



## COUNCIL REPORT

CITY OF WEST KELOWNA  
PLANNING DEPARTMENT



ATTACHMENT: 2

FILE NO.: DVP 20-08

To: Paul Gipps, CAO

Date: October 13, 2020

From: Hailey Rilkoff, Planner II

File No: DVP 20-08 & A 20-01

Subject: **DVP 20-08 & A 20-02; Development Variance Permit & ALR Non-Farm Use; 2789 Highway 97 S**

---

### RECOMMENDATION

**THAT** Council authorize the issuance of a Development Variance Permit (DVP 20-08) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S) to allow construction of a winery building in general accordance with the attached permit to vary Zoning Bylaw No. 0154 Section 8.1.5(e) to increase the maximum building height from 15.0 m (49.2 ft) to 35.05 m (115 ft) for the proposed winery building, subject to the following conditions:

- a. An application to NAV Canada's Land Use Program is required to be submitted and completed prior to Building Permit issuance to assess if the proposed building would require further approvals from NAV Canada;
- b. Dimensions, siting and design of the new winery building to be constructed on the property in accordance with Schedule 'A'; and
- c. Exterior lighting shall be designed to not spill over onto, or create glare on, adjacent properties; and

**THAT** Council support the request to permit a non-farm use for a winery production and tasting building in the Agricultural Land Reserve (File: A 20-01) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S); and further

**THAT** Council directs Staff to forward the application to the Agricultural Land Commission for consideration.

### STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity – Growth in local business; Quality, innovative urban development; Continued growth in tourism (Council's 2020-2022 Strategic Priorities).

### BACKGROUND

This application proposes a winery tasting and production building on the subject property. The proposed building requires a variance to increase the maximum building height from 15.0m to 35.05 m



## PROPERTY MAP



### History

In 2018, an Agricultural Land Commission (ALC) Application was submitted for Transportation, Utility, and Recreation Uses that permitted the dedication and construction of a 20m wide Road Right of Way that will provide access to the Goat's Peak CDP area.

### Proposal – Non Farm Use

The applicant proposes to construct a 557 m<sup>2</sup> (6,000 ft<sup>2</sup>) wine production facility and a 140 m<sup>2</sup> (1,500 ft<sup>2</sup>) tasting facility on the subject property to facilitate the development of a vineyard and winery, with the working name of Goat's Peak Winery. As the property is located within the Agricultural Land Reserve (ALR), regulations require that the primary farm product be harvestable prior to development of a winery. Therefore, approval for a Non-Farm Use from the Agricultural Land Commission (ALC) is required to construct the winery prior to the vineyard being planted and the grapes being harvestable.

### Proposal - Variance

The proposed Goat's Peak Winery tasting and production building is proposed to exceed the maximum height regulated by the City's Zoning Bylaw. The proposed Winery Tasting Building is 140 m<sup>2</sup> in floor area and 35 m (115 ft) in height and has been conceptualized as a lighthouse. The City's A1 - Agricultural Zone limits the height of buildings to 15.0 m (49 ft).

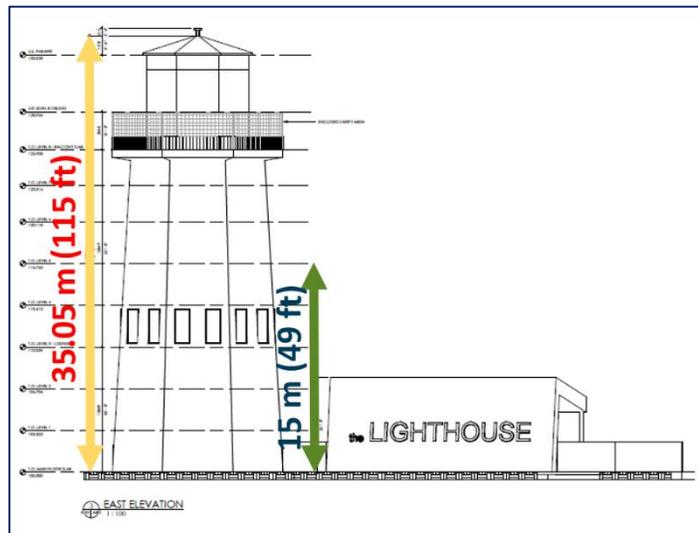


Figure 1 – Proposed Height Variance

## Applicant's Rationale

Two letters of rationale have been provided by the applicant in regards to the Non-Farm Use and Development Variance Permit applications (*Attachment 2*). The applicant has indicated that the vineyard is not expected to produce until the harvest season of 2022/2023, and are requesting a 3 year relief from the requirement to harvest 50% of the primary farm product on site. The applicants have indicated they will secure a minimum of 50% of their annual production through lease agreements on other properties.

