



# COUNCIL REPORT

To: Paul Gipps, CAO

Date: September 28, 2021

From: Holden Blue, Planner II

File No: DVP 21-10

Subject: **DVP 21-10, Development Variance Permit, 1305 and 1315 Industrial Road**

## RECOMMENDATION

**THAT** Council authorize the issuance of a Development Variance Permit (DVP 21-10) for 1305 and 1315 Industrial Road to vary S.3.25.1 of Zoning Bylaw No. 0154 to reduce the minimum setback for a cannabis production facility from a zone that permits dwellings as a principal use from 150m to 31m, in accordance with the attached permit (Attachment 1).

## STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity – (Council’s 2021-2022 Strategic Priorities)

## BACKGROUND

The applicant is seeking a Development Variance Permit (Attachment 1) to reduce the minimum setback for a cannabis production facility from any zone that permits dwellings as a principal use from 150m to 31m. In this case, the residential zone is across four lanes of Highway 97. The property (1305 Industrial Road) currently has two buildings on it, and the applicant has indicated both buildings on site (1305 and 1315 Industrial Road) will be used for the cannabis production facility. The applicant will seek a Standard Cultivation License from Health Canada prior to beginning operations.

## PROPERTY DETAILS

<b>Address</b>	1305 and 1315 Industrial Road – (Site: 1305 Industrial Road)		
<b>PID</b>	007-984-715		
<b>Folio</b>	36412746.210		
<b>Lot Size</b>	7491.68 m2		
<b>Owner</b>	Loki Supply Ltd.	<b>Agent</b>	Concentric Controls Ltd.
<b>Current Zoning</b>	I1 – Light Industrial Zone	<b>Proposed Zoning</b>	N/A
<b>Current OCP</b>	Industrial	<b>Proposed OCP</b>	N/A
<b>Current Use</b>	Storage and Warehousing (Closed)	<b>Proposed Use</b>	Cannabis Production Facility
<b>Development Permit Areas</b>	Form and Character		
<b>Hazards</b>	N/A		
<b>Agricultural Land Reserve</b>	No		

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### ADJACENT ZONING & LAND USES

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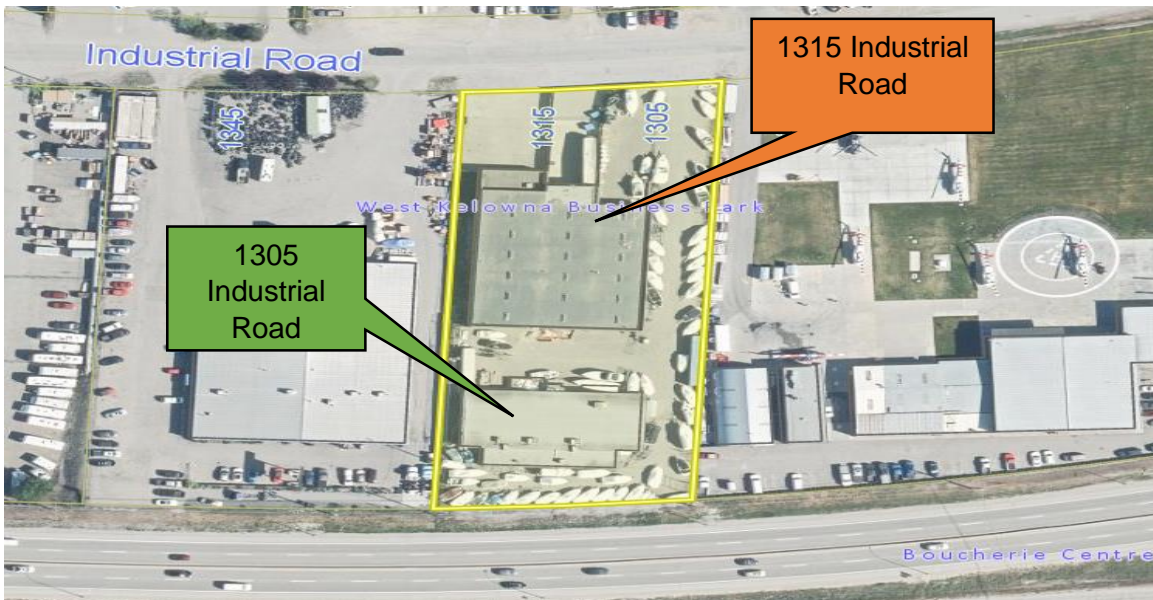
North	^	I1 – Light Industrial Zone, C4 – Service Commercial Zone
East	>	I1 – Light Industrial Zone
West	<	I1 – Light Industrial Zone
South	v	R1 – Single Detached Residential Zone

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### NEIGHBOURHOOD MAP



### PROPERTY MAP



## 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 provision of the Zoning Bylaw.

### Health Canada Requirements

Legislation at the Federal level has been developed to regulate cannabis in Canada. Along with the *Cannabis Act*, Cannabis Regulations have been developed by the Federal Government to help ensure cannabis is produced consistently and that all activities conducted by cannabis license holders meet quality standards appropriate to the intended use of cannabis.

