

Staff Report to Council

Planning and Development

FILE: 6635-01/22

REPORT DATE: February 17, 2023 **MEETING DATE:** February 28, 2023
TO: Mayor and Council
FROM: Colin O'Byrne, Manager of Planning
SUBJECT: Updates to Agricultural Land Commission Policies

CHIEF ADMINISTRATIVE OFFICER REVIEW/APPROVAL:



RECOMMENDATION(S):

THAT Council:

- A. Receive for information the report titled, "Updates to Agricultural Land Commission Policies" presented at the February 28, 2023 Public Council Meeting; AND
 - B. Resolve that all requests to exclude land from the Agricultural Land Reserve by private landowners be deferred until a Council Policy is developed to address these requests and plan for creation of a policy in the 2024 Business Plan; AND
 - C. Direct staff to prepare bylaws to limit farm retail sales area to a maximum gross floor area of 300 m²; AND
 - D. Direct staff to include in the forthcoming Council policy for Cannabis Retail Stores the preference that cannabis retail stores be located within the urban area; AND/OR
 - E. Other.
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PURPOSE

To provide Council with an overview of the Agricultural Land Reserve (ALR) policies and regulations, including recent updates and get direction on ALR exclusions requests, maximum floor area for farm retail sales and preference for cannabis retail store locations.

☐ Information Report ☐ Decision Report ☒ Direction Report

DISCUSSION

Background:

The Agricultural Land Reserve (ALR) was established by the Province in 1972, along with formation of the Agricultural Land Commission (ALC) in 1973. The ALR is intended to be a provincial land-use zone where agriculture is the priority use. The ALC is an independent provincial tribunal responsible for administering and overseeing the *Agricultural Land Commission Act* (Act).

As per section 6 of the Act, the purpose of the ALC is:

- To preserve agricultural land;
- To encourage farming on agricultural land in collaboration with other communities of interest; and
- 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.

And, in order to fulfill this purpose, the ALC must give priority to the following:

- The size, integrity and continuity of the land base of the ALR; and
- The use of the ALR for farm use.

The Act identifies the following list of development or activity types that require ALC approval before commencing:

- **Non-adhering residential use.** For second dwellings, farm worker housing, principal residences greater than 500 m².
- **Non-farm use.** Any use other than a farm use e.g. commercial non-farm business.
- **Subdivision.** Including creation of additional lots, boundary adjustments, homesite severance.
- **Inclusion.** To include land into the ALR.
- **Transportation, utility, and recreational trail use.** E.g. road widening, new utility lines, new public trails.
- **Soil use for placement of fill or removal of soil.** Depending on the scale of soil/fill involved, can be through a streamlined Notice of Intent (NOI) process, or full soil use application.
- **Exclusion.** To exclude land from the ALR, can only be made by a local government or prescribed body. Discussed in detail later in this report.
- **Statutory right-of-way.** All new statutory rights-of-way in the ALR require notification to the ALC.

All of these application types also require approval from Council, with the exception of Transportation, utility, and recreational trail use applications and Statutory right-of-way

applications. A list of matters that the ALC considers when reviewing applications is included as Attachment A.

With 78% of Pitt Meadows' land base in the ALR (see Figure 1), the ALC impacts a large portion of the municipality.