A smaller building footprint has been proposed to minimize the impact on the farmable land, however they feel the buildings unique theme and height will add to the development of the community and create a destination for tourists to visit.

In regards to the requested height variance, the applicant's vision is to make the Westside Wine Trail and West Kelowna a world destination for wine tourism. This proposed winery is intended '*to be a "beacon" for tourism and local pride...*' and is inspired by other famous towers and iconic lighthouses.



**Figure 2 – Rendering of proposed winery building**

## Visual Impact Assessment

The applicant has provided a Visual Impact Assessment (*Attachment 3*) which provides additional details on how the proposed over height winery building could impact views. The assessment identifies views of the proposed building from various nearby roads (Figure 3). The assessment indicates that the building would bring visual interest from the highway and feels the lighthouse building would be an attractive feature on the landscape.



**Figure 3 – View of proposed winery building from Gellatly Road**

## Policy & Bylaw Review

### *Official Community Plan Bylaw No. 0100*

The City's Official Community Plan (OCP)'s guiding principles support protecting and enhancing agriculture while supporting an economically sound community<sup>1</sup>. Specific Agricultural Land Use Designation objectives speak to supporting land use decisions which are consistent with the ALC and the City's Agricultural Plan and promoting innovative agricultural activities<sup>2</sup>.

The subject property borders the northern end of the Goats Peak Comprehensive Development Area which is envisioned to be a mix of residential and rural residential uses in the future.

While Agricultural developments are not subject to a Development Permit process, where Commercial and Industrial developments would be, a general development guideline related to exterior lighting should be considered. Light pollution from the proposed lighthouse building could have negative impacts on future residential developments in the Goats Peak Comprehensive Development Area. To reduce light pollution, the building should be designed so that exterior lighting does not spill over onto or create glare on adjacent properties<sup>3</sup>.

### *Agricultural Plan*

The City's Agricultural Plan recommends encouraging efforts to increase the economic activity of the agricultural industry<sup>4</sup> as well as supporting agritourism activities<sup>5</sup>. However, the Agricultural Plan also provides a recommendation which encourages food processing on farms when the development is consistent with the ALC Act and Regulations<sup>6</sup>.

### *Zoning Bylaw No. 0154*

The subject property is zoned A1 – Agricultural, which permits a winery as a principal use. The proposed development meets all of the development requirements including setbacks and parcel coverage for the A1 zone with the exception of building height. The A1 zone regulates the maximum building height of 15.0 m (49.2 ft) with exceptions which are lower for homes, agricultural worker dwellings, accessory buildings and carriage houses (5 m to 12 m) and higher for barns (20 m)<sup>7</sup>.

### *Agricultural Land Reserve (ALR) Use Regulation*

Section 13 (2) of the ALR Use Regulation requires that at least 50% of the primary farm product (grapes) used to make the alcohol product (wine) are harvested from the agricultural land on which the alcohol production facility (winery production building) is

---

<sup>1</sup> 2.5.1 OCP Guiding Principles for Planning & Design

<sup>2</sup> 3.3.8 Agricultural Land Use Designation Objectives

<sup>3</sup> OCP 4.3.1 General Guidelines That Apply to All Development Permit Areas 26. Exterior Lighting

<sup>4</sup> Section 4.5.6 Recommendation 13: Economic Development Strategies

<sup>5</sup> Section 4.5.9 Recommendation 16: Agritourism and Culinary Tourism

<sup>6</sup> Section 4.5.10 Recommendation 17: Processing and Value-Added

<sup>7</sup> Section 8.1.5 (e) Agricultural Zone (A1) - Development Regulations

located. The ALC requires that the primary farm product be growing and harvestable prior to a winery being constructed on ALR lands.<sup>8</sup>

ALC has also provided a policy which relates to development of farm structures for farm related commercial and industrial uses in the ALR. The guidelines in this policy recommends a lot coverage limit of 5% for parcels greater than 4 ha (10 acres) in order to limit the amount of land taken out of agricultural production. The lot coverage limit includes buildings, outdoor storage, landscaped areas, parking and loading areas and new access roads. The applicant's proposal indicates that they intend to meet this guideline of the 5% lot coverage limit (*Attachment 5*). The proposed building area is 1,080 m<sup>2</sup> while the proposed access road, parking, and landscaped areas total 2,456 m<sup>2</sup>. Therefore the proposed lot coverage is a total of 3,536 m<sup>2</sup> or 4.42%. This is within the 3,576 m<sup>2</sup> or 5% of the parcel that could be developed.

