

# MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



**DATE:** February 10, 2023  
**TO:** Christopher Garrish, Planning Manager  
**FROM:** Ben Kent, Planner I  
**RE:** Development Variance Permit (DVP) — Electoral Area “I”

**FILE NO.:** I2023.003-DVP

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Owner: Daniel & Christy Bibby      Agent: NA      Folio: I-03467.020  
Civic: 2735 Green Lake Road      Legal: Lot B, Plan KAP53159, District Lot 559S, SDYD

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### **Proposed Development:**

This application is seeking a variance to the agri-tourism regulations that apply to the subject property in order to formalize two detached agri-tourism sleeping units.

Specifically, it is being proposed to vary the requirement that agri-tourism accommodation sleeping units be contained within a single building.

In support of this request, the applicant has stated that “this variance will allow for the eco-tent houses to maintain the physical orientation nestled on the mountain, immersed in the natural surroundings with minimal disruption to the surrounding landscape.”

### **Site Context:**

The subject property is approximately 23.4 ha in area and straddles the east and west sides of Green Lake Road, approximately 4km south of Okanagan Falls. The property is understood to contain a single detached dwelling, a wine tasting room and a vineyard.

The surrounding pattern of development is generally characterised by vacant land, except for the adjacent parcel to the North, which has been developed to include a single detached dwelling.

### **Background:**

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on September 17, 1994, while available Regional District records indicate that building permits for a single detached dwelling (1991), a carport (1994), an addition to the dwelling (2000) and a conversion of the carport to a winetasting room (2018) have previously been issued for this property.

Under the Electoral Area “I” Official Community Plan (OCP) Bylaw No. 2683, 2016, the subject property is currently designated Agriculture (AG) and Resource Area (RA), and is the subject of an Environmentally Sensitive Development Permit (ESDP) Area designation.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently split-zoned Agriculture Three (AG3) and Resource Area (RA). The sleeping units are located on the portion zoned AG3, which permits “agri-tourism accommodation” as an accessory use and permits a maximum of 10 sleeping units with a floor area of 30m<sup>2</sup> each for parcels larger than 8 ha. The zoning bylaw excludes

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internal hallways and washroom when calculating the maximum floor area for an agri-tourism accommodation use.

The property has been the subject of a Stop Work Notice for “for constructing two yurts without a building permit.

The property is within the Agricultural Land Reserve (ALR).

BC Assessment has classified the property as part “Residential” (Class 01), part “Light Industry” (Class 05), part “Business and Other” (Class 06) and part “Farm” (Class 09).

Under Section 3.49 of the Regional District’s *Chief Administrative Officer Delegation Bylaw No. 2793, 2018*, “the CAO or his designate shall ... be delegated authority to issue a development variance permit under Section 498.1 of the *Local Government Act ...*”

**Public Process:**

In accordance with Section 2.4 of Schedule 4 (Application for a Development Variance Permit) of the Regional District’s Development Procedures Bylaw No. 2500, 2011, adjacent residents and property owners were notified of this DVP application on January 18, 2023, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of February 7, 2023, being 15 working days from the date of notification, approximately 1 representations has been received electronically or by submission at the Regional District office.

**Delegated Authority:**

Under Section 498.1(2) of the *Local Government Act*, a local government that has delegated authority to an officer or employee to issue a development variance permit (DVP) must include “criteria for determining whether a proposed variance is minor.”

Under Section 3.49 of the Regional District’s Chief Administrative Officer Delegation Bylaw No. 2793, 2018, staff are to consider if the variance would be “minor and would have no significant negative impact on the use of immediately adjacent or nearby properties” through the use of the following criteria:

1. *degree or scope of the variance relative to the regulation from which a variance is sought;*
2. *proximity of the building or structure to neighbouring properties; and*
3. *character of development in the vicinity of the subject property.*

With regard to the degree of the requested variance it is considered that the provision of two agri-tourism accommodation sleeping units in two separate structures is minor because the structures are metal frame tents with a floor area of approximately 30m<sup>2</sup> each. The massing and total parcel coverage of these structures is significantly less than the maximum permitted for an agri-tourism accommodation use on this property.