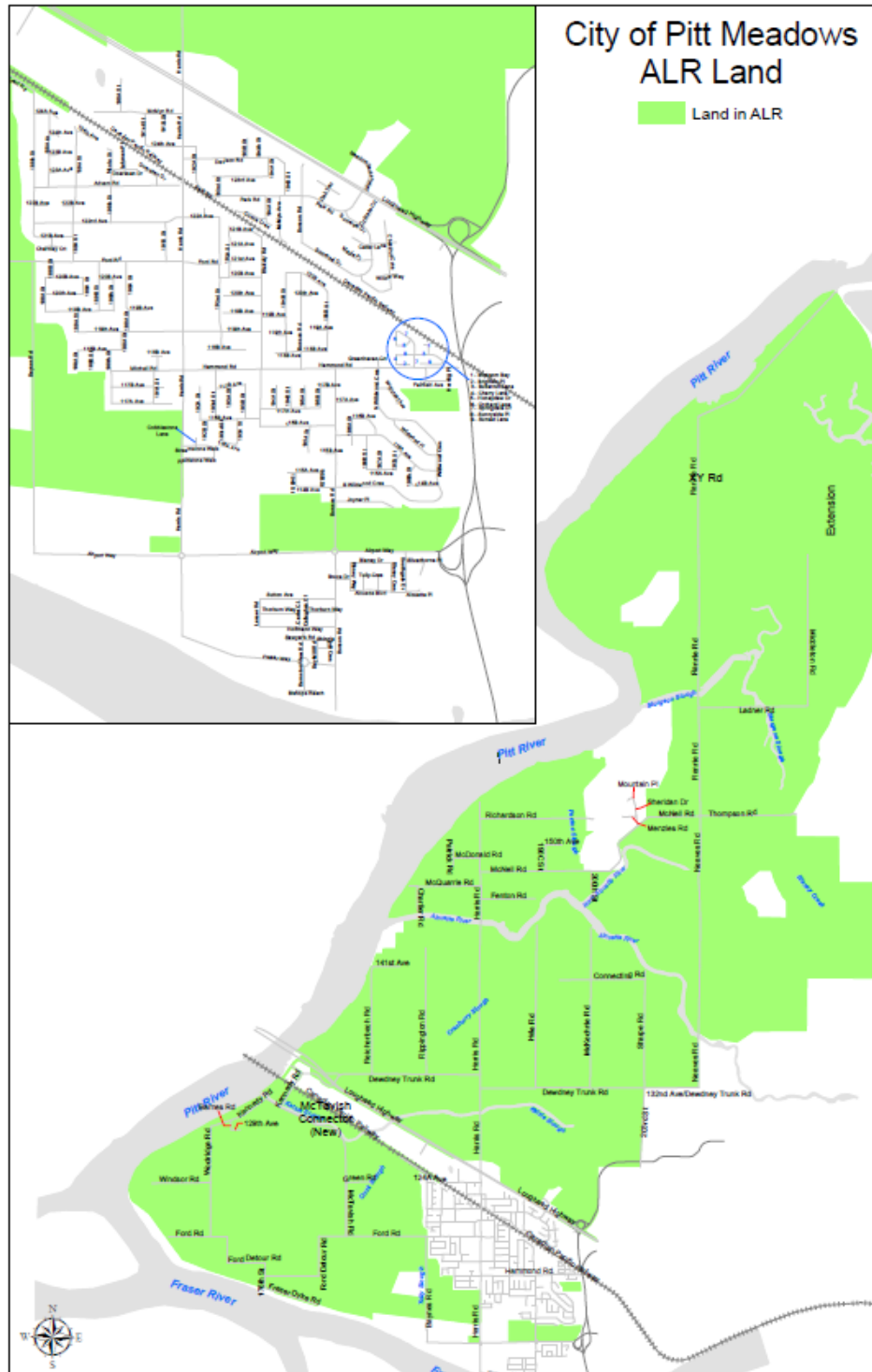


Figure 1: ALR land in Pitt Meadows

Relevant Policy, Bylaw or Legislation:

The use of ALR land is governed by the provincial *Agricultural Land Commission Act* and supporting *Agricultural Land Reserve Regulations*. The ALC Act has primacy over local government bylaws and regulations for ALR-designated land, meaning local government bylaws, plans and policies must be consistent with the ALC Act. These regulations do allow local government bylaws and regulations to be more restrictive than the ALC for non-agricultural land uses, but not less restrictive. The reverse is true for agricultural uses, where local governments cannot restrict agricultural uses in the ALR any further than the ALC. Any local government regulations that conflict with ALC regulations are of no force and effect on lands within the ALR.

The City's Official Community Plan supports the use of ALR land for agricultural purposes and discourages the use of ALR land for non-farm purposes.

The City's Zoning Bylaw also regulates land uses in the ALR in alignment with the *ALC Act*. If the *ALC Act* is revised, the Zoning Bylaw is reviewed to determine if any changes are required to keep the bylaw in alignment with those revisions.

Analysis:

Recent Legislative Amendments

By 2017, a number of pressures were identified by the Province and the ALC as negatively impacting ALR land, including:

- Proliferation of residential estates and mega-mansions, speculation and non-farm development raising costs of farmland beyond the reach of current and new farmers; and
- Illegal dumping, land uses, and soil fill practices, and lack of tools for ALC oversight impacting productive capacity of the ALR.