Part 5 of the Cannabis Regulations requires license holders to follow Good Production Practices. Further, license holders are responsible for understanding and complying with all Good Production Practices that apply to their class of license and range of authorized activities. The standards and practices outlined in the Cannabis Regulations are backed by rigorous compliance and enforcement measures by Health Canada, including unannounced inspections where inspectors verify adherence to the regulations.

### Licensing

Standard Cultivation Licenses are one of the license types permitted by Health Canada. Applicants must adhere to all licensing requirements outlined in the *Cannabis Act* and Cannabis Regulations to obtain this type of license from Health Canada prior to operation. A holder of a Standard Cultivation License must also adhere to all regulations outlined in the *Cannabis Act* and Cannabis Regulations while operating.

### Air Filtration

All cannabis applications under Health Canada must meet the following Good Production Practices for filtration:

- 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
- License holders must keep records demonstrating compliance with the above requirements, examples include:
  - Records of installation
  - Maintenance and service of the ventilation and filtration systems
  - Replacement of filters.

## Security

Required security measures for holders of Standard Cultivation licenses are outlined in Section 4 of the Cannabis Regulations. Security measures include physical security measures, visual monitoring and recording, and intrusion detection systems among other requirements outlined in the Regulations.

## **PROPOSAL**

The applicant, Concentric Controls Ltd. is seeking to reduce the setback requirement for cannabis production facilities from a zone that permits dwellings as a principle use from 150m to 31m. (Figure 1). The property currently has two buildings on it and the applicant has indicated their client will occupy both buildings, 1305 and 1315 Industrial Road. No exterior improvements are proposed at this time with the exception of 8ft chain link fencing topped with barbed wire and security measures such as security cameras and swipe card accesses being installed as per Health Canada's regulations for cannabis production facilities.

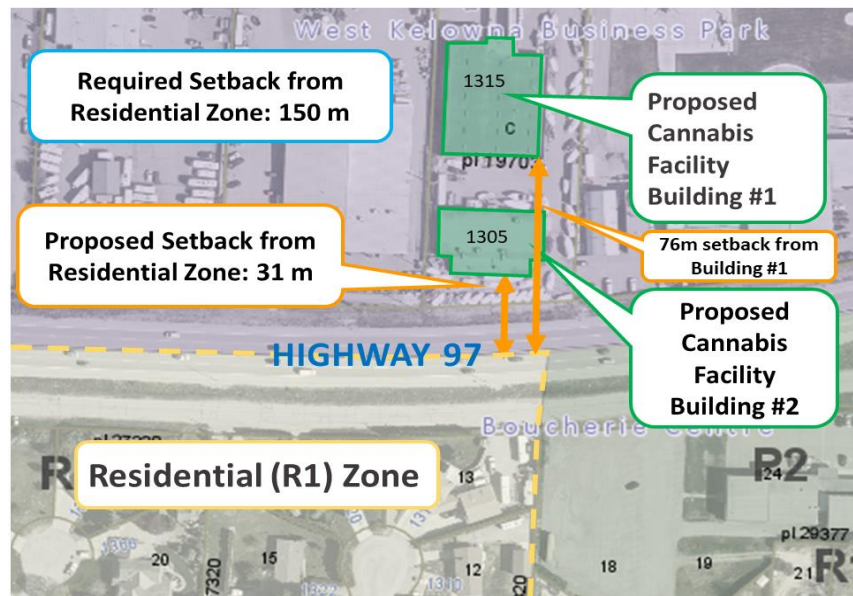


Figure 1: Proposed setback from 1305 Industrial Road. Setback from 1315 to a residential zone also shown.

All work on site including interior improvements, odor control and security measures would occur following the variance decision and be subject to all Building Code regulations and Building Bylaw's of the City of West Kelowna.



The applicant has indicated they will seek a Standard Cultivation License from Health Canada prior to the beginning of operations. The applicant will also be required to meet all building regulations, obtain a business license from the City prior to operating and comply with all Federal measures required as part of applying for and holding a Standard Cultivation License.

## **POLICY AND BYLAW REVIEW**

### Official Community Plan No. 0100

The site is within a Form and Character Development Permit Area (DPA 2 – Industrial), however, is exempt from the Development Permit as no major exterior upgrades are being proposed at this time.