With regard to the proximity of the proposed agri-tourism accommodation sleeping units to neighbouring properties, the nearest parcel lines is approximately 150 metres to the north. For this reason, the requested variance is seen minor and unlikely to adversely impact the use of adjacent properties.

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With regard to the final criteria and the character of development in the vicinity of the subject property, the provision of agri-tourism accommodation sleeping units in separate structures is not common in this area.

For these reasons, the proposed variance is deemed to be minor, and consideration by staff of whether to issue a development variance permit (DVP) under delegation may proceed.

**Analysis:**

When considering a “minor” variance request, and in accordance with Section 498.1(2) of the *Local Government Act*, the Regional District Board requires that staff consider the following guidelines when deciding whether to issue a DVP:

- 1. is the proposed variance consistent with the general purpose and intent of the zone;*
- 2. is the proposed variance addressing a physical or legal constraint associated with the site (e.g. unusual parcel shape, topographical feature, statutory right-of-way, etc.);*
- 3. is strict compliance with the zoning regulation unreasonable or un-necessary; and*
- 4. Would the proposed variance unduly impact the character of the streetscape or surrounding neighbourhood.*

In this instance, the Zoning Bylaw’s requirement that all agri-tourism accommodation sleeping units must be provided within a single building is seen to encourage compact development and limit fragmentation of farm land to non-farm uses. This requirement is further seen to prevent agri-tourism accommodation uses from evolving into tourist commercial uses (i.e. a campground) that would conflict with the principal agricultural use of the property.

It is understood that no outdoor amenity areas, roadways or associated tourist commercial structures are being proposed in relation to the agri-tourism use. For this reason, the proposed sleeping units are seen to present little risk of evolving into a tourist commercial use.

The total floor area of the two sleeping units is approximately 60m<sup>2</sup>, which is substantially less than the maximum of 300m<sup>2</sup> for 10 sleeping units permitted by the zoning bylaw. For this reason, the proposed sleeping units are consistent with the intent of the zone.

The total parcel coverage of the two sleeping units, including the open space between the two structures, is approximately 450m<sup>2</sup>. The zoning bylaw does not include washrooms or internal hallways in the maximum floor area of an agri-tourism accommodation use, so the maximum parcel coverage for an agri-tourism accommodation use could be substantially greater than the 300m<sup>2</sup> allotment for 10 sleeping units. For this reason, the proposed sleeping units are seen to be consistent with the purpose and intent of the zone.

The proposed sleeping units are located to the rear of the property in a wooded area. The nearest parcel line is approximately 150 metres from the structures and the nearest residence is approximately 300 metres away. The property immediately to the north is the only adjacent parcel that has been developed and the owner of this property has submitted a representation in support of this proposal. For these reasons, the proposed variance is seen to have little impact on the character of the surrounding neighbourhood.

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Strict compliance with the zoning regulation is seen to be un-necessary in this case because the scale and location of the development make it unlikely to adversely impact adjacent land uses.

Conversely, it is recognised that should the applicant propose additional detached sleeping units in the future, this may warrant consideration as a tourist commercial use.

It is also recognized that the proposed variance is not necessary to address any physical or legal constraints on the property.

For these reasons, it is recommended that the requested variances be approved.

**Recommendation:**

**THAT Development Variance Permit No. I2023.003-DVP, to formalize two detached agri-tourism sleeping units at 2735 Green Lake Road, be approved.**