In response to these challenges, the Province made efforts to protect farmland, support farming and ensure food security into the future. A series of legislative changes were introduced to the ALC Act and Regulations, including:

<i>Date of Change</i>	<i>Change</i>	<i>Prior Requirement</i>
<i>Feb. 22, 2019</i>	500 m ² size limit on principal dwellings	No limit
	ALC approval required for all additional dwellings	City approval only
	Soil removal and fill restrictions, and ALC oversight	No ALC oversight, no prohibited materials for fill
<i>Sept. 30, 2020</i>	Exclusion applications by private landowners not permitted	Exclusion applications by private landowners permitted
<i>Dec. 31, 2021</i>	Additional, 90 m ² residence permitted	No additional residence permitted

The amendments above regarding residential uses have also been incorporated into City bylaws. In order to provide flexibility for active farmers but to limit rural estates, the City further restricted the additional 90 m² residences to parcels larger than 8 ha (20 acres) and that have been classified as “farm” by BC Assessment.

In addition to the ALC Act and Regulation changes listed above, as of November 30, 2022, the BC Liquor and Cannabis Regulation Branch (LCRB) now permits federally licensed cannabis cultivators and nurseries to apply to sell cannabis from a retail store at their cultivation site (known as a Producer Retail Store licence).

The implications of the more recent changes to Exclusion Applications and Farm Gate Retail and Cannabis Sales are discussed below.

Exclusion Applications

As of September 30, 2020, landowners are no longer permitted to submit applications to exclude their land from the ALR directly to the ALC. Only a local government, first nation or prescribed public body can now submit an exclusion application. The Province intends this change to compel local governments to assess exclusion applications within the context of the broader community vision, so only exclusion applications that are in alignment with the community’s broader land use goals are received by the ALC.

Local governments have the authority to determine how exclusion requests from private landowners are received and to make decisions on whether or not to apply to the ALC. With an exclusion request, the municipality assesses the proposal in relation to its own specific land-use policies, bylaws (for example, the OCP) and community goals. A municipality and the ALC may view an exclusion application through different lenses. Ultimately though, any decision to permanently remove land from the ALR is made by the ALC.

Protecting agricultural land now and for future use is emphasized in City and regional policy documents. Any land proposed for exclusion is, therefore, critically examined to fully understand if the proposed community benefit outweighs land loss for current and future food production. Land converted to urban uses from agricultural is very difficult—if not impossible—to recover for land-based food production later.

Exclusion applications require public notification (such as signage, mailouts, newspaper advertisements, public hearing requirements), associated technical and agricultural studies in support of the application, plus substantial staff time. Presently, the City has no policy, procedure or fees to process an exclusion application on behalf of a private landowner.

The City does not have an extensive history of exclusion applications. In the past 15 years, only four exclusion applications have been considered:

Table 1: ALR exclusion applications within the past 15 years

YEAR	SITE	STATUS
2020	11898, 11848, 11834, 11782 Baynes Road	Denied by the ALC
2020	18601 Loughheed Hwy	Denied by the ALC
2010	North Loughheed Area	Conditionally approved – not yet excluded
2007	19265 Airport Way (Golden Ears Business Park Phase 3)	Approved

Given the challenging process to exclude land from the ALR, the likelihood of the City receiving many serious exclusion requests is small. However, it is prudent for the City to consider how to respond to ALR exclusion requests from private landowners. If any are received, the following scenarios are expected:

1. Proposals that will require an OCP amendment and rezoning, and possibly a Regional Growth Strategy (RGS) amendment in addition to an ALR exclusion.
2. Proposals that will not require an OCP amendment or rezoning, but are otherwise limited by being within the ALR. For example, a golf course may wish to expand their footprint in a way that is restricted by the ALC, but allowed under City zoning or other regulations.

In the case of Scenario 1 proposals, the City has four options:

1. No private landowner exclusion applications are accepted. In this situation, an exclusion application would only result from a comprehensive review or update to the OCP, or as part of another long-term planning project at the direction of Council.

This approach is the most efficient use of staff resources, and provides the opportunity to evaluate any exclusion application in a fulsome and comprehensive manner by taking into account broader community goals and the overall land use planning vision for the City.

To achieve this, Council could pass a Standing Resolution that no ALR exclusion applications from private landowners will be considered. Instead, staff could compile private landowner requests for consideration during regular OCP reviews or future long-term planning projects. This option limits opportunity for progressing exclusion requests for multiple years, but better aligns with good planning practice to assess development in a comprehensive manner with a long range lens.

The Regional Districts of Okanagan-Similkameen and Cariboo, and Sooke have taken this approach.