### Technical Review

#### *Planning*

The proposed use of a winery is permitted in the A1 Zone and is considered a farm-use under the ALR Use Regulation. The applicants have provided invoices for the purchase of plants (vines) and are committed to the development of a vineyard on the subject property. The non-farm use is only required as a transitional approval while the vineyard is being established.

The height variance of the proposed winery building is significant. The proposed building height of 35 m is over double the current maximum height of 15 m (4 storeys). 15 m is the highest permitted building height within any zone in the City of West Kelowna. There has been a site specific text amendment to permit up to 22 m high (6 storeys) for an apartment building development in Westbank Centre. If the variance were approved, the proposed building would be the tallest in West Kelowna.

#### *Agricultural Advisory Committee (AAC)*

The City's AAC considered the application at their June 4<sup>th</sup>, 2020 meeting held via Zoom video conferencing. Discussion points included:

- Proposed height doesn't impact agricultural footprint;
- The ALC policy which requires grapes to be planted prior to the winery

The AAC passed the following motions:

**THAT** the AAC support file A20-01, Non-Farm Use Application, 2789 Highway 97 South with the condition that the first five (5) acres be planted before construction.

**THAT** the AAC support DVP 20-08, DVP Application, 2789 Highway 97 South as presented.

---

<sup>8</sup> ALR Use Regulation Part 2 Farm Uses – Alcohol Production 13 (2)

### *Ministry of Agriculture*

The Ministry of Agriculture commented on a number of considerations with the application as proposed. The Ministry identified potential impacts to future residential neighbours in regards to noise from the winery production operations and liquor service hours for the lounge and tasting room. The Ministry also identified that the neighbouring agricultural property has a cherry orchard (to the north and east) and advised that the proposed building height may impact the use of helicopters as part of their operations.

### *Transport Canada & NAV Canada*

Due to the proposed height of the winery building, the application was referred to Transport Canada to provide comments on potential impacts to air traffic. Transport Canada responded that the development does not propose any navigational concerns in regards to the Kelowna Airport, however indicated that an application to NAV Canada's Land Use Program should be submitted to assess if the project requires further approvals. The applicant will be required to submit this NAV Canada Application and provide details on any considerations to air traffic flight paths prior to a building permit being issued for the development.

### Legislative Requirements

Section 498 of the *Local Government Act* gives Council the authority to issue a Development Variance Permit that varies, in respect of the land covered in the permit, the provisions of the Zoning Bylaw.

Under Section 20 of the *Agricultural Land Commission (ALC) Act*, an owner may apply to the ALC for permission under S. 25 for a non-farm use. An application for non-farm use must not proceed to the ALC for consideration unless authorized by a resolution of the local government.

### Public Notification

In accordance with the *Local Government Act*, 9 notification letters were sent to all property owners and their tenants within 100 metres of the subject property (*Attachment 6*) and a notice of application sign has been placed on the subject property in accordance with the Development Applications Procedures Bylaw No. 0260. At the time of writing this report, no submissions from the public had been received.

## **DISCUSSION**

Supporting the growth of agri-business is a priority of the City's Economic Development Focus Plan, through programs such as the Westside Wine Trail. The creation of additional wineries can support agriculture while creating new jobs and investment. The proposed Goat's Peak Winery could become a bookend of the Westside Wine Trail with its location along the south-west highway entrance to the City. There are currently 15 destinations listed as members of the Westside Wine Trail, with more destinations under development.

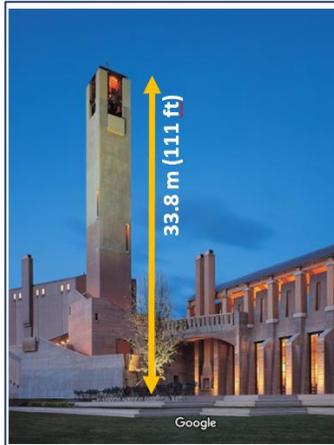
The City's Official Community Plan and Agricultural Plan have no direct policies that address the form and character or height buildings on agricultural lands. The proposed

lighthouse building would stand out in the landscape and would be the tallest building in West Kelowna if constructed. The proposed building style of a lighthouse would be unique in the region and a one of a kind landmark. Other local wineries have structural landmarks such as the pyramid at Summerhill Pyramid Winery in Kelowna or the tower at Mission Hill Winery.