**Respectfully submitted:**

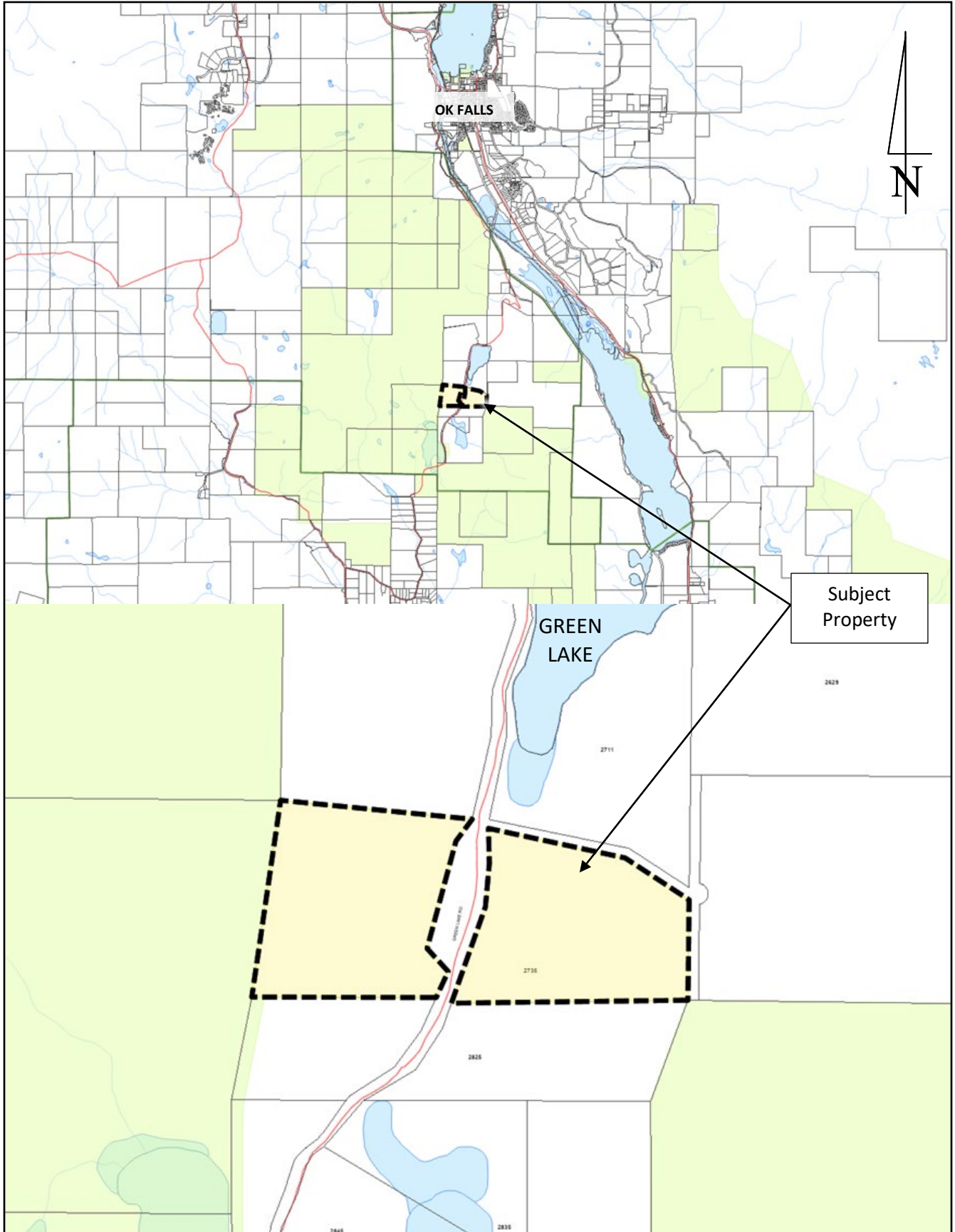
*Ben Kent*

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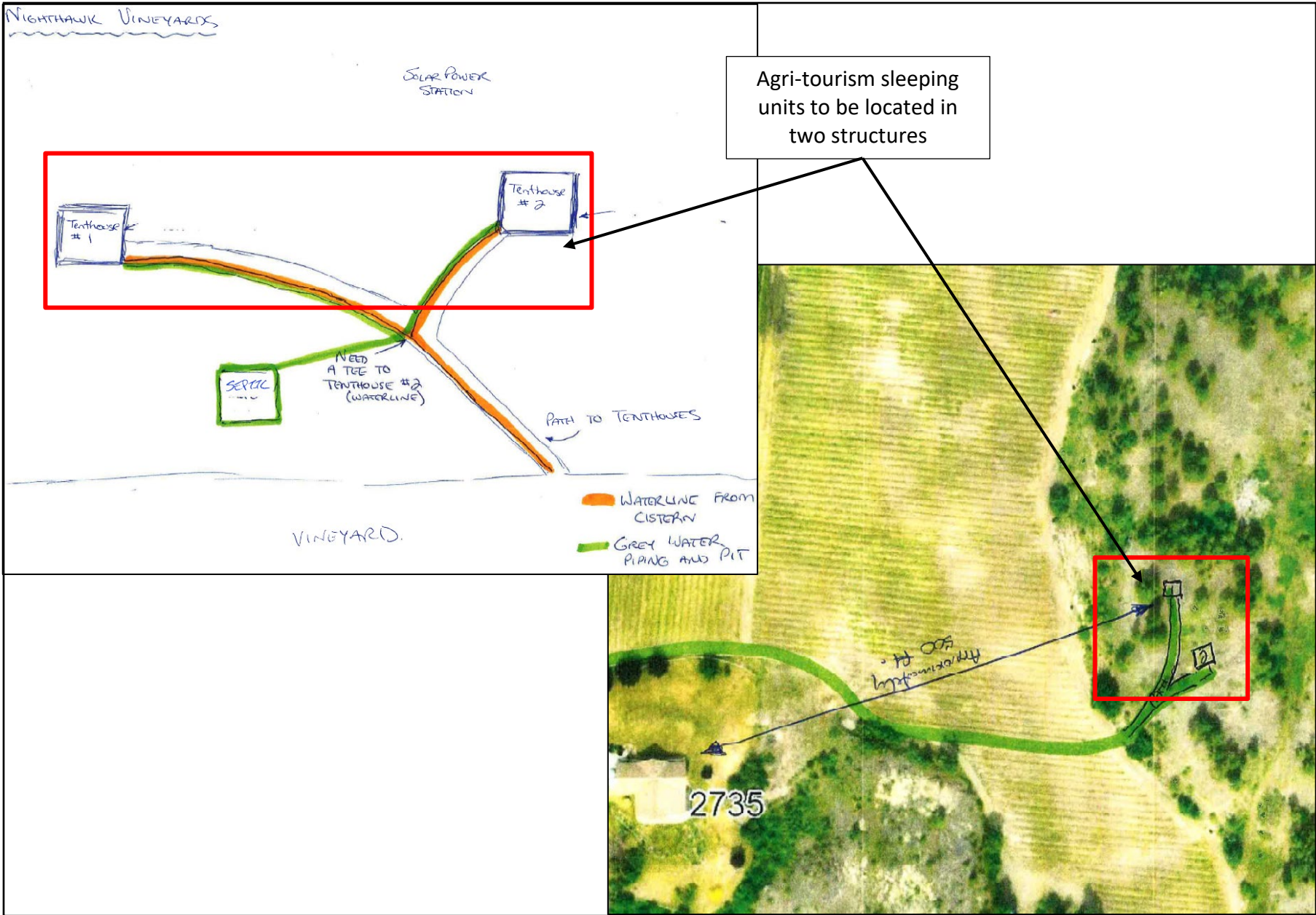
Ben Kent, Planner I

- Attachments:
- No. 1 — Context Maps
  - No. 2 — Applicant's Site Plan
  - No. 3 — Applicant's Floor Plan
  - No. 4 — Applicant's Elevation Drawings
  - No. 5 — Aerial Photo
  - No. 6 — Aerial Photo
  - No. 7 — Site Photo

