



COUNCIL REPORT

To: Paul Gipps, CAO

Date: June 23, 2020

From: Chris Oliver, Planner III

File No: Z 20-01

Subject: **Z 20-01, Zoning Amendment Bylaw No. 154.88 (3rd Reading), 2648 Kyle Road**

Options for Council's Consideration:

Option 1 – Give 3rd Reading

THAT Council give third reading to City of West Kelowna Zoning Amendment Bylaw No. 0154.88, 2020 (Z 20-01); and

THAT Council direct staff to schedule the bylaw for consideration of adoption following:

- Approval by the Ministry of Transportation and Infrastructure; and
- Registration of a S.219 Covenant limiting cannabis production to Buildings 1-3 and notifying tenants and owners of the potential use.

Option 2 – Postpone Consideration

THAT Council postpone consideration of 3rd reading to City of West Kelowna Zoning Amendment Bylaw No. 0154.88, 2020 (Z 20-01).

Option 3- Deny Application

THAT Council rescind first and second readings of City of West Kelowna Zoning Amendment Bylaw No. 0154.88 (Z 20-01) and abandon the bylaw; and

THAT Council direct staff to close File: Z 20-01.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity (Strategic Plan Priorities 2020-2022)

BACKGROUND

The applicant is requesting a site-specific text amendment to permit cannabis production in a building with multiple occupancies for Buildings 1-3 of the proposed development. As part of this request, Building 3 will encroach within the 150m buffer to the adjacent P2 Zoned parcel (Brookhaven) by approximately 40m.

PROPERTY DETAILS			
Address	2648 Kyle Road		
PID	009-944-095		
Folio	36414127.001		
Lot Size	10.33 acres (41804.1 sqm)		
Owner	DENCITI KYLE RD HOLDINGS LTD	Agent	Urban Design Group Architects Ltd.
Current Zoning	I1 – Light Industrial	Proposed Zoning	I-1 Light Industrial with a site-specific text amendment
Current OCP	Industrial	Proposed OCP	Industrial
Current Use	Mixed-use Industrial Park	Proposed Use	Mixed-use Industrial Park
Development Permit Areas	Hillside Development Permit Area		
Hazards	No		
Agricultural Land Reserve	No		

ADJACENT ZONING & LAND USES		
North	^	RMP – Manufactured Home Park
East	>	P2 Institutional Assembly and I1 Light Industrial
West	<	I2 – Heavy Industrial and I4 Gravel Extraction
South	v	I1 Light Industrial

NEIGHBOURHOOD MAP



PROPERTY MAP



DISCUSSION

Overview of Public Hearing

A public hearing was held on May 26, 2020. As part of the Public Hearing, three members of the public addressed Council and 32 submissions were received. At the public hearing and as part of the submissions, the discussion was primarily focused around the cannabis production use and the size of the permitted buildings. Members of the public that addressed Council spoke in opposition to the permitted cannabis use and the proposed amendment Bylaw. Key concerns included:

- Odour and noise;
- Proximity to Crystal Springs Mobile Home Park and Treasure View Estates;
- Adverse health impacts;
- Federal licensing requirements;
- Buildings 4, 5, and 6 being used for Cannabis Production or other ancillary uses;
- The application process;
- Transportation; and
- Security.

Other more direct questions that were raised as part of the Public Hearing were related to Federal requirements of Micro-Cultivation Licences. Staff has provided additional detail regarding the Federal requirements later in this report.

In addition to the proposal specific questions, concerns were raised regarding the need for additional consultation with residents located at the adjacent Brookhaven care facility¹. As such, Council continued the public hearing until June 2, 2020 to permit additional consultation to occur. Staff worked with Interior Health to consult with residents and representatives as requested by Council. Interior Health acted as a key community partner going above and beyond to ensure that they could meet the request of Council while ensuring their staff and residents were kept safe

¹ Interior Health was sent a referral in addition to the notice that was sent to the Brookhaven Care Facility.

while facing the challenges of COVID-19. As part of the additional consultation, Interior Health confirmed no residents had comments and staff received two responses from representatives of residents at Brookhaven. In addition to representatives of Brookhaven residents, seven additional responses were received and three speakers spoke at the continued public hearing, citing similar concerns raised at the start of the public hearing.

Background on the Applicant (DENCITI Development Corporation)

DENCITI Development Corporation is a Vancouver-based real estate development company creating urban industrial, commercial and residential developments. The DENCITI team has delivered over \$2 billion of real estate across Canada. Currently, DENCITI has 8 projects ranging from residential, rental, light industrial, mixed-use and commercial in the following regions:

- Vancouver Island
- BC interior
- Fraser Valley
- Lower Mainland

Micro-Cultivation Licences

Micro-cultivation licences are one of the classes of licences permitted through Health Canada. The most notable difference between the various type of licences (standard, micro, and nursery) is the size restriction associated with micro-cultivation licences. For micro-cultivation, plant surface area cannot exceed 200 m² (includes multiple surfaces such as surfaces vertically arranged). A flow chart of the various types of licence permitted by Health Canada can be seen in Figure 1.

