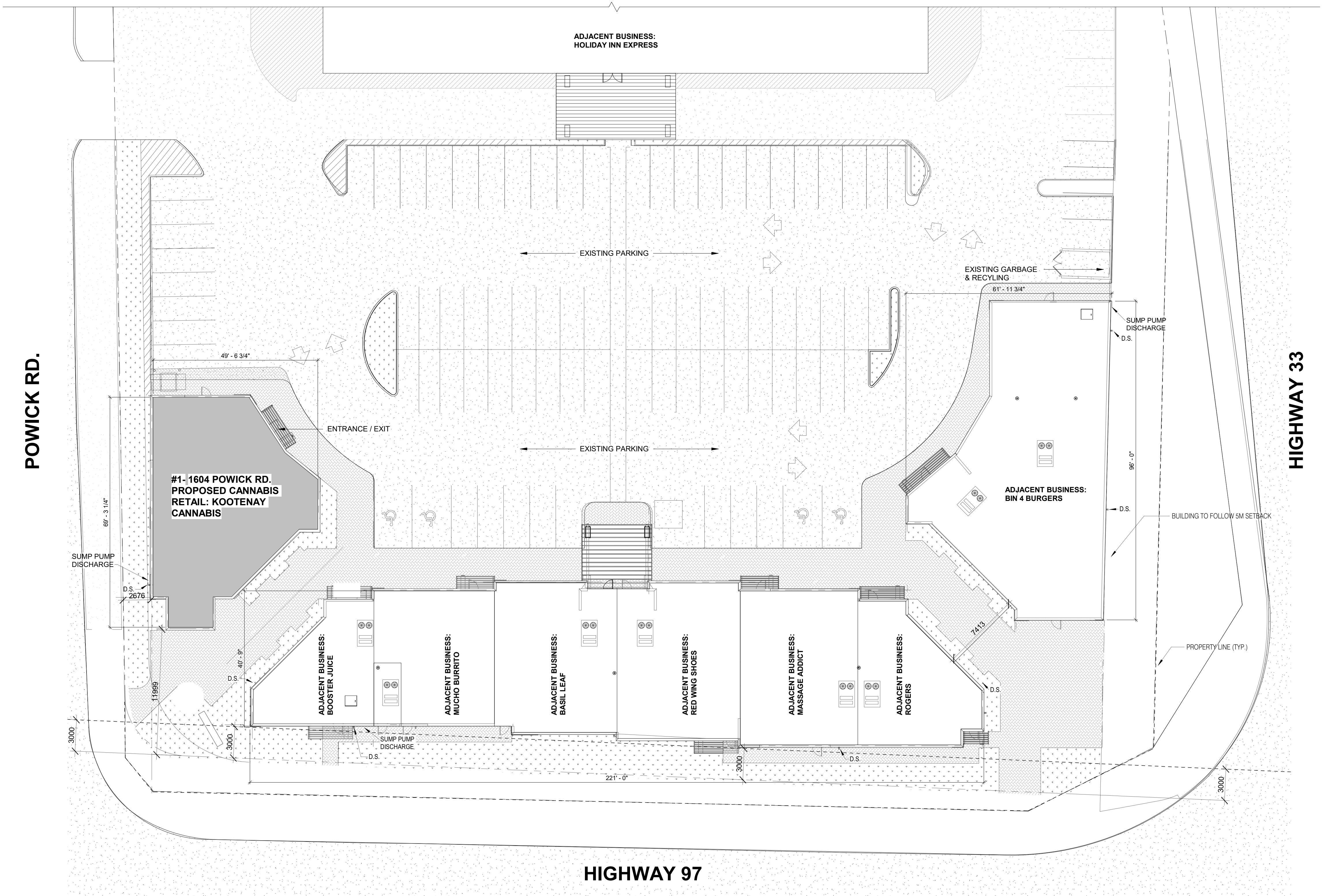


Schedule A – Proposed Site Specific Text Amendments

No.	Section	Current Wording	Proposed Wording	Reason for Change								
1.	Section 9 - Specific Use Regulations, 9.16 - RETAIL CANNABIS SALES ESTABLISHMENTS	Section 9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.	9.16.8 Site Specific Regulations Regulations apply for Retail Cannabis Sales Establishments on a specific basis as follows: <table><tr><th></th><th>Legal Description</th><th>Civic Address</th><th>Regulation</th></tr><tr><td>2.</td><td>Lot 1 District Lot 125 Osoyoos Division Yale District Plan 18724 Except Plans KAP78413 and KAP80632</td><td>1604-1620 Powick Road</td><td>To allow for a retail cannabis sales establishment within 500 metres of an approved retail cannabis sales establishment at 1675-1677 Commerce Avenue and within 500 metres of a public middle school at 350-470 Ziprick Road.</td></tr></table>		Legal Description	Civic Address	Regulation	2.	Lot 1 District Lot 125 Osoyoos Division Yale District Plan 18724 Except Plans KAP78413 and KAP80632	1604-1620 Powick Road	To allow for a retail cannabis sales establishment within 500 metres of an approved retail cannabis sales establishment at 1675-1677 Commerce Avenue and within 500 metres of a public middle school at 350-470 Ziprick Road.	To allow for a retail cannabis sales establishment within 500 metres of other approved retail cannabis sales establishments in the City Centre Urban Centre
	Legal Description	Civic Address		Regulation								
2.	Lot 1 District Lot 125 Osoyoos Division Yale District Plan 18724 Except Plans KAP78413 and KAP80632	1604-1620 Powick Road	To allow for a retail cannabis sales establishment within 500 metres of an approved retail cannabis sales establishment at 1675-1677 Commerce Avenue and within 500 metres of a public middle school at 350-470 Ziprick Road.									
2.	Section 9 - Specific Use Regulations, 9.16 - RETAIL CANNABIS SALES ESTABLISHMENTS	9.16.4 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from any public middle or secondary school, measured from closest lot line to closest lot line.		To allow for a retail cannabis sales establishment within 500 metres of a public middle school								



1 SITE PLAN
1 : 200

Project:

KOOTENAY CANNABIS
#1 1604 POWICK ROAD
KELOWNA, BC
V1X 7G5

Drawing Title:

SITE PLAN

Project No.

102

Drawn By:

LP

Drawing No.

ID00

Side View of Building looking North



Back Side of Building Looking East



Front View of Building looking South West



Side of Building Looking West





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City of Kelowna Planning Department
1435 Water St.
Kelowna, B.C.,
V1Y – 1J4, Canada

Our ref: (2313 – 002) (Kootenay Cannabis)

July 26, 2021

Dear Sir:

RE: Kootenay Cannabis Ltd. – Letter of Rationale Regarding Development Proposal (Text Amendment Application) re: 1604 Powick Road, Kelowna, B.C., V1X 7G5, Canada (Applicant Property), forming part of the Application Form – Development Proposal (the “Development Application”).

I have been retained to assist Brian Gray of Kootenay Cannabis Ltd. (the “**Applicant**”), with business licensing considerations, specifically the required Text Amendment Development Proposal Application, concerning retail sales from a cannabis sales establishment to be located at 1604 Powick Road, Kelowna, B.C., V1X 7G5, Canada, (the “**Applicant Property**”). Please accept this document as an introduction to Mr. Brian Gray, an overview to Kootenay Cannabis Ltd. while serving as a Letter of Rationale, forming part of the Application Form – Development Proposal (the “**Development Application**”).

The Applicant, Kootenay Cannabis Ltd., has two distancing issues that require Text Amendments as part of the Development Application. The specific distancing metrics as they pertain specifically to this Text Amendment – Development Proposal Application, are summarized as follows:

1. **Distancing from Applicant to a Neighbouring Cannabis Retail:** (i.e. Kootenay Cannabis Ltd., located at 1604 Powick Rd. to Greenery Cannabis Boutique, located at 113-1677 Commerce Ave.

2. **Distancing from Applicant to a Middle School:** (i.e. Kootenay Cannabis Ltd., located at 1604 Powick Rd. to Springvalley Middle School, located at 350 Ziprick Rd).

The Applicant asks that the City of Kelowna consider the site-specific considerations that are unique to the Applicant Property and the Applicant.

The City of Kelowna text amendment proposal process requires a text amendment to the specific use regulations for cannabis retail sales as per Section 9.16.1 and 9.16.4 of the Zoning Bylaw (Specific Use Regulations – Retail Cannabis Sales Establishments) (the “**Zoning Bylaw**”). The Zoning Bylaw (Specific Use Regulations – Retail Cannabis Sales Establishments) at Section 9.16.1 states:

9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.

Further, the Zoning Bylaw at Section 9.16.4 states:

9.16.4 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from any public middle or secondary school, measured from closest lot line to closest lot line.

Accordingly, the Applicant has distancing considerations (as discussed), requiring a Text Amendment and Development Application. The Applicant is hopeful the City of Kelowna will relax the strict application of Sections 9.16.1 and 9.16.4 of the Zoning Bylaw, establishing a 500-meter (minimum) setback for retail cannabis stores from middle schools and a minimum proximity distance of 500-meters between retail cannabis store locations. Other than the distancing limitations, the Applicant is a well-qualified operator (no police history or licensing infractions) and should be eligible for another cannabis retail license under the municipal and provincial retail regimes.