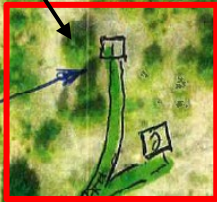
Attachment No. 1 – Context Maps



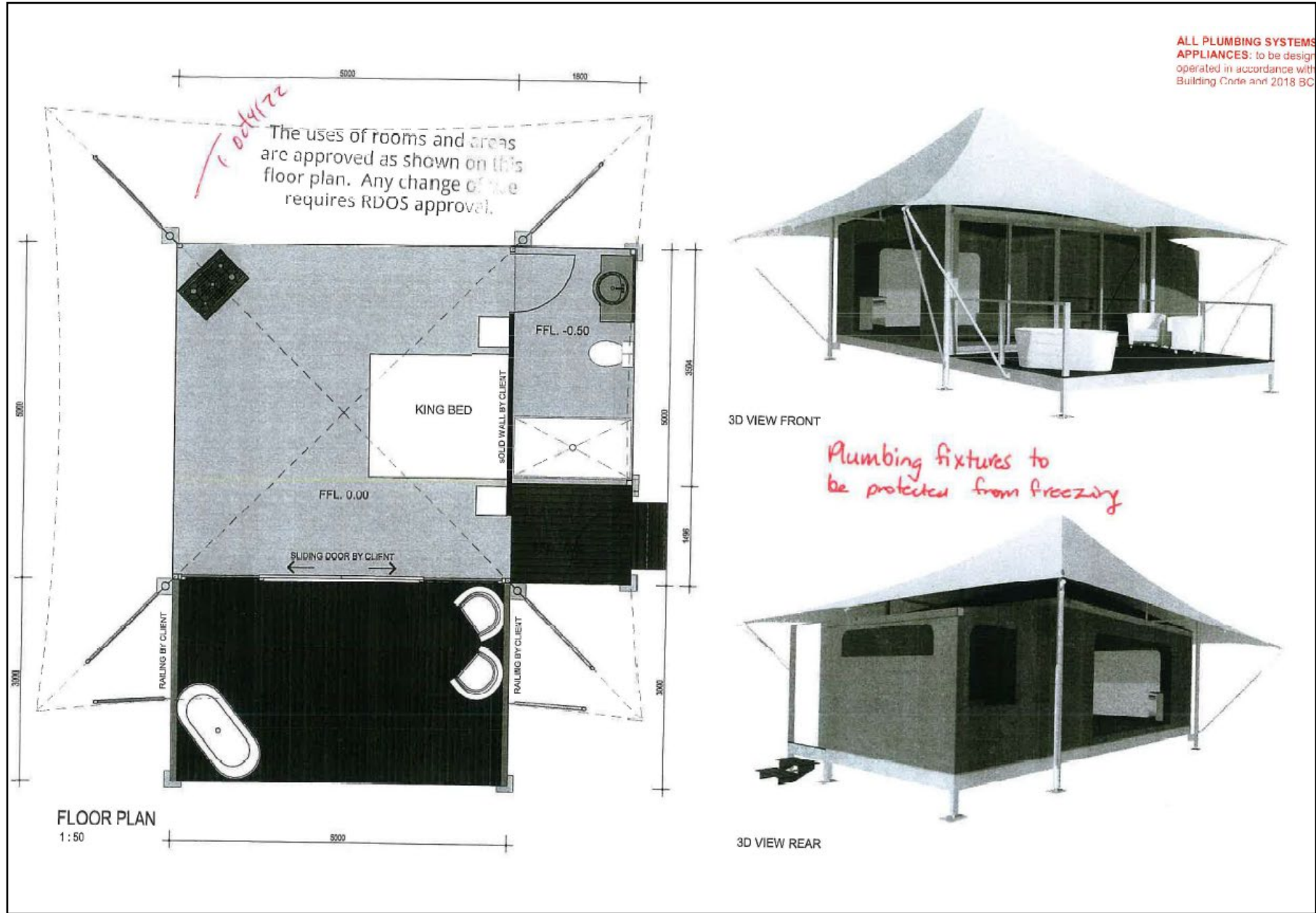
Attachment No. 2 – Applicant’s Site Plan



