012, Council requested that staff "...report back with options for amending the I6 – Low-Impact Transitional Industrial Zone, to ensure consistency of intent and purpose with the Kelowna 2030 – Official Community Plan (OCP)".

### **2013 Considerations:**

At the December 16, 2013 Council Meeting, Council resolved:

*THAT Council directs staff to follow Option 1 as identified in the Utilities Planning Manager, Bylaw Services Manager & Urban Planning Managers report, dated December 16, 2013 regarding the Arab/Appaloosa Land Use and Servicing Options;*

*AND THAT Council directs staff to bring forward the proposed amendments to the I6 Zone, including a provision for outdoor storage, and to require Development Permits, to ensure consistency with the intent and purpose of the Kelowna 2030 OCP and Industrial-Limited designation;*

*AND THAT Council directs staff to ensure that the fire flow and servicing with respect to the I6 zone be required as per Subdivision, Development & Servicing Bylaw No. 7900;*

*AND THAT Council directs staff to commence bylaw enforcement action against the two (2) most prolific offenders;*

*AND FURTHER THAT Council directs staff to hold a Local Area Service meeting in order to gauge support for a Local Area Service Bylaw and to explain the proposed changes to the I6 zone.*

Options were developed and presented to Council at the March 25, 2013 Council meeting and at this meeting Council resolved:

*THAT Council receive for information, the supplementary report from the Manager of Urban Land Use dated March 19, 2013, with respect to the Industrial – Limited future land use designation contained in the Kelowna 2030 – Official Community Plan;*

*AND THAT Council direct staff to pursue Land Use Alternative 1, as identified below;*

*AND THAT Council direct staff to initiate the process to advance Sanitary Sewer Connection Area #35 to a Specified Sanitary Sewer Service Area;*

*AND FURTHER THAT Council direct staff to accept no further Rezoning applications for the Arab Appaloosa road area, pending final resolution of land uses for the area.*

On May 16, 2013, Council authorized funds necessary to create a pre-design for the water, sewer, and roads, and associated drainage works for the Arab/Appaloosa area.

At the September 30, 2013 Council meeting staff reviewed the Focus Engineering pre-design, the costs of the infrastructure required to meet zoning requirements, and the various service areas, their costs, and the typical and maximum costs that a homeowner on Appaloosa Road would be required to fund if a Local Service Area were adopted.

#### **2015 Servicing Considerations:**

At the February 23, 2015 Council meeting, Council directed staff to pursue Bylaw amendments to the Official Community Plan and affirmed its desire to pursue a local service area to build the infrastructure required to rezone to the new I6 designation.

*THAT Council receive for information the supplementary report from the Urban Planning Manager dated January 26, 2015, with respect to the Industrial –Limited Future Land Use designation and the land use issues along Arab and Appaloosa Roads;*

*AND THAT Council direct staff to bring bylaw amendments to the Official Community Plan and Zoning Bylaw amending Industrial development guidelines and policies to Council for consideration after a public open house has been held.*

*AND FURTHER THAT Council direct staff to conduct a public open house to survey support for a Local Area Service to pay for the extension of Sanitary Sewer Service to lots along Arab and Appaloosa Roads to facilitate industrial development. This consultation will take place after the adoption of the Zoning Bylaw and Official Community Plan amendments.*

The OCP amendments were completed in September 2015 and the project was redesigned to accommodate a change in the Clydesdale road design. The designs and costs for the project were completed by a consulting firm and reviewed by the infrastructure division.

#### **2016 Public Interest Survey:**

In early 2016 a public open house and survey was completed. Personalized letters were sent out to each home owner that outlined their share of the costs for infrastructure improvements and a description of the opportunity to rezone their property should a local service area be successful. An information sheet about the survey process, background and next steps; specific costs for improvements were identified for each type of improvement; and a self-addressed, self-stamped response form was provided to each household, in order to receive feedback from the residents.

An invitation to a public open house was also provided. Residents had the choice of either submitting their survey at the open house or by mailing in the same. The Open House took place on January 27, 2016 and survey results were finalized on February 19, 2016.

