

REPORT TO COUNCIL



Date: April 9, 2019

RIM No. 0930-50

To: City Manager

From: Community Planning Department (TH / LB)

Application: LL18-0019

Owner: Wyn and Marion Lewis

Address: 3240 Pooley Road

Applicant: MJB Lawyers

Subject: Liquor License Application

Existing OCP Designation: REP – Resource Protection

Existing Zone: A1 – Agriculture 1

Agricultural Land Reserve: Yes

1.0 Recommendation

THAT Council directs Staff to forward the following Recommendation to the Provincial Liquor & Cannabis Regulation Branch (LCRB):

In accordance with Section 71 of the Liquor Control and Licensing Regulation and Council Policy #359, BE IT RESOLVED THAT:

1. Council recommends support of an application from MJB Lawyers for a Special Event Area (SEA) Endorsement Change for Lot 2 Section 15 Township 26 ODYD Plan 3379, located at 3240 Pooley Road, Kelowna, BC for the following reasons:
 - the change of hours for SEAs 2 and 3 does not increase the total area on the property that can be used for special events;
 - the requested change of hours introduces a maximum person capacity for the SEAs; and
 - the requested change of hours is in keeping with how the licensee has previously operated special events.
2. Council's comments on the LCRB's prescribed considerations are as follows:
 - a. **The location of the special event area:** SEA 2 is within 60 m of a neighbouring residence, and SEA 3 is within 70 m of a neighbouring residence.
 - b. **The proximity of the special event area to other social or recreational facilities and public buildings:** The subject property is within 1 km of East Kelowna Park, East Kelowna Hall, Harvest Golf Club, Orchard Greens Golf Club, McCulloch Station Pub, and Okanagan Montessori School. It is also within 1 km of several wineries and cideries.

- c. **The person capacity of the winery related uses on the subject parcel:** Existing maximum person capacities for the licenced areas are as follows: tasting room and retail sales area – 40 persons; lounge (indoor) – 78 persons; and lounge (outdoor patio) – 60 persons. These are in addition to the proposed person capacities for the SEA endorsements: SEA 1 – 75 persons; SEA 2 – 300 persons; and SEA 3 – 75 persons. The total person capacity of the winery related uses is 628 when events are taking place.
 - d. **Traffic, noise, parking and zoning:** The subject parcel has generated numerous noise complaints from neighbouring residents regarding amplified music and voice. Parking has also been an issue, with cars impeding regular two-way traffic along Pooley Road during events. These impacts are expected to continue though not likely increase significantly with this application to change hours. A 2,990 m² area was converted from agriculture to permanent parking to add parking for the winery and associated uses. This was permitted to be overflow parking only and was not to be a permanent (e.g. gravel or paved) surface.
 - e. **The impact on the community if the application is approved:** The existing SEAs and other ancillary winery uses generate noise and parking concerns and impacts to the community. These impacts are expected to continue if the requested change in hours is approved.
2. Council's comments on the views of residents are as contained within the minutes of the meeting at which the application was considered by Council. A sign was posted on the property notifying neighbours 10 days in advance of the Council meeting. The methods used to gather views of residents were as per Council Policy #359 "Liquor Licensing Policy and Procedures."

2.0 Purpose

To consider a change in hours to two areas of the special event area endorsement on an existing manufacturing licence for a winery to extend the hours events can be held, and to hold events on Sundays and some Mondays.

3.0 Community Planning

Staff support the application to allow the existing special event area 2 (SEA 2) and special event area 3 (SEA 3) to increase hours of operation through the Liquor and Cannabis Regulation branch (LCRB) to allow the licensee to hold events an hour later on Thursdays through Saturdays, and to operate during the day on Sundays and holiday Mondays. The change in hours also specifies restrictions on the maximum person capacity for each SEA. The extended hours generally align with the winery's previous special event operations and offer the opportunity to have live music or other events on Sundays and holidays Mondays during daytime hours in the summer months.

The winery and endorsement areas allow for over 600 people on the property at a given time when events are taking place, impacting the community and putting added pressure on the use of the land. The existing SEA endorsement and other ancillary winery uses cause impacts to the community, notably through noise and parking issues. Bylaw Services staff have responded to several noise and parking complaints over the last couple of years, related to events in the summer. The proposed changes, however, are not expected to further increase existing concerns.

Staff are also concerned with the overall decrease in active agriculture resulting from the increase in ancillary uses on the property over the last several years. These are intended to complement the main agricultural use and not detract from farming operations. However, the change in the hours does not directly increase the amount of land used for events or other ancillary uses.

4.0 Proposal

4.1 Background

The property is known as Vibrant Vines and currently has a manufacturer licence, indoor and outdoor wine tasting, and an indoor and outdoor lounge that can operate seven days a week, 11 am to 10 pm. The combined capacity of these areas is 178 people. The property also currently holds a SEA endorsement for three separate areas that operate Thursday, Friday and Saturday from 11 am to 8 pm. The property and the SEA areas are shown in the images below.



It should be noted the parking area west of SEA 3 was permitted to be overflow parking only, intended to be between rows of crops in accordance with ALC policies. A permit for placement of fill for the parking area was not applied for or issued, and staff are reviewing this in the context of other policies. Staff will continue to work with the property owner to address the matters of non-compliance such as the permanent parking area and the outstanding gate for the second vehicle access to Pooley Road.