After consideration of the Applicants position, including the qualities of the operator and the location of the proposed cannabis retail store (and inherent site-specific hardships), the City of Kelowna can achieve the twin cannabis retail policy objectives of (1) declustering and (2) creating a fair and reliable business environment, by granting the Applicant the required Text Amendments forming part of the Application, with a copy appended at Exhibit “U” to this Rationale Letter.

Application Overview

The City of Kelowna by virtue of the administrative principles of natural justice and procedural fairness, has discretion and authority to remedy instances where the strict interpretation of a bylaw, such as Section 9.16.1 and 9.16.4 of the Zoning Bylaw, would represent a site-specific hardship and result in prejudice to the Applicant (i.e. Kootenay Cannabis Ltd).

On or about December 3, 2019, the City of Kelowna adjusted its own policy to allow for a third cannabis store to be located downtown (see “Exhibit D”)¹ Grasshopper Cannabis located at 1632 – 1650 Pandosy St., was granted a text amendment, being located just 412 meters walking distance from another approved site at 547 Bernard Avenue.²

In the case of Grasshopper Cannabis, “Counsellors Mohini Singh, Maxine Dehart, Charlie Hodge, Gail Given and Luke Stack voted in support of the text amendment application. Councillor Stack stated: “I really think the investment into this part of downtown is important and I think having a new facade on that street and a new business investing into the Pandosy/Leon corridor there is a positive move.”

As will be discussed throughout this Rationale Letter for Brian Gray of Kootenay Cannabis Ltd., the arguments for the Applicant in relation to his Development Application are similar in nature (i.e. the twin cannabis retail policy objectives of (1) declustering and (2) creating a fair and reliable business environment).

The Applicant has two distancing issues, requiring a Text Amendment Development Proposal Application.

1. **Distancing from Applicant to a Neighbouring Cannabis Retail:** (i.e. Kootenay Cannabis Ltd., located at 1604 Powick Rd. to Greenery Cannabis Boutique, located at 113-1677 Commerce Ave.)
2. **Distancing from Applicant to a Middle School:** (i.e. Kootenay Cannabis Ltd., located at 1604 Powick Rd. to Springvalley Middle School, located at 350 Ziprick Rd).

The Applicant asks that the City of Kelowna consider the site-specific considerations that are unique to the Applicant Property and to relax a strict application of Section 9.16.1 of the Zoning Bylaw, establishing a 500-meter (minimum) setback for retail cannabis stores and from middle schools, and specific community, recreation and city parks and a minimum proximity distance of 500-meters between retail cannabis store locations. Doing so will render the Applicant as eligible for licensing under both the municipal and provincial retail cannabis licensing regimes, enabling the City of Kelowna to achieve the twin cannabis retail policy objectives of (1) declustering and (2) creating a fair and reliable business environment.

Furthermore, the principles of natural justice and procedural fairness, plus the factors surrounding site-specific hardships, including the inconsistency (and unreliability) of measurements, lot size anomalies, and property line measurement limitations, should be taken into consideration by the City of Kelowna.

¹ <https://www.iheartradio.ca/am-1150/news/kelowna-breaks-policy-to-allow-third-cannabis-store-downtown-1.10311008>

² AM 1150 (News) “Kelowna Breaks Policy to Allow Third Cannabis Store Downtown” by Baille Vickers, dated December 4, 2019. (“**Exhibit D**”)

Also, the downtown, commercial nature of the property, located in a business corridor off a major thoroughfare, with one of the highest volume intersections in Kelowna, contribute to the unique circumstances of the Applicant.

In conclusion, the City of Kelowna should grant the Applicant the necessary text amendment as required under Section 9.16.1 and 9.16.4 of the Zoning Bylaw.

Summary of Applicable Distances and Measurements

1. Neighbouring Cannabis Retail: Distance and Measurements – Applicant (Kootenay Cannabis) to Greenery Cannabis Boutique:

- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Boundary to Boundary” (Lot Line to Lot Line) = **423.99 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Building to Building” = **572.17 meters**; and.
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Door to Door” = **595.11 meters**; and.
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Google Maps” (route for travelling by foot and car) = **600 meters**.

2. Proximity to Middle School: Distance and Measurements – Applicant (Kootenay Cannabis) to Springvalley Middle School

- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (i.e. 350 Ziprick Rd.), measuring “Boundary to Boundary” (Lot Line to Lot Line) = **337.07 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (i.e. 350 Ziprick Rd.), measuring “Building to Building” = **432.15 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (350 Ziprick Rd), measuring “Door to Door” **523.01 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (i.e. 350 Ziprick Rd.), measuring “Google Maps” (route for travelling by foot and car) = **800 meters**.

List of Documents

Appended to and referenced throughout this Rationale Letter forming part of the Development Application, are the following documents, Exhibits and Schedule A” Text Amendments Proposed by the Applicant under Section 9.16.8 of the Zoning Bylaw to be found at “**Exhibit U**”:

1. Section 9 (City of Kelowna Zoning Bylaw 8000 - Specific Use Regulations [See Page 9-21 (9.16 – Retail Cannabis Establishments (Revised May 2021)]. (“**Exhibit A**”).
2. Global News “Kelowna Says No To Provincial Pot Shop” by Megan Turcato, dated February 25, 2020, <https://globalnews.ca/news/6596137/kelowna-no-provincial-pot-shop/> (“**Exhibit B**”)³.
3. Castanet “Room For More Weed: Kelowna council votes to give Cannabis Store A Second Chance” by Kirk Penton, dated October 28, 2019. (“**Exhibit C**”)⁴.
4. AM 1150 (News) “Kelowna Breaks Policy to Allow Third Cannabis Store Downtown” by Baille Vickers, dated December 4, 2019. (“**Exhibit D**”)⁵.
5. Report to Council, City of Kelowna (File 1250-04) dated August 27, 2018 (“**Exhibit E**”).
6. Schedule “D” (forming part of Report to Council). (“**Exhibit F**”).
7. Report to Council, City of Kelowna (Application TA19-0013 and Z19-0100) regarding applicant Grasshopper Cannabis Inc. and dated October 28, 2019. (“**Exhibit G**”).
8. City of Kelowna Regular Council Meeting Minutes, dated October 28, 2019 (“**Exhibit H**”).
9. Interactive Map (City of Kelowna) showing distance from 1604 Powick Road to 113 – 1677 Commerce Ave. (“**Exhibit I**”).
10. Surveyors Map (Vector Geomatics and Land Surveying Ltd.) showing distances from 1604 Powick Road to 113 – 1677 Commerce Ave. and dated April 8, 2021. (“**Exhibit J**”).
11. Google Maps (Screenshot) showing distance from 1604 Powick Road to 113 – 1677 Commerce Ave. (“**Exhibit K**”).
12. Surveyors Map (Vector Geomatics and Land Surveying Ltd.) showing distances from 1604 Powick Road to Springvalley Middle School and dated June 30, 2021. (“**Exhibit L**”).
13. Interactive Map (City of Kelowna) showing distance from 1604 Powick Road to Springvalley Middle School and dated April 26, 2021. (“**Exhibit M**”).

³ <https://globalnews.ca/news/6596137/kelowna-no-provincial-pot-shop/>

⁴ <https://www.castanet.net/news/Kelowna/269210/Kelowna-council-votes-to-give-cannabis-store-a-second-chance>

⁵ <https://www.iheartradio.ca/am-1150/news/kelowna-breaks-policy-to-allow-third-cannabis-store-downtown-1.10311008>

Kootenay Cannabis Ltd. (Letter of Rationale) – Development (Text Amendment) Application

14. Google Maps (Screenshot) showing distance from 1604 Powick Road to Springvalley Middle School and not dated. (“**Exhibit N**”).
15. Letter of Reference to City of Kelowna from Castlegar Sculpturewalk, dated April 1, 2021. (“**Exhibit O**”).
16. Letter of Reference to City of Kelowna from James Camps re: 1604 Powick – Retail Cannabis Store Application, dated May 26, 2021. (“**Exhibit P**”).
17. Letter of Reference to City of Kelowna from Rachelle Matushewski of P.R. Hotels Management Ltd. re: Kootenay Cannabis – Letter of Endorsement, Fairfield by Marriott & Holiday Inn Express, dated March 31, 2021. (“**Exhibit Q**”).
18. Letter of Reference to City of Kelowna from Daniel Ruel, General Manager of Fairfield by Marriott. re: Kootenay Cannabis – Letter of Endorsement, Fairfield by Marriott, dated April 7, 2021. (“**Exhibit R**”).
19. Letter of Reference to City of Kelowna from Steve Carroll, General Manager Holiday Inn Express and Suites. re: Kootenay Cannabis – Letter of Endorsement, Holiday Inn Express dated April 7, 2021. (“**Exhibit S**”).
20. City of Kelowna Application Form (Development Proposal) (“**Exhibit T**”).
21. “Schedule A” Text Amendments Proposed by the Applicant under Section 9.16.8 of the Zoning Bylaw. (“**Exhibit U**”).
22. Letter of Reference from Andrea Ryman of Destination Castlegar dated June 9, 2021, re: Kootenay Cannabis). (“**Exhibit V**”).
23. Letter of Reference from Tammy Verigin-Burk of Castlegar Chamber of Commerce dated July 23, 2021, re: Kootenay Cannabis New Location – Kelowna (Castlegar Chamber of Commerce). (“**Exhibit W**”).