### Zoning Bylaw No. 0154

Cannabis production facilities are permitted in the I1 Light Industrial Zone. Cannabis production facilities must be located 150m from a zone which permits dwellings as a primary use. The applicant is proposing to reduce the setback from the building to the residential zone to 31m. The proposal meets all other zoning bylaw requirements that apply to cannabis production facilities including not being in a multi-tenant building and not providing retail sales on the premises. In addition, the Zoning Bylaw (No. 0154) S.3.25.2 states that cannabis production facilities shall comply with, at a minimum, the air filtration and security requirements set out in Part 1 of the Federal Regulations. It is expected that these requirements are met upon application for a Building Permit for the proposed use.

## **PUBLIC NOTIFICATION**

In accordance with the *Local Government Act*, 24 notification letters were sent to all property owners and their tenants within 100 meters of the subject property (Attachment 2). Notice of application signage has also been placed on the subject property, in accordance with the City's Development Applications Procedures Bylaw No. 0260. At the time of writing this report, one submission from the public has been received.

## DISCUSSION

The setback requirements for cannabis production facilities outlined in the zoning bylaw are measured to a residential zone boundary, which extends past residential property lines. In this case, the residential zone boundary is 31m from the proposed cannabis production facility, at the center line of the highway. (Figure 1) The actual distance from the 1305 Industrial Road building to the nearest residential property boundary is approximately 62m. (Figure 2, Attachment 3). Both buildings on the site are to be used for cannabis production and the site in question is separated from the residential area to the south by four lanes of Highway 97. The applicant has indicated that filtration systems on site will be designed to ensure there is no odor surrounding the buildings. The applicant has also indicated that security measures on site will be designed to Health Canada standards for cannabis production facilities. Given the separation of uses by Highway 97 and the Federal requirements, the requested variance is not anticipated to affect the public in a negative way or the residential zone on the south side of Highway 97.

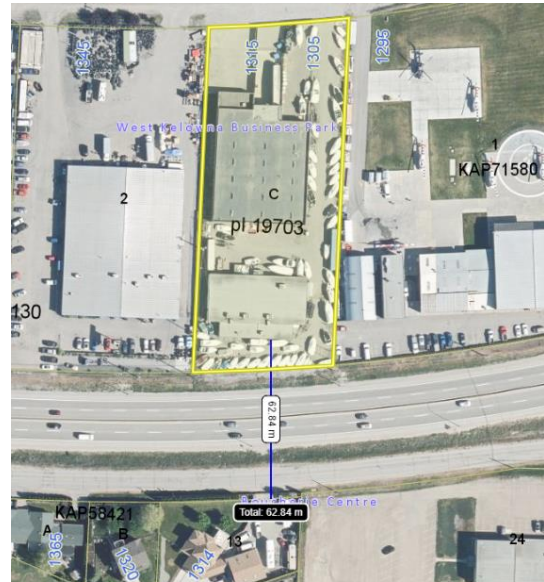


Figure 2: Distance from 1305 Industrial Road to nearest residential property. (approx.. 62m)

### Building Department Considerations

The City of West Kelowna Building Department currently has a stop work order in place for any construction at 1305 and 1315 Industrial Road as a significant amount of work has previously taken place in both buildings (1305&1315) without a building permit. The applicant has indicated in their proposal they will consult with the appropriate professionals for the projects design and have committed to addressing all non-compliant work that was previously done. The works previously completed without a permit were not carried out by the variance applicant.

Should the variance request be approved, the Permit would not be issued until a building permit has been issued by the Building Department addressing the non-compliant work. The applicant and property owner have been made aware of the Building Departments concerns and the proposed condition of the variance.

## CONCLUSION

In accordance with recommended motion, staff support the applicants request to vary the minimum setback distance from 150m to 31m subject to the building permit requirements based on the following rationale:

- The proposed variance is not anticipated to result in significant negative impacts to the adjacent industrial properties and residential properties due to the proposed building design and location across Highway 97 from residential properties.

**Alternate Motion(s):**

1. **THAT** Council deny the issuance of a Development Variance Permit (DVP 21-10) for 1305 and 1315 Industrial Road.

Should Council deny the requested variance, the file will be closed. 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.

2. **THAT** Council postpone the consideration of a Development Variance Permit (DVP 21-10) for 1305 and 1315 Industrial Road.

Should Council postpone the consideration of a Development Variance Permit (DVP 21-10) for 1305 and 1315 Industrial Road, it is requested that Council provide direction to staff on next steps following the postponement of consideration of this application.

**REVIEWED BY**

Brent Magnan, Planning Manager

Mark Koch, Director of Development Services

Shelley Schnitzler, Legislative Services Manager/Corporate Officer

**APPROVED FOR THE AGENDA BY**

Paul Gipps, CAO

Powerpoint: Yes  No

**Attachments:**

1. Draft Development Variance Permit (DVP 21-10) for 1305 and 1315 Industrial Road.
2. Public notice map
3. Distance from 1305 Industrial Road to nearest residential property
4. Public Submission