The Mission Hill Winery bell tower is a structure with a comparable height that is familiar in the landscape of West Kelowna. This tower, constructed as part of a major redesign of the winery which was completed in 2002, is 27.4 m (90 ft) tall from the plaza level (Figure 4) and the main grounds of the Mission Hill Winery, and is 33.8 m (111 ft) tall from the lower level (Figure 5).



**Figure 4 – Plaza Level Height Comparison**



**Figure 5 – Lower Level Height Comparison**



The proposed lighthouse winery building would be 1.2m (4 ft) higher than the Mission Hill Winery bell tower (*Attachment 4*). The Mission Hill Winery tower is approximately 11 ft wide at the top, and 20 ft wide at the base. The proposed lighthouse winery building would be approximately 27 feet wide at the top and 45 ft wide at the base.

If the Development Variance Permit Application was approved by Council, and the Non-Farm Use Application were supported and subsequently approved by the ALC, the applicants could apply for a Building Permit to begin construction.

## CONCLUSION

It is recommended that Council approve the proposed variance application DVP 20-08 and support the Non-Farm Use ALR application (A 20-01). The proposed winery building is not anticipated to create significant negative impacts and the applicant has provided documentation to support the intended planting of a vineyard.

## ALTERNATE MOTIONS

Alternate Motion 1: Deny Variance, Support ALR Non-Farm Use

**THAT** Council deny the issuance of a Development Variance Permit (DVP 20-08) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S); and

**THAT** Council support the request to permit a non-farm use for a winery production and tasting building in the Agricultural Land Reserve (File: A 20-01) Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S); and further

**THAT** Council directs Staff to forward the application to the Agricultural Land Commission for consideration.

Should Council deny the requested variance, the file will be closed. The applicants would be advised to redesign the proposed winery building to meet the Zoning Bylaw's height regulations. As per the City's Development Applications Procedures Bylaw No. 0260, the applicant could re-apply for a similar proposal 6 months after initial Council consideration.

A local government report will be sent to the ALC advising that Council supports the Non-Farm Use application.

Alternate Motion 2: Approve Variance, Not Support ALR Non-Farm Use

**THAT** Council authorize the issuance of a Development Variance Permit (DVP 20-08) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S) to allow construction of a winery building in general accordance with the attached permit to vary Zoning Bylaw No. 0154 Section 8.1.5(e) to increase the maximum building height from 15.0 m (49.2 ft) to 35.05 m (115 ft) for the proposed winery building, subject to the following condition:

- a. An application to NAV Canada's Land Use Program is required to be submitted and completed prior to Building Permit issuance to assess if the proposed building would require further approvals from NAV Canada;
- b. Dimensions, siting and design of the new winery building to be constructed on the property in accordance with Schedule 'A'; and
- c. Exterior lighting shall be designed to not spill over onto, or create glare on, adjacent properties; and

**THAT** Council not support the request to permit a non-farm use for a winery production and tasting building in the Agricultural Land Reserve (File: A 20-01) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S); and further

**THAT** Council directs Staff to forward the application to the Agricultural Land Commission for formal consideration.

Should Council choose this motion, the Development Variance Permit would be issued and a local government report will be sent to the ALC advising that Council does not support the Non-Farm Use application. By forwarding the application, Council is advising their non-support, but defers to the ALC for a formal decision.

Alternate Motion 3: Deny Variance, Not Support ALR Non-Farm Use

**THAT** Council deny the issuance of a Development Variance Permit (DVP 20-08) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S); and

**THAT** Council not support the request to permit a non-farm use for a winery production and tasting building in the Agricultural Land Reserve (File: A 20-01) for Lot A, DL 3188, Plan 26860 Except Plan KAP63607 (2789 Highway 97 S); and further

**THAT** Council directs Staff to forward the application to the Agricultural Land Commission for formal consideration.

Should Council choose this motion, the file will be closed. The applicants would be advised to redesign the proposed winery building to meet the Zoning Bylaw's height regulations. A local government report will be sent to the ALC advising that Council does not support the Non-Farm Use application, but defers to the ALC for a formal decision.

**REVIEWED BY**

Brent Magnan, Planning Manager

Mark Koch, Director of Development Services

**APPROVED FOR THE AGENDA BY**

Paul Gipps, CAO

Powerpoint: Yes  No

Attachments:

1. Draft DVP 20-08
2. Applicant's Rationale Letters
3. Visual Impact Assessment
4. Height Comparison
5. Site Coverage Assessment
6. Public Notification Map