Several formal complaints have been recorded with Bylaw services, including:

- 2017: 8 noise complaints generated on Thursdays or Fridays
- 2018: 3 noise complaints generated on Saturdays
- 2018: 2 traffic complaints of vehicles parked on road, blocking two-way traffic

Special Event Area Regulations

SEAs differ from picnic areas in that amplified sound is allowed, and they are not limited to a maximum of 30 people. To address public interest concerns around noise and community impact, the LCRB now requires all new or changed outdoor SEA endorsements to have a maximum person capacity. Additionally, lounge endorsement areas and SEAs are not limited to the ALC's gathering for event regulations of up to 10 events per year with up to 150 people each, making it more important to consider the potential community impacts from events held in these areas.

4.2 Project Description

The original application was to extend the SEA hours to 11 am to 10 pm seven days a week, and staff worked with the applicant to determine hours that would limit additional community impacts while meeting the winery's intended uses. The existing hours for the various liquor licence components are shown below, followed by the proposed change in hours for SEAs 2 and 3. The other areas would keep the same hours that are in place today, and SEA 1 would have a maximum capacity of 75 people.

Existing Liquor Licence Hours

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Manufacturer/Winery Tasting Room				Max Persons Indoor & Outdoor Combined: 40			
Open	11 am	11 am	11 am	11 am	11 am	11 am	11 am
Close	10 pm	10 pm	10 pm	10 pm	10 pm	10 pm	10 pm
Lounge				Max Persons Indoor: 78 Outdoor: 60			
Open	11 am	11 am	11 am	11 am	11 am	11 am	11 am
Close	10 pm	10 pm	10 pm	10 pm	10 pm	10 pm	10 pm
Special Event Areas				Max Persons: SEA 1: 75 SEA 2: 300 SEA 3: 75			
Open	-	-	-	11 am	11 am	11 am	-
close	-	-	-	8 pm	8 pm	8 pm	-

Proposed Liquor Licence Hours for Special Event Areas 2 and 3

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Special Event Area 2				Max Persons: 300			
Open	-	-	-	11 am	11 am	11 am	-
Close	-	-	-	9 pm	9 pm	9 pm	-
Special Event Area 3				Max Persons: 75			
Open	11 am*	-	-	11 am	11 am	11 am	11 am
Close	6 pm*	-	-	9 pm	9 pm	9 pm	6 pm

* Maximum four times per year on Mondays from May-September

4.3 Site Context

The parcel is 4.6 ha (11.3 acres) in area, is designated REP – Resource Protection Area, zoned A1 – Agriculture, and is within the Agricultural Land Reserve. The surrounding properties in Southeast Kelowna are also agricultural.

A variety of uses related to the residence and winery are on the property. The SEA endorsement consists of three areas on the property: SEA 1 (1,700 m²) and SEA 2 (1,300 m²) are within the residential footprint area, and SEA 3 (150 m²) is adjacent to the wine shop. In total, the SEAs cover 3,150 m² or 7% of the parcel. Active agriculture covers approximately 1.9 ha or 42% of the parcel. The amount of land used for agriculture has decreased over the last several years as the winery and ancillary uses have grown with more buildings, parking and driveways, and event space on the property. The property owner has indicated that approximately 0.5 ha will be replanted with fruit in 2019.

5.0 Current Development Policies

5.1 City of Kelowna Official Community Plan (OCP)

Chapter 5: Development Process

Objective 5.33 Protect and Enhance Local Agriculture

Policy .1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .5 Agri-Tourism, Wineries, Cideries, Retail Sales. Support agri-tourism uses that can be proven to be in aid of and directly associated with established farm operations. Permit wineries, cideries and farm retail sales (inside and outside the ALR) only where consistent with existing ALC policies and regulations.

5.2 City of Kelowna Agriculture Plan (2017)

Theme 1: Strengthening local policies and actions to protect agriculture.

Action 1.2d On agricultural lands, locate farm retail sales, wineries, cideries, breweries, distilleries, and any other structures and services related to the public that are defined as farm uses under the ALC Act near the road or entrance (or where geographically appropriate), in order to reduce the footprint and extent of services through the property with the intent of maximizing agricultural potential.

5.3 Agricultural Land Commission

Policy L-04 Activities Designated as Farm Use: Agri-tourism Activities in the ALR (excerpts):

- The highest priority is the agricultural activity that takes place on the farm.
- Parking areas must not be permanent (asphalt, concrete, gravel, etc) and parking must not interfere with the farm's agricultural productivity. All vehicles visiting the farm for agri-tourism activity must be parked on site. To minimize impacting farm land, parking should be along field edges, adjacent to internal farm driveways and roads and in farm yard areas or immediately adjacent to farm buildings and structures.

6.0 Technical Comments

6.1 Building & Permitting Department

An outstanding issue remains for the construction of an outdoor event stage/structure without Building Permits. This structure is not suitable for use of any kind, public or private.

6.2 Bylaw Services

Numerous noise complaint files exist on this parcel specific to amplified sound on Thursday, Friday and Saturdays.

6.3 Fire Department

Ensure appropriate exiting for the occupant loads are appropriate.

7.0 Application Chronology

Date of Application Received: July 26, 2018

Date of Application Revision: January 7, 2019

Report prepared by: Tracey Hillis, Planner &
Laura Bentley, Community Planning Supervisor

Reviewed & approved for Inclusion: Ryan Smith, Community Planning Department Manager

Attachments:

Attachment A: Applicant Rationale