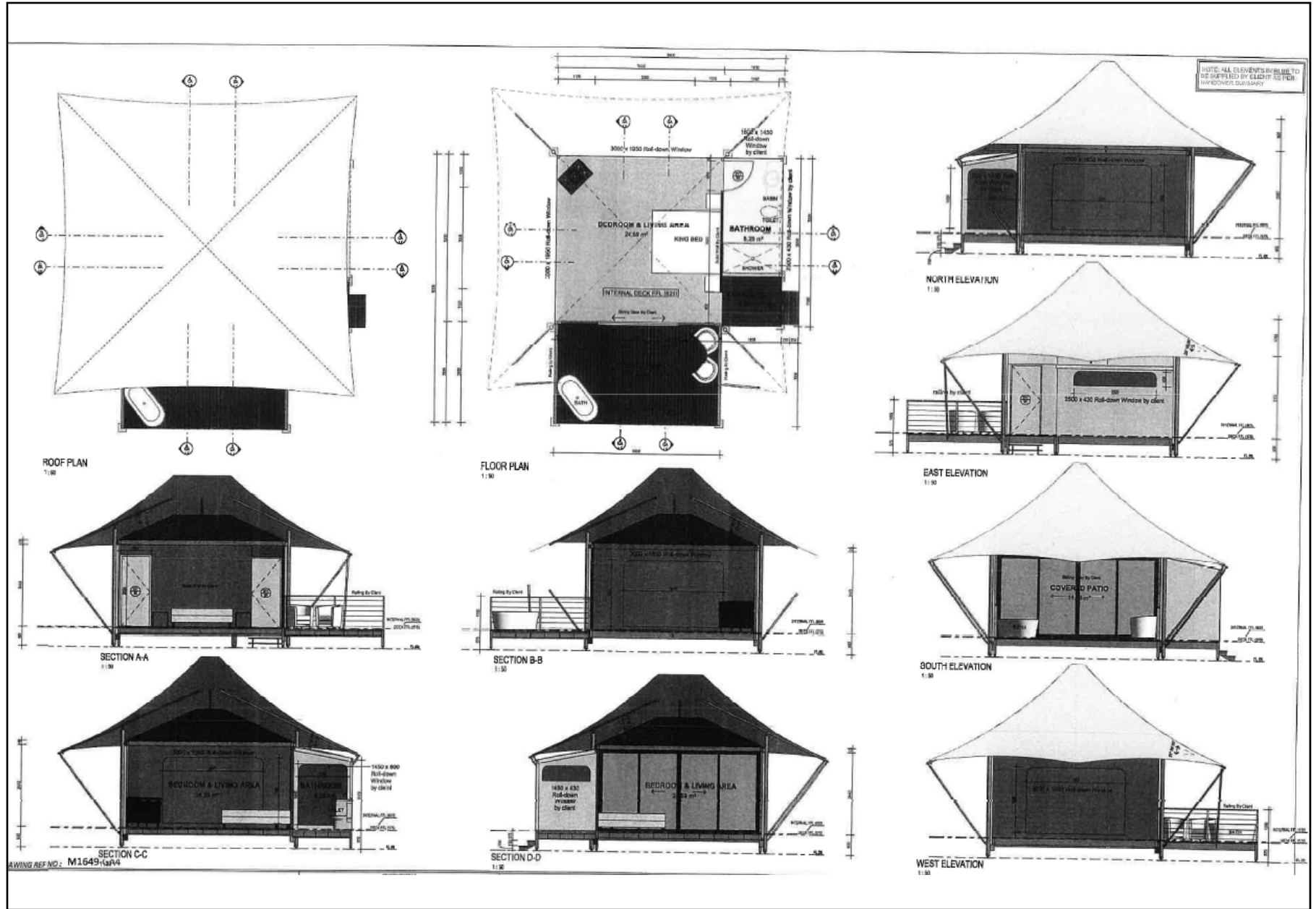
Agri-tourism sleeping units to be located in two structures