Of the 48 properties that were asked to vote, 29 responded:

59 % for NO for a LAS (roads, drainage, sewer)

41 % for YES

Based on the public interest survey results, on the March 21, 2016 meeting, Council directed staff to prepare Official Community Plan amendments removing the Industrial – Transitional designation from properties in the neighborhood, and re-designating them as Resource Protection.

*AND THAT Council direct staff to follow the future land use and bylaw enforcement strategy as identified in the Utilities Planning Manager report, dated March 7, 2016 regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy;*

*AND THAT Council direct staff to prepare Official Community Plan amendments as identified in the Utilities Planning Manager report, dated March 21, 2016 regarding the Arab/Appaloosa Land Use and By Enforcement Strategy;*

*AND FURTHER THAT Council direct staff to process Zoning Bylaw Applications submitted for properties designated for Industrial – Transitional Use, and advance any bylaws in progress to Council for consideration and any required public consultation.*

#### **2016 Bylaw Consideration and Enforcement:**

Based on previous directives of Council, staff prepared bylaw amendments to the Official Community Plan and completed additional neighborhood correspondence (2 mailouts) indicating the proposed bylaw enforcement strategy. This occurred prior to preparation and consideration of the Official Community Plan amendments considered by Council. Council supported first reading of the bylaw and moved it to a Public Hearing.

At the November 15<sup>th</sup>, 2016 Public Hearing the proposed Official Community Plan amendment bylaw was defeated by Council, and Council directed staff to propose alternative options for future land use and servicing in the area.

At the November 28<sup>th</sup> Council meeting Council considered options presented by staff and resolved that:

*THAT Council receive for information, the supplementary report from the Community Planning Department dated November 28, 2016, with respect to the Industrial – Limited future land use designation for properties along the Arab and Appaloosa Roads;*

*AND THAT Council direct staff to pursue Option 3 as outlined in the report from the Community Planning Department dated November 28, 2016.*

Option 3 included:

- Commission WSP to update LAS costs
- Send all owners in the neighborhood new cost estimates by registered mail
- Hold a public information session
- Provide options for residents to initiate property-owner led Local Area Service
- Provide a final report to Council to either pursue an LAS or recommending Official Community Plan amendments.

Staff held a public meeting on December 14<sup>th</sup>, 2016, hosting approx. 22 area residents in Council Chambers and giving a presentation on the Local Area Service costs and processes, and responding to questions on land use, zoning and bylaw enforcement.

Additionally, a further public interest survey was conducted to gauge public support for a Local Area Service (LAS) in the neighbourhood. To maximize response, staff sent two survey mail-outs, made surveys available at the Public Meeting, and hand-delivered surveys to all properties.

### **LAS Survey Results:**

The public interest survey closed on January 15<sup>th</sup>, 2017. Response to the survey was considerably stronger than in January 2016, with 38 of 44 eligible properties responding to the survey (the 45<sup>th</sup> property is owned by the City of Kelowna).

Properties representing 57 per cent **of the area assessment** support a Local Area Service.

The survey responses were:

- In support of the LAS – 29 votes, 66%
- Opposed to the LAS – 9 votes, 20%
- No response - 7 properties 14%

Based on these responses, the majority of the neighbourhood has indicated support for a Local Area Service, at this stage in the process.

### **Planning Rationale**

Despite the result of the public survey, staff do not recommend a Local Area Service as a means to provide services to the neighbourhood for the purposes of facilitating industrial development.

While staff's recommendation for not support of the LAS is rooted in the appropriate land use for the area, other considerations also come into play. An LAS imposes costs on all property owners, regardless of whether they supported or opposed the LAS, therefore the impacts on non-supporters must be carefully considered.

Each property is responsible for paying their portion of the LAS, payable in either a lump sum or added to the property taxes of the property for 25 years. The average annual levy per property over 25 years will be approximately \$7,500, with some levies in excess of \$13,000 per year. If paid in lump sum these costs range from \$12,500 to more than \$180,000. The LAS levy is payable regardless of whether a

resident chooses to re-zone their property or not. Should a property owner not wish to re-zone and redevelop their property, they will nonetheless be subsidizing the required services for those who do.

Municipalities traditionally adhere to the 'developer pay' model of infrastructure servicing, where any expansion of services required for a development is borne by the developer. Using an LAS as a means to extend services for the purpose of facilitating development would be contrary to this model, forcing those residents who don't support industrial development in the neighbourhood to bear the costs of its servicing. These additional costs may become simply unaffordable for some of these residents, and possibly force them to sell their homes.