As with the Standard licensing requirements, Micro applicants must meet the same requirements for background checks, quality control, and record-keeping. The main operational differences to Micro license are the size limitation (200 m²), scale of security measures (Attachment 2), and associated licensing costs (Table 1).

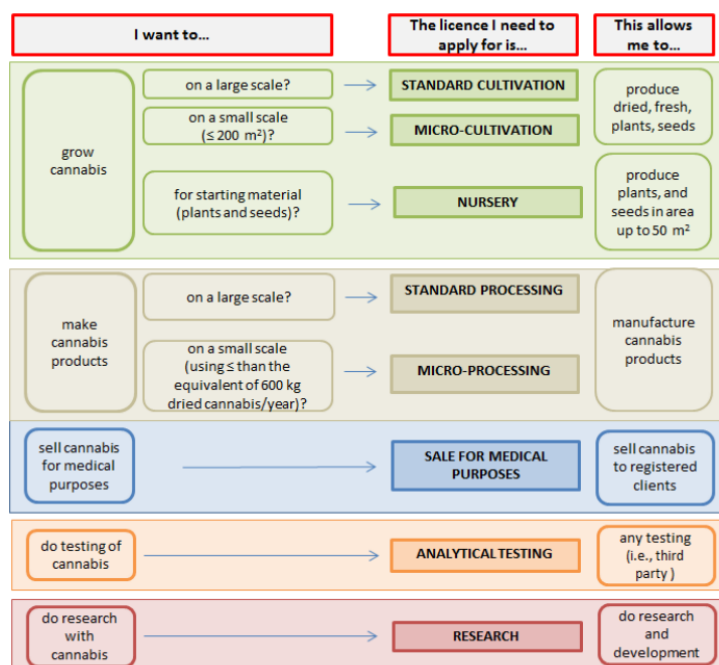


Figure 1. Cannabis Classes and Subclasses of licenses

Table 1. Cannabis Application Fee Comparison		
Application Type	Minimum Fee	Regulatory Fee Rate
<ul style="list-style-type: none"> • Standard cultivation • Standard processing • Sale for medical purposes 	\$23,000	2.3% of cannabis revenue
<ul style="list-style-type: none"> • Micro-cultivation • Micro-processing • Nursery 	\$2500	1% for cannabis revenue of 1 million or less and 2.3% of cannabis revenue in excess of 1 million

Health Canada does provide information on the total number of licensed cultivators, processors and sellers of cannabis under the Cannabis Act. The following breakdown is based on Health Canada's website statistics as of June 11, 2020:

Total number of licensed cultivators, processors and sellers in Canada: **400**

Total number of licensed cultivators, processors and sellers in BC: **96**

Total number of licensed micro-cultivators and processors in Canada: **54**

Total number of licensed micro-cultivators and processors in BC: **10**

Micro-producers and micro-processors are both permitted in the I1 – Light Industrial Zone as part of the Cannabis Production Facility use.

Air Filtration

All cannabis applications under Health Canada must meet the following good production practices:

- Filter air to prevent the escape of cannabis odours associated with cannabis plant material to the outdoors.
- Provide natural or mechanical ventilation with sufficient air exchange to provide clean air and to remove unclean air in order to prevent the contamination of the cannabis or thing that will be used as an ingredient, except in the case of any building or part of a building where the only activities being conducted in respect of cannabis and anything that will be used as an ingredient are its cultivation, propagation or harvesting.
- Be accessible and, if necessary for its cleaning, maintenance or inspection, be disassembled, except in the case of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting;
- Withstand repeated cleaning, except in the case of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting;
- Function in accordance with its intended use, except in the case of any building or part of a building where the only activities being conducted in respect of anything that will be used as an ingredient are its cultivation, propagation or harvesting; and
- Must keep records demonstrating compliance of these requirements, examples included:
 - Records of installation;
 - Maintenance and service of the ventilation and filtration systems; and
 - Replacements of filters.

The City has included specific references in the Zoning Bylaw to reaffirm the Federal regulations for odour mitigation. As part of the layered approach to ensuring these requirements are met, staff

ensure these requirements are met through Building Permit and Business Licensing requirements.

There are approximately five existing standard cannabis production facilities in West Kelowna. One of the most prominent is approximately 1.2 km away from the subject property. That facility is also adjacent to the Pinewoods Villa mobile home park and as part of a previous site-specific text amendment, benefits from being able to be located within a multi-tenant building. As part of its ongoing operation, there has only been one complaint regarding odour since the initial operation in 2016.

In discussion with Health Canada staff, it is not typical for a license holder to rely on others to ensure their licensing requirements are met (e.g., shared filtration). As any compliance issue may jeopardize their license, it is standard for a licensee to have their own contained filtration to ensure licensing requirements can be met. Health Canada staff could not confirm if an applicant would have the ability to use a shared system.