2. No private landowner exclusion applications are accepted until a corresponding Council Policy is developed. This policy could provide a framework for processing and evaluating these types of requests, and to consider methods of recovering costs. A key benefit of

establishing a policy is providing clarity for applicants and the community on what types of exclusion applications may be considered (e.g., based on size, location, or proposed uses) and what constitutes a significant community benefit. This type of approach will require staff time to complete, and if this is the preferred option by Council, it is recommended that this work be completed as a project in the 2024 business plan.

Once a policy is developed, if there is an increase in exclusion applications, future workplans or resource levels may need to be altered in order to accommodate. It is difficult to plan for this as the number of applications within any given year is unknown, but it would be further reviewed during the annual business planning process.

If an exclusion application was desired by a property or developer, they would be made aware of the City's plan to develop a policy first and the outstanding motion of Council. They could still request a delegation before Council for consideration, at which point staff resourcing and costs would need to be considered.

A number of local governments have developed policies, such as the Regional Districts of East Kootenay and Columbia Shuswap, Armstrong, Osoyoos, and Penticton.

3. Consider a private landowner exclusion application as received, prior to requiring submission and consideration of an OCP amendment, rezoning, and RGS amendment applications. If the exclusion application is supported by Council, the City would act as the agent for the application, and would require the landowner to provide all supporting documents and studies, along with being responsible for all required notification, including signage, notices, advertising, hosting a public hearing, and paying the \$750 fee to the ALC. The City may be able to recoup some costs by creating a bylaw for cost recovery.

This process will require considerable staff time and resources to manage such an application, likely to the detriment of other planned projects. This would, however, allow the application to go before the ALC for determination before the City considers an OCP amendment, rezoning, or submits an RGS amendment to Metro Vancouver.

The challenge with this approach is that the proposals would likely have less detail, making it difficult to comprehensively evaluate the exclusion application.

4. Consideration of an exclusion application in conjunction with an OCP amendment and rezoning application, and possibly RGS amendment. In this approach, the OCP amendment and rezoning application processes will be used as the first step to assessing the proposal against existing City plans and policies, receive public input, and to determine Council's initial level of interest in the proposal. It is envisioned that this type of application would be paused at second reading if it got to that point, to allow the City to formally apply for exclusion at that time. If an exclusion was granted by the ALC, then the OCP amendment and rezoning would continue.

This approach would require considerable staff time and resources to manage the exclusion process. The City would have some cost recovery by way of the OCP amendment, rezoning, and possibly RGS amendment application fees, but this type of application is not accounted for in regular department workplans. The fees collected would not approach cost recovery for staff time and City resources. An additional bylaw for cost recovery would be recommended in this case. This approach would permit a more fulsome and comprehensive evaluation of the application, given that a land use proposal would be required at the same time as the exclusion application.

In the case of Scenario 2, this situation would only apply to privately-owned parcels in the ALR that are already designated as another use in the OCP, such as a golf course, the Airport, or any of the regional or provincial parks. Given that this scenario only applies to a limited number of properties, it is not recommended that a separate procedure be developed for this scenario. If a landowner of one of these parcels was interested in exclusion, a non-farm use application could be considered first. If that avenue was exhausted and an exclusion pursued, then the City could address the request in a similar fashion to those considered under Scenario 1.

Given that the likelihood of receiving many exclusion applications is low and that the recently adopted OCP does not identify any ALR land for exclusion, it is recommended that Council select Option 2 (i.e., defer all exclusion requests until a Council policy is in place) as the preferred approach to addressing ALR exclusion requests. This will ensure transparency, enable a more comprehensive review, and communicate clearly to ALR landowners of the City's commitment to protecting and preserving ALR land, as supported by the OCP.

Farm Gate Retail and Cannabis Sales

In the ALR, farm retail sales are designated as a farm use by the ALC (which means they cannot be prohibited by local government) if:

1. 100% of the farm products offered for sale are produced on that agricultural land or farm operation (over multiple parcels). In this case, the ALC does not limit the retail sales area; or
2. The area used for all retail sales meets both of the following conditions:
 - at least 50% of that area is limited to the sale of farm products produced either on that agricultural land or by an association to which the owner of the agricultural land belongs; and
 - the total area, both indoors and outdoors, does not exceed 300 m².

The City's Zoning Bylaw regulations currently align with the ALC regulations above, with the exception of the recent allowance for cannabis retail sales.

Cannabis production is an allowed farm use in the ALR, meaning that it cannot be prohibited by local government if the cannabis is produced:

- a) Outdoors in a field;
- b) Inside a structure that has a base consisting entirely of soil; or

- c) Inside a structure that was, before July 13, 2018, constructed for the purpose of growing crops and has not been altered to increase the size or change the material of its base (e.g. a greenhouse).