Introduction – Nature of the Application (Section 9.16.1 and 9.16.4 of the Zoning Bylaw)

It is the understanding by Kootenay Cannabis Ltd., (the Applicant) that in the circumstances of their Development Application, the City of Kelowna Development Application process requires a text amendment (the “Text Amendment”) to the specific use regulations for cannabis retail sales as per Section 9.16.1 and Section 9.16.4 of the Zoning Bylaw regarding Specific Use Regulations – Retail Cannabis Sales Establishments) (the “**Zoning Bylaw**”).

The Zoning Bylaw at Section 9.16.1 states:

9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.

Further, the Zoning Bylaw at Section 9.16.4, dealing with setback minimum distances from public middle school, states:

9.16.4 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from any public middle or secondary school, measured from closest lot line to closest lot line.

Kootenay Cannabis Ltd. supports this endeavour and respects the motives for this zoning requirement, In the circumstances, however, the Applicant maintains that the measuring methodology adopted by the City of Kelowna and a strict application of Sections 9.16.1 and 9.16.4 of the Zoning Bylaw (in the case of the Applicant) is unduly prejudicial, amounting to a site-specific hardship. For more on this analysis, below please see the section of this Rationale Letter entitled “Supplemental Arguments and Distancing Considerations”.

Rationale and Reasoning: 500 Meter Minimum Setback Cannabis Retailers and Middle Schools

It is the understanding of the Applicant (Kootenay Cannabis Ltd.) that the City of Kelowna has land use authority relating to zoning, business licensing, building code, municipal workplace safety and enforcement of regulations around public consumption.⁶ Further, local governments can use land use controls to regulate the location of retail cannabis store in the community through Sections 9.16.1 and 9.16.4 of the Zoning Bylaws.⁷

It is understood by the Applicant that the intention behind establishing minimum setback distances for retail cannabis stores, according to the City of Kelowna, is to help restrict youth access to cannabis and protect young people from promotions or enticements to use cannabis.⁸ I am instructed City of Kelowna

⁶ Report to Council, City of Kelowna (File 1250-04) date August 27, 2018 (“**Exhibit E**”) page 2.

⁷ Ibid Page 2.

⁸ Ibid Page 6.

planning staff in August 2018 established a minimum setback distance of 500 meters for retail cannabis stores from public schools and specific community, recreation and city parks and other cannabis retailers.⁹

As will be discussed later, there is compelling evidence and analysis illustrating the flaws and fallacies of utilizing a 500-meter “property line to property line” method of establishing setback distances from neighbouring cannabis retailers and middle schools.

Historical Considerations – Section 9.16.1 (and 9.16.4) of the Zoning Bylaw

Protection of Youth

It is the understanding of the Applicant that the distance of 500 meters was recommended by city staff on the basis that this buffering zone still allows for businesses to operate throughout many areas of the city, while maintaining a setback from areas where children and youth visit. Accordingly, it is the belief of the City of Kelowna that the 500-meter setback distance metric is consistent with other municipalities in British Columbia, and internationally, where cannabis is legal.¹⁰

Experience from Washington and Colorado

However, jurisdictions such as Washington and Colorado adopted a 300-meter buffer or setback from schools because of the existence of U.S. Federal “Drug Free Zone” laws. As will be discussed below, this distancing metric (adopted by the City of Vancouver and extended by the City of Kelowna) has nothing to do with “land use best practice” as erroneously maintained by the City of Vancouver when that municipality began licensing retail and medical dispensaries in 2015. Applying a 300-meter buffer served as an elimination strategy for the City of Vancouver, under the guise of a regulatory policy until federal cannabis legalization in 2018.

It should be noted that at the time the 1,000-foot buffer zone was being proposed for Colorado’s initial medical cannabis program in 2010, one of the primary reasons for this setback was to avoid the potential risks of federal enforcement. The risk of federal enforcement had nothing to do with municipal land use considerations.

U.S. Federal “Drug Free Zone” Laws (Applicable to Kelowna?)

This is important for the City of Kelowna to appreciate as there was a legitimate concern that permitting medical cannabis dispensaries to open within 1,000 feet of a school could entice the state U.S. Attorney in the state of Colorado to bring enforcement actions as had occurred for years with unregulated cannabis businesses in California that were within 1,000 feet from a school. Fortunately, we do not have these

⁹ Report to Council, City of Kelowna (File 1250-04) dated August 27, 2018 (“**Exhibit E**”) page 2.

¹⁰ Report to Council, City of Kelowna (File 1250-04) dated August 27, 2018 (“**Exhibit E**”) page 6.

types of issues in British Columbia and accordingly the authority of the City of Kelowna should not be restricted or fettered in this manner.

Creation of Fair and Reliable Business Environment

The Applicant is also appraised of the fact the rationale applied by city planners for not recommending text amendments to the Development Application is attributable to policy concerns surrounding clustering and the need for creating a fair and reliable business environment for cannabis sales establishments. Specifically, a minimum proximity distance of 500 meters between retail cannabis store locations has been adopted to avoid the clustering of multiple stores in specific areas, particularly in urban areas.¹¹ As will be discussed, in some instances site-specific hardship arguments by applicants, such as Kootenay Cannabis should be considered as such was the case for the applicants at 1636 – 1652 Pandosy Street location.

Regulatory Regime Similar to Alcohol

In British Columbia, the Provincial Government licenses and oversees the distribution and sale of cannabis subject to federal conditions. The Provincial Cannabis Control and Licensing Act establishes a cannabis retail licensing regime that, according to the City of Kelowna, is similar to the current licensing regime for liquor.¹²

The Liquor Control and Licensing Branch (LCLB) are responsible for licensing non-medical cannabis private stores and monitoring the non-medical cannabis retail sector.¹³ The Applicant notes that the Province will not issue a non-medical cannabis retail license without the support of the City of Kelowna. The intent of the minimum proximity distance is, according to the City of Kelowna, also appropriate and similar to the Provincial Government requirement for a minimum of one kilometer distance between new retail liquor stores.¹⁴ There are flaws in the liquor analysis which should be considered in addition to the site-specific and inconsistency (and unreliability) of measurement arguments, as will be discussed throughout this Rationale Letter.

Unduly Restrictive Regulation of Cannabis (Compared to Alcohol)

Further, despite being regulated in a manner like alcohol, cannabis land use regulation is unduly restrictive when compared to how the City of Kelowna (and Vancouver) regulate alcohol. For more on this analysis, below please see the section of this Rationale Letter entitled “Supplemental Arguments and Distancing Considerations”.

¹¹ Ibid page 6.

¹² Ibid page 3.

¹³ Ibid.

¹⁴ Ibid page 6.

As presented earlier, the City of Kelowna by virtue of the administrative principles of natural justice and procedural fairness, have the discretion and authority to remedy instances where the strict interpretation of a bylaw, such as Section 9.16.1 or 9.16.4 of the Zoning Bylaw, would represent two instances of site-specific hardship requiring a text amendment. Please see “Exhibit U” for the proposed SCHEDULE A - Text Amendments for the Applicant (Kootenay Cannabis Ltd).

Again, the principles of natural justice and procedural fairness, plus the factors surrounding site-specific hardships, including the inconsistency (and unreliability) of measurements, should be taken into consideration in this instance by the City of Kelowna. Accordingly, the City of Kelowna should have no problem granting the Applicant the necessary text amendment necessary under Section 9.16.1 and Section 9.16.4 of the Zoning Bylaw.

Overview of Distances: Site-Specific Hardships and Setback Concerns

Setback Distances Applicable to Kootenay Cannabis Ltd.

The location of the Applicant’s proposed store at the Applicant Property is located at a distance within the requisite 500-meter setback distance to another **cannabis retail store** (Greenery Cannabis Boutique located at 113 – 1677 Commerce Ave.) and a **middle school** (Springvalley Middle School located at 350 Ziprick Rd.), when considering the measurements on a property line to property line or lot line to lot line.

The Zoning Bylaw at Section 9.16.1 states:

9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.

Further, the Zoning Bylaw at Section 9.16.4, dealing with setback minimum distances from public middle school, states:

9.16.4 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from any public middle or secondary school, measured from closest lot line to closest lot line.

Reliability of “Property Line to Property Line” Measurements?

As will be discussed, this measure of distancing analysis based on a “property line to property line” measurement is not the most reliable method of assessment where site-specific hardships can be demonstrated. For more on this analysis on this point, please see below the section of this Rationale Letter entitled “Supplemental Arguments and Distancing Considerations”.