Noise

It is not anticipated that the proposed use would be any more impactful from a noise perspective than other permitted uses in the I1 – Light Industrial Zone including:

- Bulk fuel depot
- Freight or distribution outlet
- Greenhouse of plant nursery
- Heavy equipment sales, rental and repair
- Heliport facility
- Kennels
- General industry
- Utility service

The City's Good Neighbour Bylaw does include regulations regarding noise. In general, the intent of the Bylaw is not to limit the operation of industries in industrial areas when the noise is typical of the industry it is associate with. Noise from mechanical systems or air conditioners would be considered in accordance with the following exemption of the Good Neighbour Bylaw (s7.4(d)):

“lawfully carrying on a trade or industry at a commercial, industrial or light industrial zoned area, provided that the sound or noise therefrom does not exceed the sound or noise common to such trade or industry where carried out in accordance with generally accepted industry standards using equipment and facilities in good operating order”

Health Canada Compliance and Enforcement Policy for the Cannabis Act (Health Canada)

The Health Canada Compliance and Enforcement Policy for the Cannabis Act is intended to help regulated parties comply with the:

- Cannabis Act
- Cannabis Regulations
- Applicable administrative policies

Health Canada monitors the activities of regulated parties to verify they are complying with the Act and its Regulations and to prevent non-compliance. Compliance monitoring includes gathering and analyzing information, carrying out compliance verification activities, and collaborating with other regulatory agencies as appropriate.

Health Canada uses information from internal and external sources to identify possible risks to public health and public safety. When Health Canada identifies a product or activity that may not

be compliant with the Act or its Regulations, it applies the guiding principles in this policy, including using a targeted, outcomes-focused, and evidence-based approach to assess whether there is non-compliance. External sources may include consumers, a company within a supply chain, and federal, provincial, territorial, and international partners.

When non-compliance is identified, there are a number of options to support achieving compliance. These options are generally categorized into two categories: voluntary measures and enforcement actions initiated by Health Canada to address non-compliance or to address an issue of public health, depending on the circumstances. These include:

1. Issuing warning letters to non-compliant regulated parties
2. Issuing public advisories or other forms of risk communication
3. Seizure and detention
4. Refusing, suspending or revoking an authorization, including a license or permit
5. Issuing administrative monetary penalties up to \$1 million
6. Issuing a ministerial order to recall products from the market, conduct tests or studies, produce information or documents, or take other measures

Policy History – Cannabis-Related Zoning Bylaw Changes

In 2014, as part of an amendment to the recently adopted Zoning Bylaw No. 0154, Council adopted a 150m buffer for Commercial Medical Marihuana Production. Since the adoption, the associated terminology and definitions associated with Commercial Medical Marihuana Production uses have been updated in 2017 and most recently in 2018 to update the language in the bylaw in advance of legalization to reflect the forthcoming Cannabis Act. While terminology and licensing names have changed, the 150m buffer requirement and the intent of buffering cannabis production and processing uses has been consistent since 2014.

City of Kelowna – Cannabis Production Requirements

Similar to the recent 2018 amendments to Zoning Bylaw No. 0154, the City of Kelowna also amended their definition of Medical Marihuana Production Facilities to Cannabis Production Facilities, which includes both medical and non-medical cannabis production. Cannabis Production Facilities are a permitted principal use in Kelowna on Industrial (I1, I2, I3 and I4) zoned properties. Properties with new Cannabis Production Facilities are required to be located a minimum of 60 metres from any property where the principal use is residential. The City of Kelowna does not have a multi-tenant building regulation pertaining to cannabis production.

Similar to our processes, the City of Kelowna requires a business licence and a federal production licence for production facilities to operate.

OPTION(S)

Option 1 – Give 3rd Reading

Should Council choose to give third reading, prior to adoption the applicant would be required to register a S.219 restrictive covenant on title limiting the production to the first three buildings and notify future owners of the permitted multi-tenant use. In addition to the covenant registration, MOTI would also need to sign-off on the Bylaw.

Option 2 – Postpone Consideration

Should Council postpone consideration of the proposed amendment Bylaw, further direction to staff on how to proceed is required.

Option 3- Deny Application

Should Council deny the proposed amendment bylaws, the application will be closed in accordance with Development Applications Procedures Bylaw No. 0131. Council shall not reconsider an application of this nature for the property for a period of six months.

As currently permitted, the applicant would be able use Buildings 1 and 2 for cannabis production as long as all of the tenants in the buildings were Cannabis Production Facilities (27 units and ~76,000ft²).

COUNCIL REPORT / RESOLUTION HISTORY

Date	Report Topic / Resolution	Resolution No.
April 21, 2020	THAT Council give first and second reading to City of West Kelowna Zoning Amendment Bylaw No. 0154.88, 2020 (File Z 20-01); and THAT Council direct staff to schedule the proposed bylaw amendment for Public Hearing, when appropriate.	C115/20
May 26, 2020	Public Hearing Opened	N/A
June 2, 2020	Public Hearing Closed	N/A

REVIEWED BY

Brent Magnan, Planning Manger

Mark Koch, Director of Development Services

Tracey Batten, Deputy CAO/Corporate Officer

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes ☒ No ☐

Attachments:

1. Zoning Amendment Bylaw No 0154.88
2. Health Canada Physical Security Requirements Comparison