Attachment No. 3 – Applicant’s Floor Plan

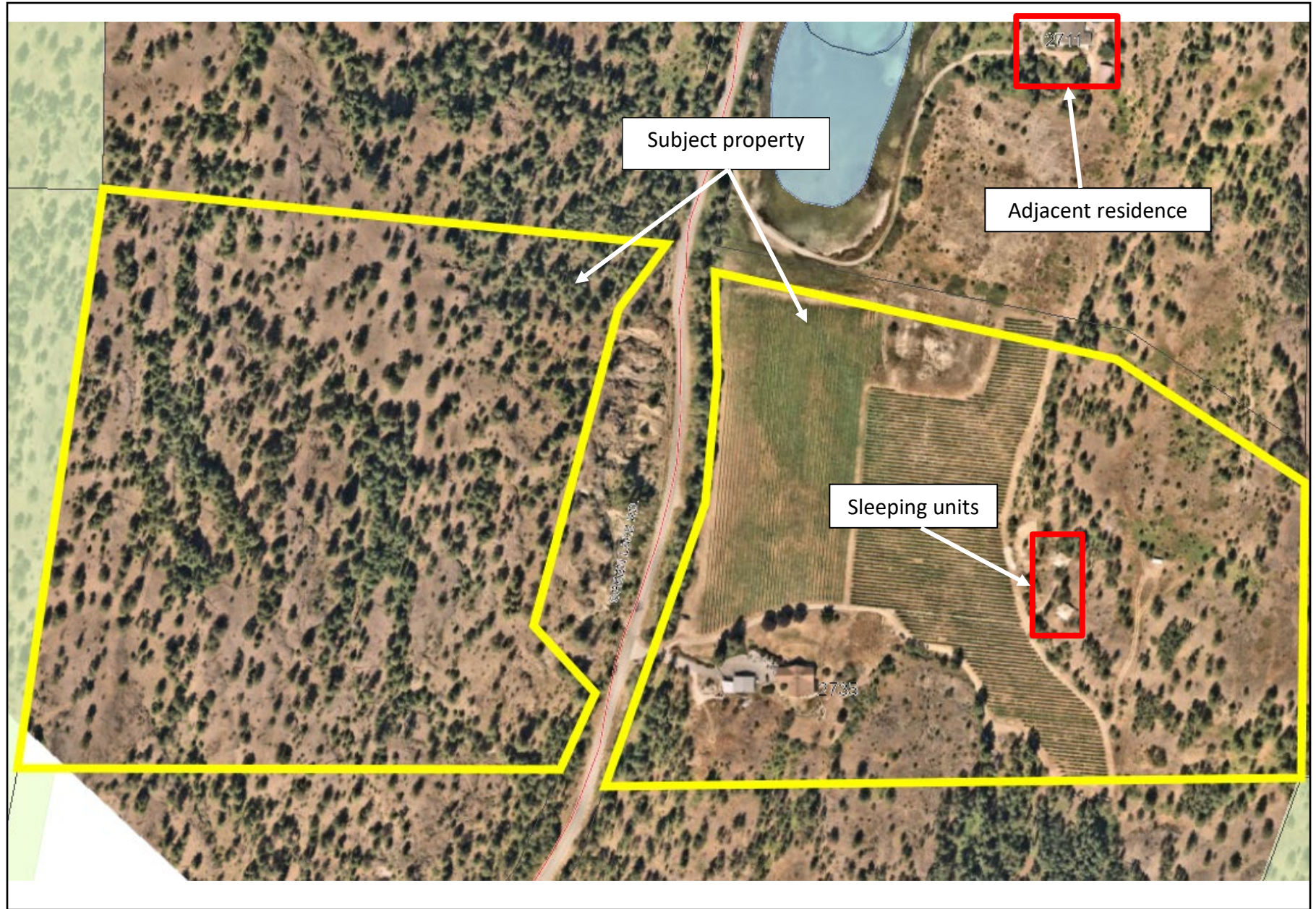


Attachment No. 4 – Applicant’s Elevation Drawings





Attachment No. 5 – Aerial Photo



Attachment No. 6 – Aerial Photo



Attachment No. 7 – Site Photo