Creation of a Fair, Equal and Consistent Licensing System

Further, it has been argued by staff that by utilizing a unified or fixed buffer metric such as 500-meters for determining setbacks results in a fair, equal and consistent system. Such a result may, as will be argued throughout this Rationale Letter, may amount to site-specific hardship in instances where property lines are unique and the property lots in question. Such is the case with the Applicant, having a 500-meter setback distance to another **cannabis retail store** and a 500-meter setback distance to **middle school**, as will be demonstrated below.

Large and Unusual Lot Sizes

Unlike other applicants requiring a text amendment under the Zoning Bylaws, the Applicant (Kootenay Cannabis), the neighbouring store (Greenery Cannabis Boutique), and the middle school (Springvalley Middle School), each have unusually large lot sizes. This is precisely the situation in which Kootenay Cannabis Ltd. finds itself regarding the City of Kelowna's Development Application process.

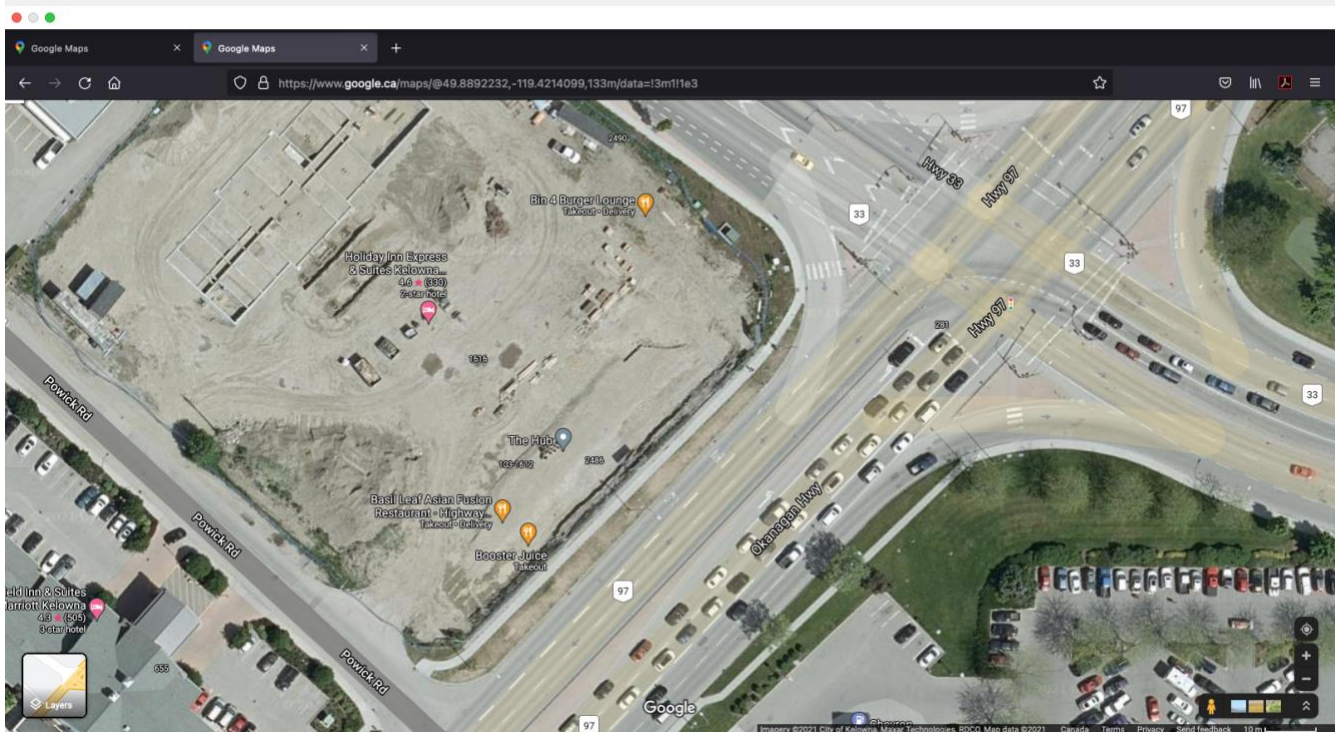


Figure 1. Showing Lot Size of Applicant Property (1604 Powick Road (Source: Google Maps)

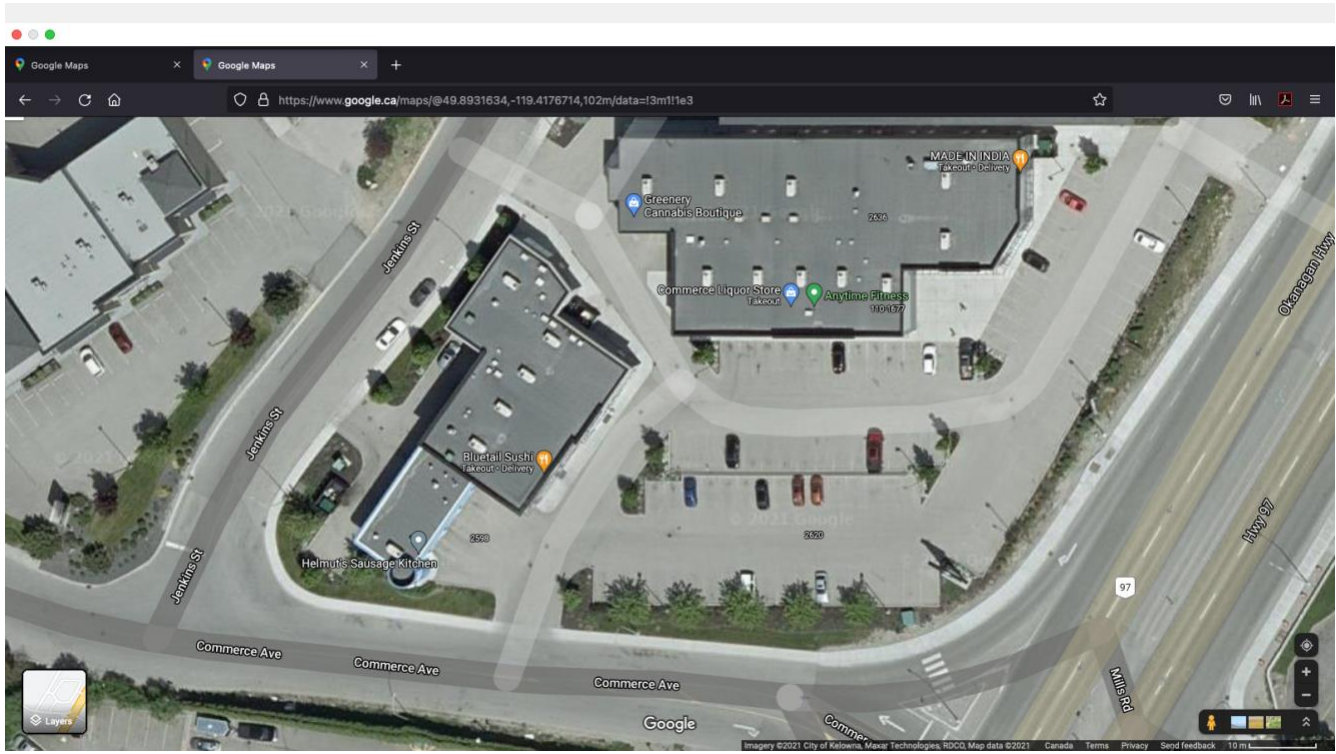


Figure 2. Lot size of Greenery Cannabis Boutique (located at 113 – 1677 Commerce Ave).

As it can be seen from looking at Figures 1 and Figures 2 (above) and compared with “Exhibit J” (Surveyors Map (Vector Geomatics and Land Surveying Ltd.) showing distances from 1604 Powick Road to 113 – 1677 Commerce Ave. and dated April 8, 2021), the lot size for the Applicant and the neighbouring cannabis business are very large. Exhibit J when compared with Figure 1 (above) shows that the storefront is located the bottom righthand corner of the civil lot identified as Rem 1 Plan 18724, showing at least 80 meters from front door of the applicant to Highway 33 W.

Figure 2 (above) is a Google Maps picture of the lot of the neighbouring cannabis business (Greenery Cannabis Boutique) located at 113 – 1677 Commerce Ave, identified as Rem A Plan KAP90858. As can be seen, Greenery Cannabis Boutique is located off Jenkins and Commerce Avenue which is estimated to be 40-meters from the front door to the lot line boundary on Commerce Ave. In fact, Greenery Cannabis Boutique has a lot line closer to Jenkins Street and there are three businesses located between Greenery Cannabis and the lot line boundary located at Commerce Ave. From the Commerce Avenue lot line, Helmu’s Sausage Kitchen (1675 Commerce Ave), Bluetail Sushi and the Commerce Liquor Store share the same lot line as the neighbouring cannabis store despite Greenery Cannabis Boutique store (and front door) being more than 40-meters of the Commerce Ave lot line. Taking these factors into account suggests the Applicant is at an appropriate distance.

Kootenay Cannabis Ltd. – Applicable Distances and Measurements

1. Distance to Another Cannabis Retail Store

The Zoning Bylaw at Section 9.16.1 states:

9.16.1 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from another Retail Cannabis Sales Establishment, measured from closest lot line to closest lot line.