A number of licensed cannabis producers (approximately 5) are located in Pitt Meadows, operating in greenhouses that are compliant with c) above. Therefore, the potential exists for some of these producers to apply for a retail sales licence (farm gate cannabis retail).

Currently, the Zoning Bylaw prohibits all retail sales of cannabis in the entire City (although an active rezoning application is in process to permit this use at a location in the Meadowtown Shopping Centre). This means that the Zoning Bylaw conflicts with the ALC regulations, on the point of cannabis retail sales on ALR land only.

While farm retail sales (including cannabis) cannot be prohibited by local government, they can be regulated; for example, by setting a maximum building size and/or lot coverage, setbacks, etc. Presently, the City's Zoning Bylaw only limits the retail area for farm retail sales to 300 m² where between 50-99% of products sold are produced on site. There is presently no limit on farm retail sales area if 100% of the products sold are produced on site or within the farm operation. The majority of current retail sales on farms in Pitt Meadows where 100% of the products sold are produced by the farm are seasonal farm stands, which are generally small in area. However, the introduction of farm gate cannabis sales opens up the possibility for more retail stores on farms and it seems likely that a cannabis producer may only sell cannabis produced on that land, meaning that there would be no retail sales area limit in that case.

Many local governments have implemented floor area limits of 300 m² for all farm retail sales, regardless of whether or not 100% of the products being sold are produced on that farm operation or not (e.g. Abbotsford, Kelowna, Penticton, Richmond). Council may wish to consider implementing a similar floor area limit to mitigate potential issues with larger retail operations in the agricultural area:

- In general, ALR land in the City is serviced to a rural and agricultural standard. For example, roads are generally designed to carry farm vehicles and limited traffic. The City's OCP directs commuter and non-farm traffic away from rural roads that serve farm vehicles. There is no bus service in the rural area, and anyone working or shopping at a farm retail store in the ALR would require a private vehicle to access the store. A farm retail store is likely to generate both employee and customer traffic through agricultural land. Parking would be required to serve customers and employees of a farm retail store, removing additional land from potential agricultural productivity.
- The City's water system in the rural area is not designed to handle numerous buildings that require sprinklers. Farm buildings (as defined in the National Farm Building Code) do not require sprinklers; all other buildings (including retail stores, residential, assembly, etc.) are required to install sprinklers.
- The City's OCP supports preservation of ALR land for agricultural production uses. Introducing large retail businesses into the ALR removes land for food and crop production. The OCP does encourage value-added agricultural business initiatives in appropriate locations, including on-farm sites. For these reasons, it is recommended that

the Zoning Bylaw be amended to include a maximum floor area for all farm retail sales, regardless of whether the products being sold are 100% produced on the farm or between 50-99%. This will provide a balance whereby legitimate farm businesses can sell products, but also limits the amount of agricultural land used for these retail areas.

It is recommended that a limit of 300 m² of floor area for farm retail sales be used, which is the same as the current ALC and City regulation for farm retail sales where 50-99% of the products being sold are produced on site. The Zoning Bylaw already requires one parking space per 20 m² of floor area for farm retail sales, as suggested in the Province's "Guide for Bylaw Development in Farming Areas", and setbacks are already included in the Zoning Bylaw as well.

Alternatively, if the Zoning Bylaw is not amended to limit farm retail sales to 300 m², then the potential exists for a farm business to have a larger retail store if the products being sold are all produced on site.

Cannabis Retail Licensing

As of November 30, 2022, the BC Liquor and Cannabis Regulation Branch (LCRB) now permits federally licensed cannabis cultivators and nurseries to apply to sell cannabis from a retail store at their cultivation site (known as a Producer Retail Store licence). If a cannabis producer applies for such a licence, the LCRB refers the licence application to the applicable local government, with the following options outlined in Figure 3:

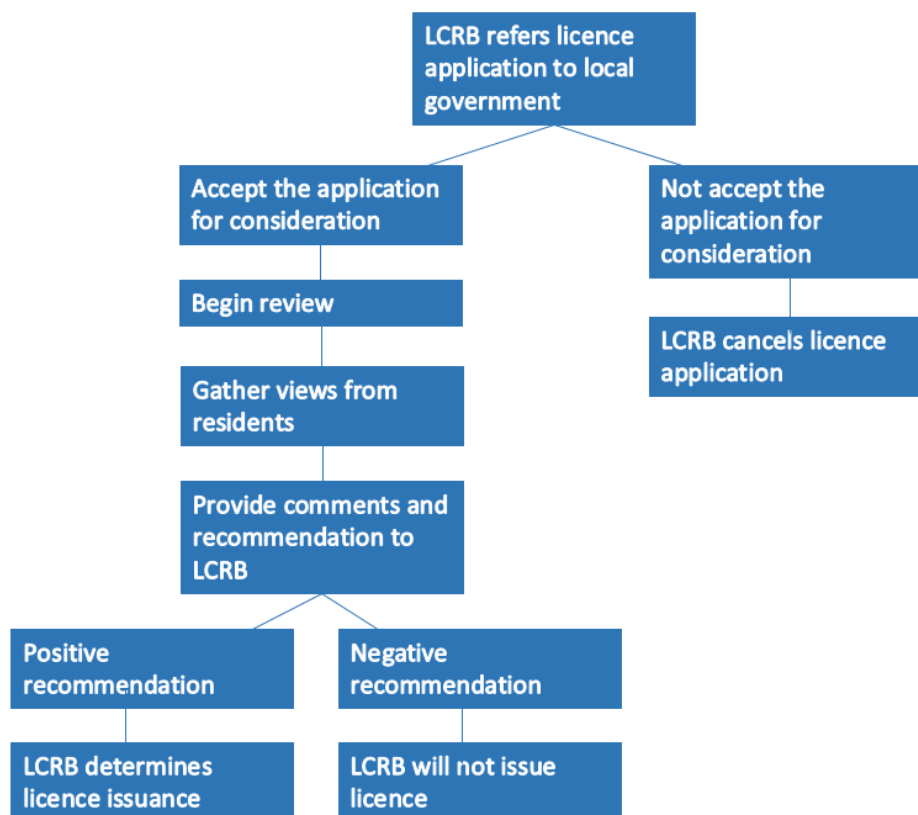


Figure 3: LCRB process

Ultimately, the LCRB cannot issue a cannabis retail licence unless a positive recommendation from the local government is received. Additionally, even if a positive recommendation is received, the LCRB retains final discretion on whether or not to issue the licence.

Despite the fact that farm retail sales cannot be prohibited in the ALR (including cannabis) and the City's Zoning Bylaw must align with this, the local government can still decide whether or not to authorize a cannabis retail licence in the ALR, through the LCRB licensing process. This is because a recommendation to the LCRB from a local government is not a prohibition under a law, and a local government can decline to provide a positive recommendation to the LCRB.

The City is currently developing a policy to handle LCRB referrals for cannabis retail stores, and this will be presented to Council in the near future. Cannabis is readily available from other cannabis retail stores or online through the BC government distribution system. Given this, and the potential detrimental impacts to agricultural land, it is recommended that this policy encourages cannabis retail stores to be located within the urban area. However, it is recommended that the policy retain Council discretion to consider an application on its own merits, including evaluation of its impacts on surrounding agricultural land.

COUNCIL STRATEGIC PLAN ALIGNMENT

- ☐ Principled Governance ☒ Balanced Economic Prosperity ☐ Corporate Excellence
☐ Community Spirit & Wellbeing ☐ Transportation & Infrastructure Initiatives
☐ Not Applicable

Agriculture. Support and advocate for the continued viability of our agricultural industry.

WORKPLAN IMPLICATIONS

- ☒ Already accounted for in department workplan / no adjustments required
☒ Emergent issue / will require deferral of other priority(ies)
☐ Other

If a Council Policy to address ALR exclusions is supported, then it will be added as a project in the 2024 Business Plan for Council's consideration.

A Zoning Bylaw Amendment to incorporate a 300 m² floor area for farm retail sales can be completed within the regular department workplan for 2023.

FINANCIAL IMPLICATIONS

- ☒ None ☐ Budget Previously Approved ☐ Referral to Business Planning
☐ Other
-

PUBLIC PARTICIPATION

☒ Inform ☐ Consult ☐ Involve ☐ Collaborate ☐ Empower

Comment(s):

This report is available as part of the normal Council agenda process.

KATZIE FIRST NATION CONSIDERATIONS

Referral ☐ Yes ☒ No

SIGN-OFFS

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Reviewed by:

Colin O'Byrne,
Manager of Planning

ATTACHMENT(S):

- A. ALC Criteria for reviewing applications