Between the industrialization of the neighbourhood and the sharp increase in annual property taxes over the long-term by utilizing an LAS levy, non-industrial property owners would be pressured to redevelop or to sell. Essentially, those property owners who are using the property for its intended legal use would be pressured to leave, while those who have been using their properties contrary to zoning would be rewarded by having their neighbours pay for the servicing of their previously illegal uses.

Despite the early indication of support by some area residents, staff recommend that the LAS process not be undertaken, and that instead the future land use of the properties unable to be serviced be amended to a non-industrial designation.

### **LAS Process**

The formal LAS process would be expected to take approximately 6 months to complete. A further 7 months would be required to construct the works if the formal LAS petition passed. The following these steps are envisioned:

- Report to Council, re: formal steps in the LAS process and any financial implications to the City
- Public open house
- Follow-up Report to Council
- Provincial borrowing approval
- Formal petition process
- Council Report re: petition outcome
- Project design and tender package
- Tender award
- Final project costs determined
- Letter to residents on final costs
- Construction

While the neighbourhood has indicated support for the LAS through a public interest survey, the next phase of approval would have to follow a formal petition process, allowing the City to borrow approximately \$4.5 million dollars to front end the cost of construction. That \$4.5 million would be repaid by the levies added to the property taxes on the 45 properties in the neighbourhood.

### **Legal/Statutory Authority:**



Section 210 of the *Community Charter* gives the municipality the authority to create a Local Area Service.

**210** (1) A local area service is a municipal service that is to be paid for in whole or in part by a local service tax under section 216 [*local service taxes*].

(2) The only services that may be provided as local area services are

(a) services that the council considers provide particular benefit to part of the municipality

### **Legal/Statutory Procedural Requirements:**

The Community Charter establishes the Local Area Service process under Sections 211 to 218.

Local Service Areas follow a publically initiated petition process, where residents will have a period of time to submit a certified petition.

For a petition to be sufficient under the Community Charter, at least 50% of affected owners and at least 50% of the total assessed values must approve the local service area.

As part of the LAS process, the petition must provide authorization for a borrowing bylaw which will need to accompany the Local Service Area authorization. This will allow the City to borrow the funds required for the project and collect levies over a 20 year period.

### **Internal Circulation:**

While the review process of development potential and servicing in the Arab Appaloosa area has been spearheaded by Community Planning, the process has been managed by a team consisting of staff from Utilities Planning, Community Planning and Communications. The recommendations presented are those of all of these departments.

### **Financial/Budgetary Considerations:**

No budget has been allocated for the preparation of the Local Area Service bylaws and legal fees associated with their review. Budget will have to be reallocated from projects within the relevant departments or from contingency funds.

### **Personnel Implications:**

Even if the Local Area Service process is led by the community, substantial staff time will be required to develop the Local Area Service bylaws and ensure the process is conducted fairly and transparently. Previous LAS processes have taken approximately six months to roll out, from developing of documents to final notification.

Based on previous LAS processes, an estimated 200 staff hours will be required, involving staff from Utilities Planning, Communications and Community Planning. Staff time will be re-allocated from other workplan items or development file processing.

**Alternate Recommendation:**

THAT Council receive for information the supplementary report from Community Planning dated February 20, 2017, with respect to the establishment of a Local Area Service along Arab and Appaloosa Roads;

AND THAT Council direct staff to commence the Local Area Service process to create an LAS to provide partial industrial level services to the 45 properties described in the Report from Community Planning.

**Considerations not applicable to this report:**

**Communications Comments:**

**Existing Policy:**

**External Agency/Public Comments:**

Submitted by:

R Roycroft, Planner

**Approved for inclusion:**



Ryan Smith, Community Planning Department Manager

Attachments:

Utilities Planning Manager report, dated March 21, 2016  
Local Area Service Estimates

cc:

*Divisional Director, Community Planning and Real Estate*  
*Divisional Director, Infrastructure*  
*Divisional Director, Communications and Information Services.*  
*Utility Planning Manager*  
*Policy and Planning Department Manager*  
*Divisional Director, Financial Services*