In the case of the Applicant (Kootenay Cannabis Ltd.), their proximity to Greenery Cannabis Boutique, a neighboring cannabis retailer, located at 113 – 1677 Commerce Avenue in Kelowna, is measured at distance of **423.99-meters** from lot line to lot line. Consequently and because of two unusual lot sizes, the applicant is not eligible under the Application Process for falling afoul of Section 9.16.1 of the Zoning Bylaw. The resulting situation arguably amounts to a site-specific hardship. (See Exhibits I and J).

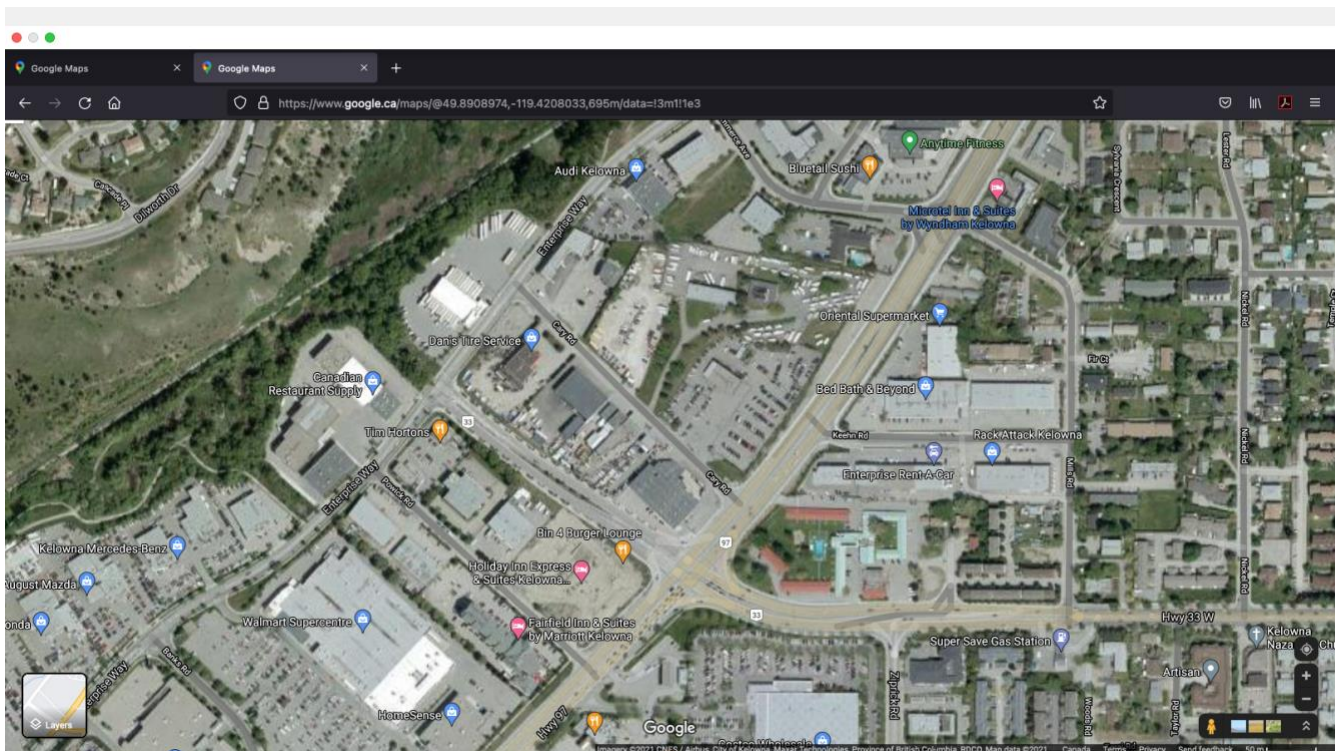


Figure 3. Google Map Satellite Photo Showing physical distance from 1604 Powick Road to Greenery Cannabis Boutique, a neighboring cannabis retailer, located at 113 – 1677 Commerce Avenue in Kelowna (Source: Google Maps)

The Figure 3. Google Map Satellite Photo shows that the proposed Applicant business at 1604 Powick Road is in downtown Kelowna. Reference to the Interactive Map provided at “Exhibit I” (appended to this letter) shows that the physical location of the Applicant (Kootenay Cannabis Ltd.) existing just outside the 500-meter buffer (or setback). Further reference to Exhibit J (see below), Surveyors Map (Vector Geomatics and Land Surveying Ltd.) compares distances from 1604 Powick Road to 113 – 1677 Commerce Ave. and is dated April 8, 2021.

Kootenay Cannabis Ltd. (Letter of Rationale) – Development (Text Amendment) Application

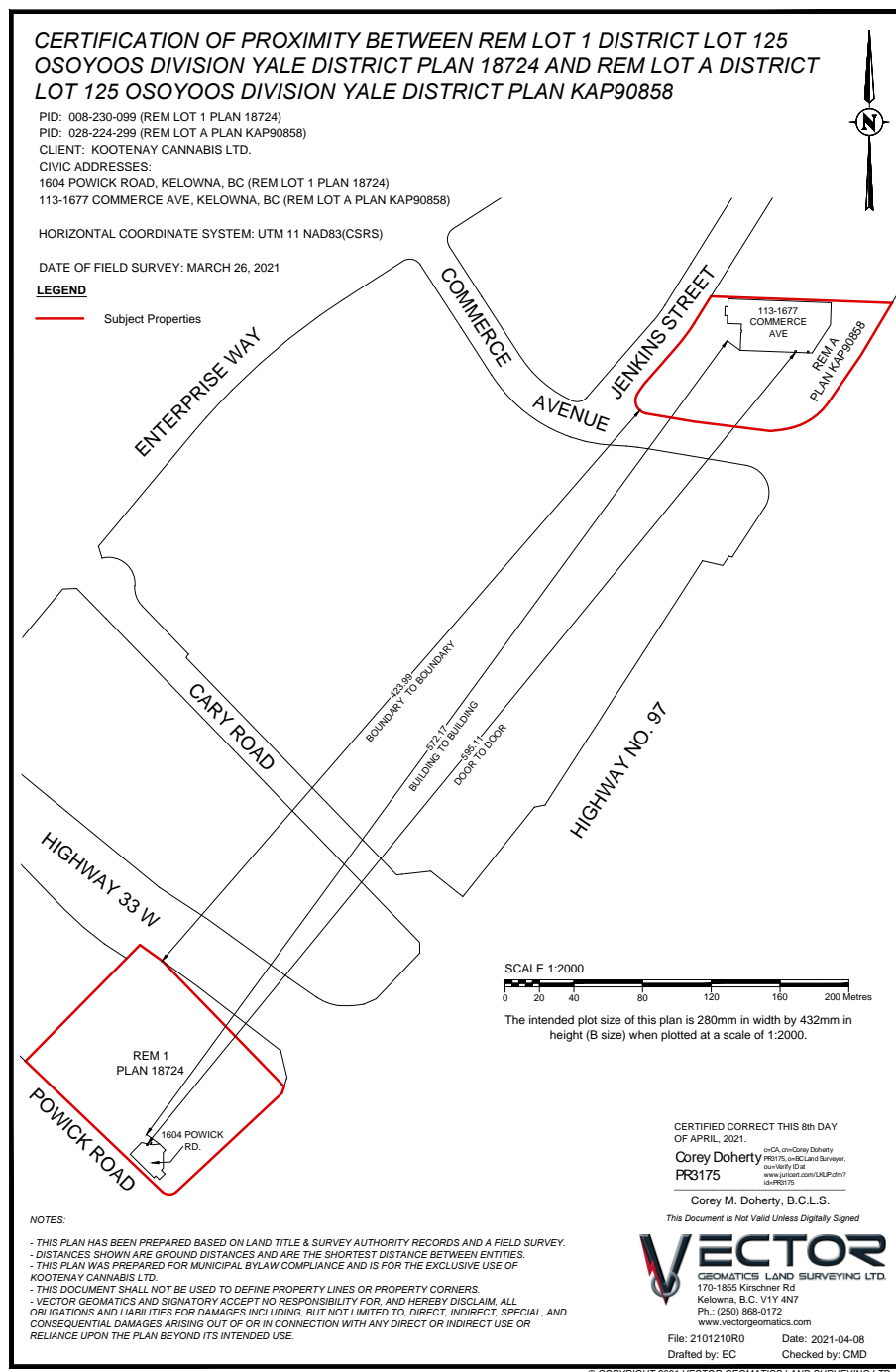


Exhibit J. - Surveyors Map (Vector Geomatics and Land Surveying Ltd.) showing distances from 1604 Powick Road to 113 – 1677 Commerce Ave. and dated April 8, 2021.

The certification of proximity and the distances between the Applicant (Kootenay Cannabis) and neighboring Greenery Cannabis Boutique are measured as follows:

Neighbouring Cannabis Retail: Distance and Measurements – Applicant (Kootenay Cannabis) to Greenery Cannabis Boutique

- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Boundary to Boundary” (Lot Line to Lot Line) = **423.99 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Building to Building” = **572.17 meters**; and.
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Door to Door” = **595.11 meters**; and.
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Google Maps” (route for travelling by foot and car) = **600 meters**.

As can be seen, the Applicant would meet the 500-meter setback requirement if any other measuring methodology, but “lot line to lot line” was adopted and utilized by the City of Kelowna. Where a Building-to-Building measurement is used, the distance from Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.) is 572.17 meters. When measuring the setback distance measuring “Door to Door”, the distance from Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.) is 595.11 meters.

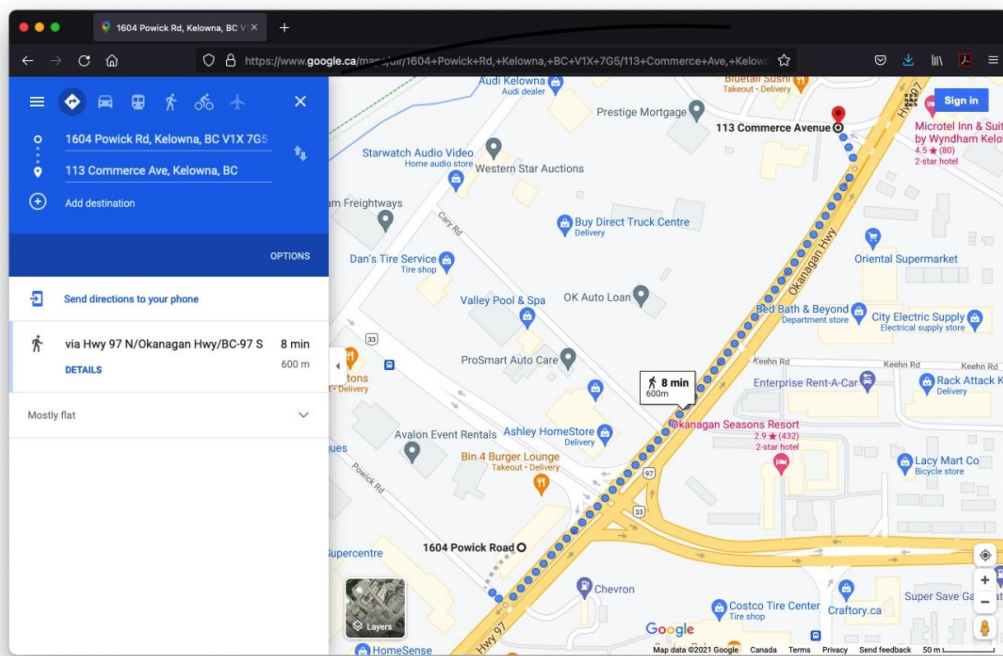


Figure 4. (“Exhibit K”) Google Maps (Screenshot) showing distance from 1604 Powick Road to 113 – 1677 Commerce Ave.

From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring the distance utilizing “Google Maps, the distance is **600 meters**. People do not fly (as crows do) or float through walls, they walk or drive, travelling on established routes. Google Maps measures the distance people actual travel and provides a more accurate measurement considering the route traveled between two distances by foot and car.

Again, Section 9.16.1 of the Zoning Bylaw states that this measurement is to be done lot line to lot line which on that basis means there is actually a setback distance between the two stores (i.e. the Applicant and Greenery Cannabis Boutique located at 113 – 1677 Commerce Avenue) greater than 500 meters. As you can see by considering Figure 6 (below) and Figure 4 (Exhibit K), there is only one major route or thoroughfare between Kootenay Cannabis Ltd. located at 1604 Powick Rd. and Greenery Cannabis Boutique at 113-1677 Commerce Ave.

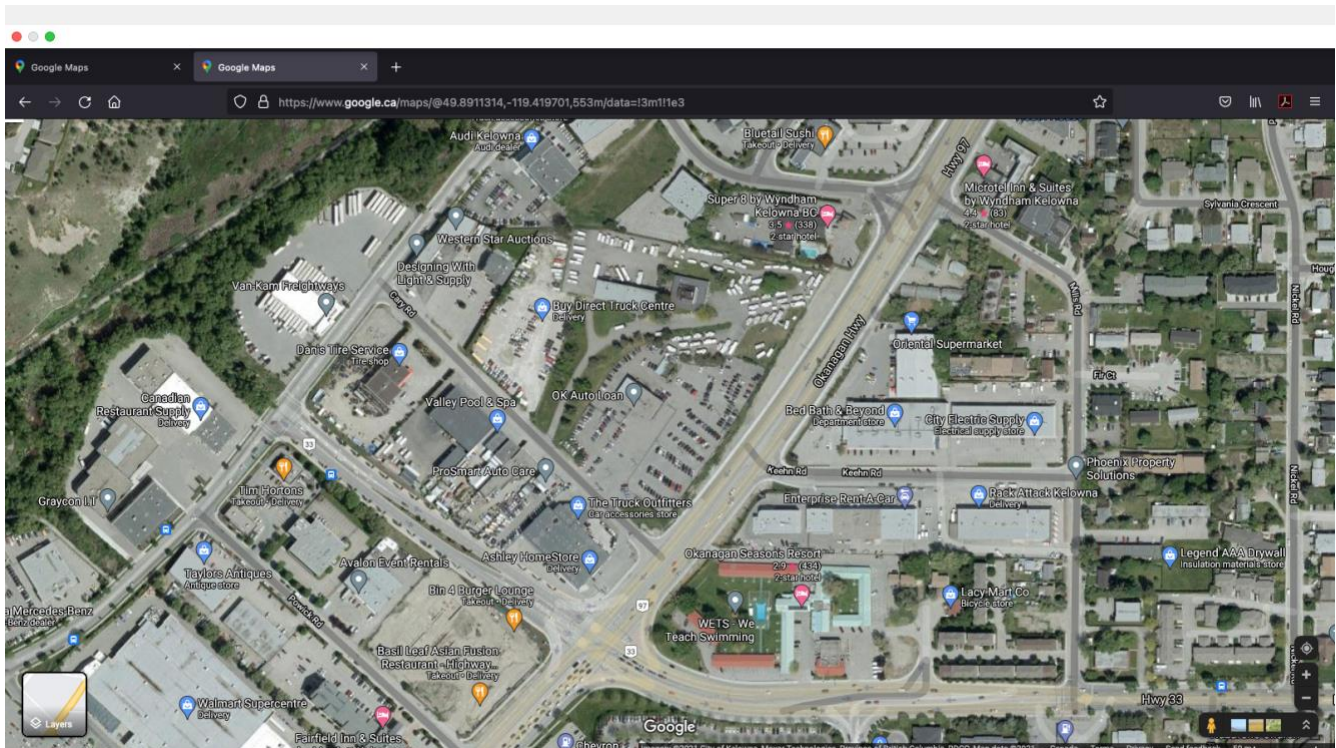


Figure 5. Google Map Satellite Photo Showing physical distance from 1604 Powick Road to Greenery Cannabis Boutique, a neighboring cannabis retailer, located at 113 – 1677 Commerce Avenue in Kelowna (Source: Google Maps)

When applied to the Applicant, “the lot line to lot line” (boundary to boundary) measurement is flawed because of the site-specific characteristics of not just the Applicant property but also the neighboring cannabis retail (Greenery Cannabis Boutique). In this instance there is roughly 80 meters from the front door of 1604 Powick to the property line boundary. This means the property line to property line

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measurement of 423.99 meters is flawed or skewed by 80-meters and but for such a large and irregular lot size, the Applicant would meet the set-back requirement, before even considering the distance from the front door to the corresponding property line of the neighboring cannabis retail. See above for the discussion regarding large lot lines at Figures 1 and Figure 2 above.

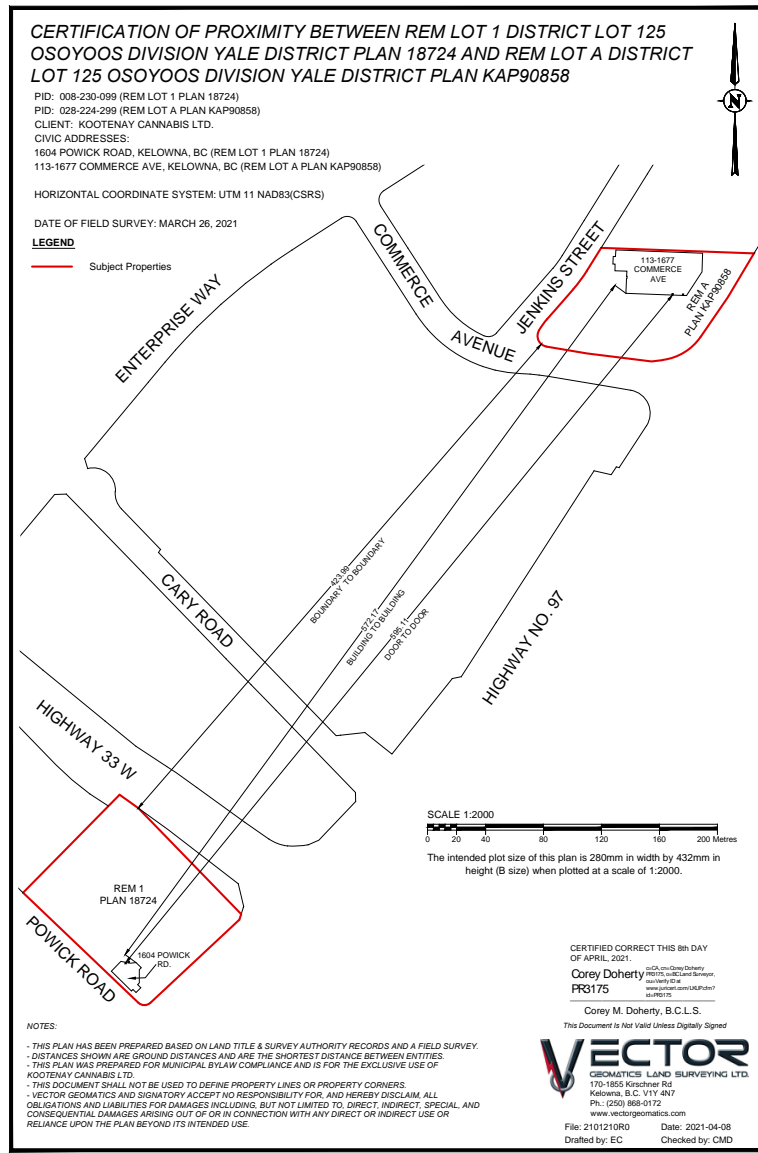


Exhibit J. - Surveyors Map (Vector Geomatics and Land Surveying Ltd.) showing distances from 1604 Powick Road to 113 – 1677 Commerce Ave. and dated April 8, 2021.

An examination of the distance from the front door of Greenery Cannabis Boutique located at 113 – 1677 Commerce Avenue to its corresponding property line, represents 40-meters. Considering or factoring in the 80-meter or 40-meter lot size measurements to the 423.99 property line distance, suggests a site-specific hardship.

With respect to the Applicant and the neighboring cannabis retail store, both locations (i.e. 1604 Powick Rd. and 113-1677 Commerce Ave.), involve large commercial lots which unfortunately skew or frustrate the distancing measurements further. When considering the distancing using GPS and Google Maps, which indicates the route that cars and people would take, by contrast, the result is a site-specific hardship for the Applicant.

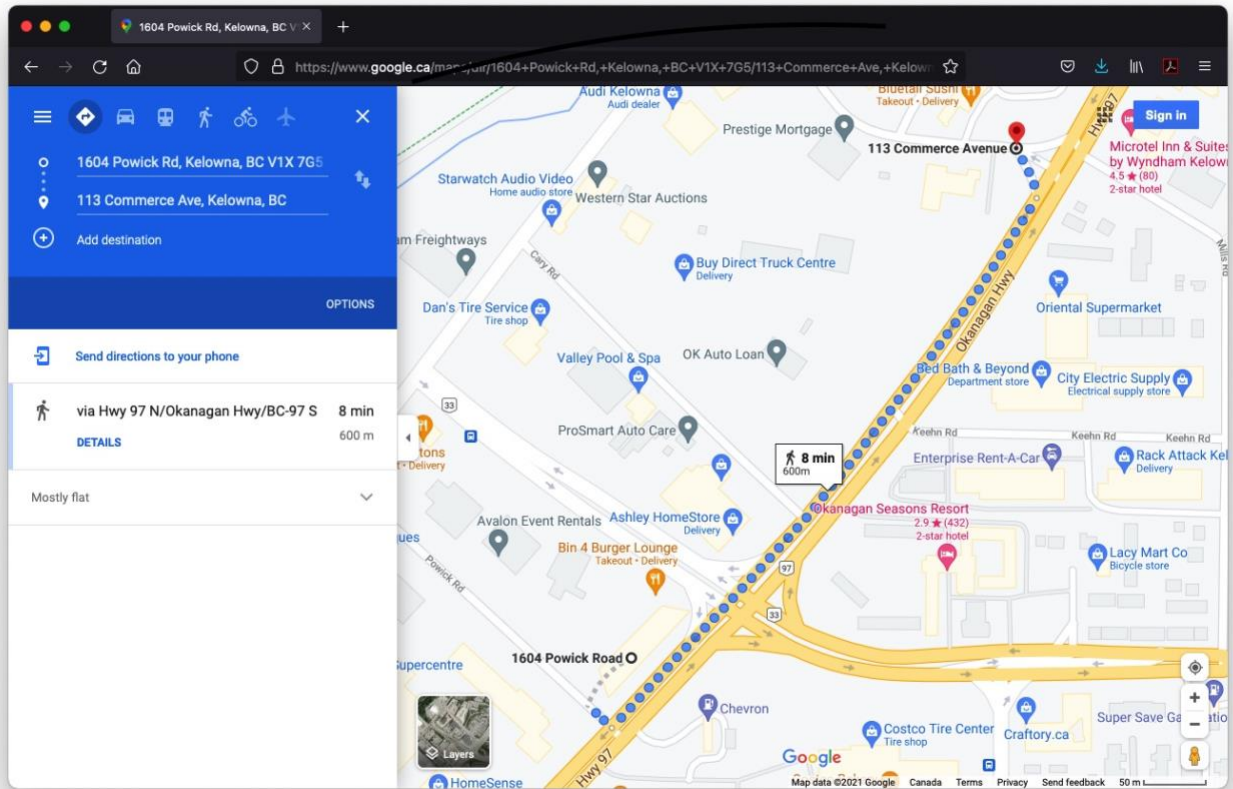


Figure 6. “Exhibit N”: Google Maps. From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Google Maps” (route for travelling by foot and car) = **600 meters**.

According to Google Maps, the distance between Greenery Cannabis Boutique and the Applicant (Kootenay Cannabis) is **600-meters** with a travel time on foot of 8 minutes. The measurement of property line to property line (i.e. lot line to lot line) does not represent a fair measurement. People do not fly or travel distances over geography “as the crow flies”.

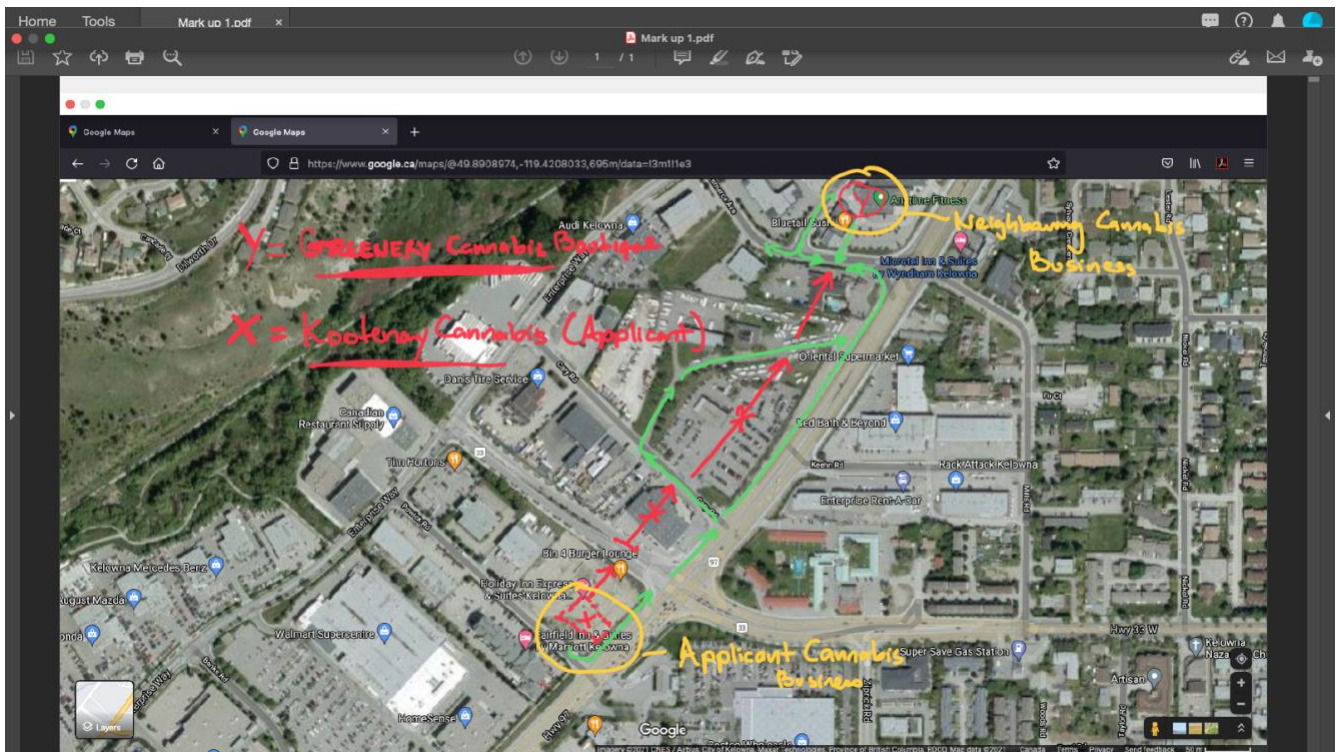


Figure 7. Google Satellite Map. From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Greenery Cannabis Boutique (113-1677 Commerce Ave.), measuring “Google Maps” (route for travelling by foot and car) = 600 meters and no direct access.

Moreover people (including children) cannot walk through walls and are subject to natural boundaries such as roads, subdivisions, and highways, rendering the reliability of this measuring standard as flawed, unfair, unreliable, and prejudicial in instances facing the Applicant. Figure 7. Above illustrates that there is no direct straight-line route. The green arrows indicate the route that one would need to travel from the Applicant cannabis business located at 1604 Powick Rd. to Greenery Cannabis Boutique at 113-1677 Commerce Ave. The red lines indicate there is no direct route or path.

Given the unique circumstances, the City of Kelowna should take the irregular large lot sizes into account and allow the text amendment. The boundary to boundary (lot line to lot line) measurement also does not consider the unique lot shape or the location of the actual business premises within the property.

2. Distancing from Applicant to a Neighbouring Middle School

The Zoning Bylaw at Section 9.16.4, dealing with setback minimum distances from public middle school, states:

9.16.4 Any Retail Cannabis Sales Establishment must be set back a minimum distance of 500 metres from any public middle or secondary school, measured from closest lot line to closest lot line.

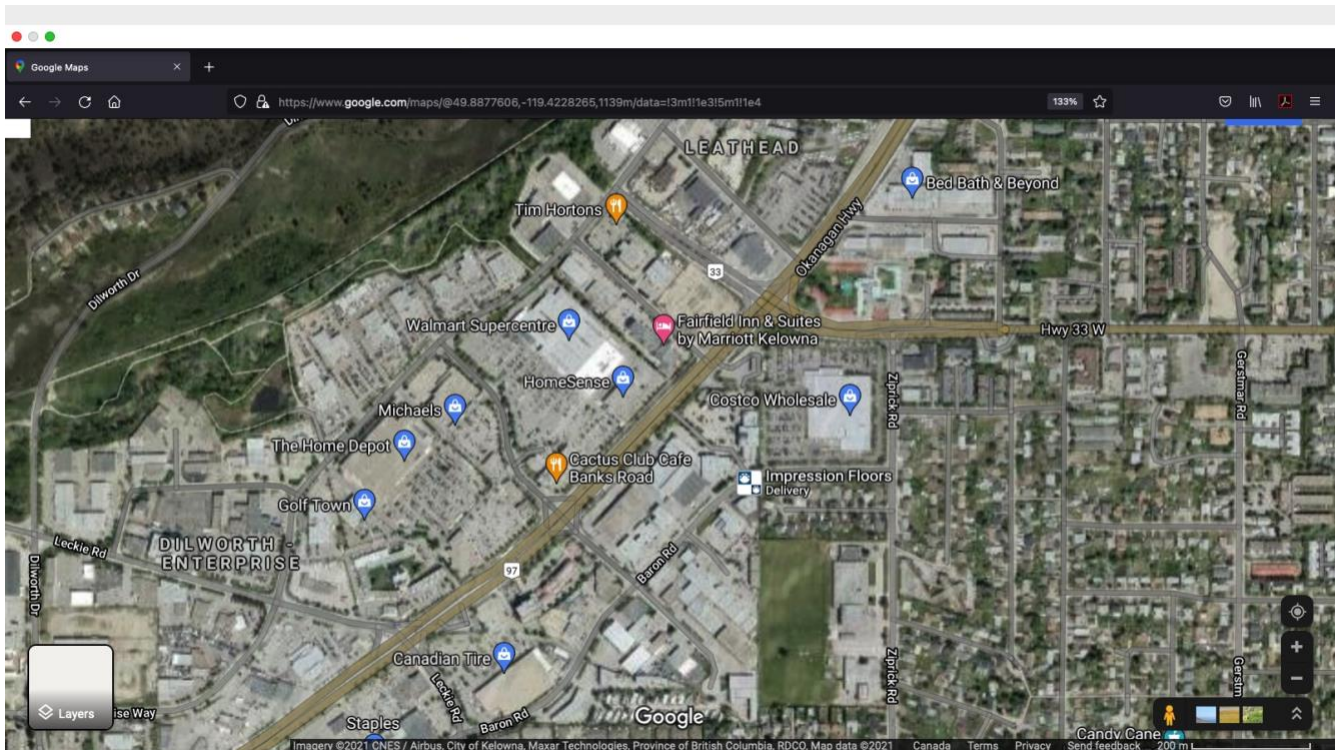


Figure 8. Google Maps (Satellite)

In addition to a neighboring cannabis business, the Applicant is located at distance measured “lot line to line” within the required 500-meter setback from a middle school.

According to measurements provided by the City of Kelowna, the Applicant Kootenay Cannabis Ltd., located at 1604 Powick Rd.) is situated at 337.07 meters from Springvalley Middle School, having an address at 350 Ziprick Rd. This measurement of 337.07-meters is measured “Boundary to Boundary” or Lot Line to Lot Line and is flawed for the reasons set out earlier.

When examining distances, it is important to have regard to the unique or site-specific circumstances of the Applicant and the Applicant Property. In the case of Springvalley Middle School, just as with the proximity of the neighboring cannabis business to the Applicant, the distancing is frustrated because of the large lot size of the school. When considering the distancing using GPS and Google Maps, which indicates the route that cars and people would take, by contrast, the result is a site-specific hardship for the Applicant.

Please see Exhibit L., a Surveyors Map (Vector Geomatics and Land Surveying Ltd.), showing distances from 1604 Powick Road to Springvalley Middle School. Utilizing any measurement methodology other than that which measures the distance people travel reveals limitations. For example, the “door to door”, “building to building” and “boundary to boundary” measurements do not account for any fences, subdivisions, highways or obstructions between the applicant and the middle school. (See Figures 9 and 10 below).

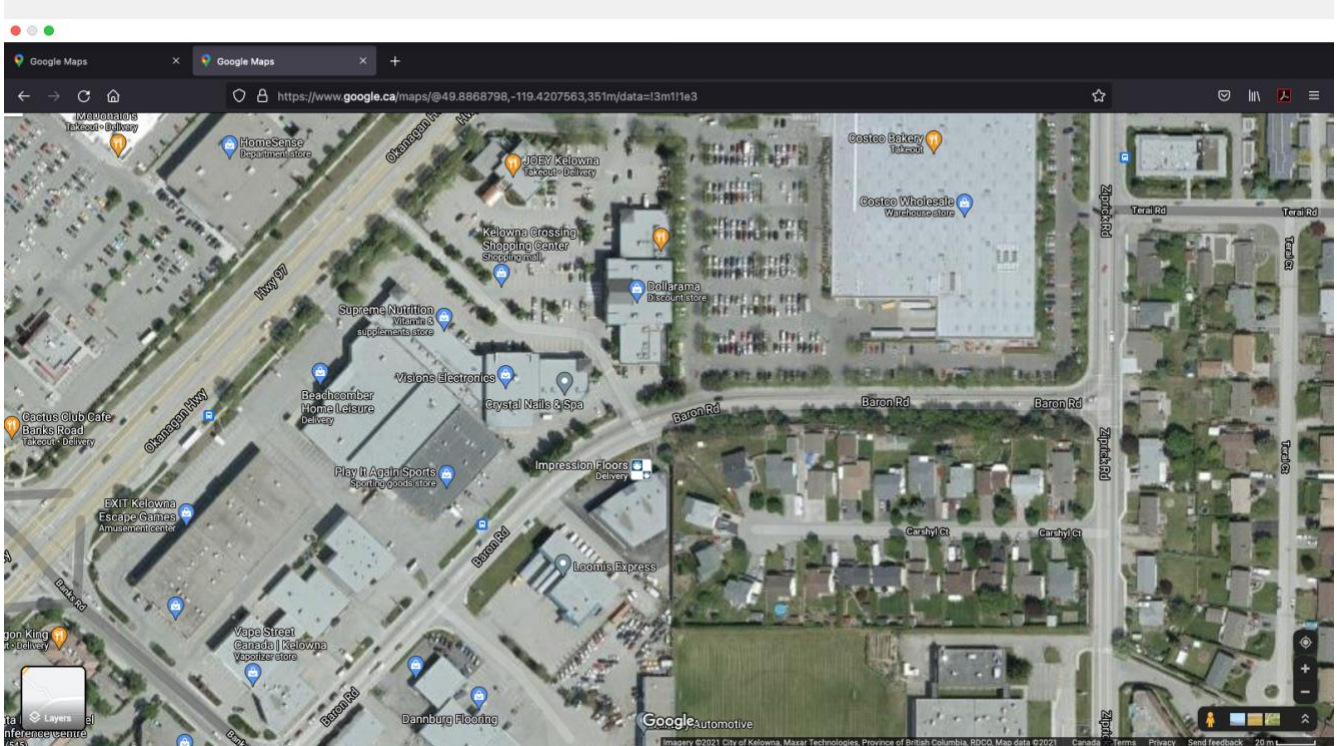


Figure 9. Google Map (Satellite Photo) – Showing fenced in School yard, industrial parks, and residential neighborhood at Carshyl Crt. and Costco parking lot.

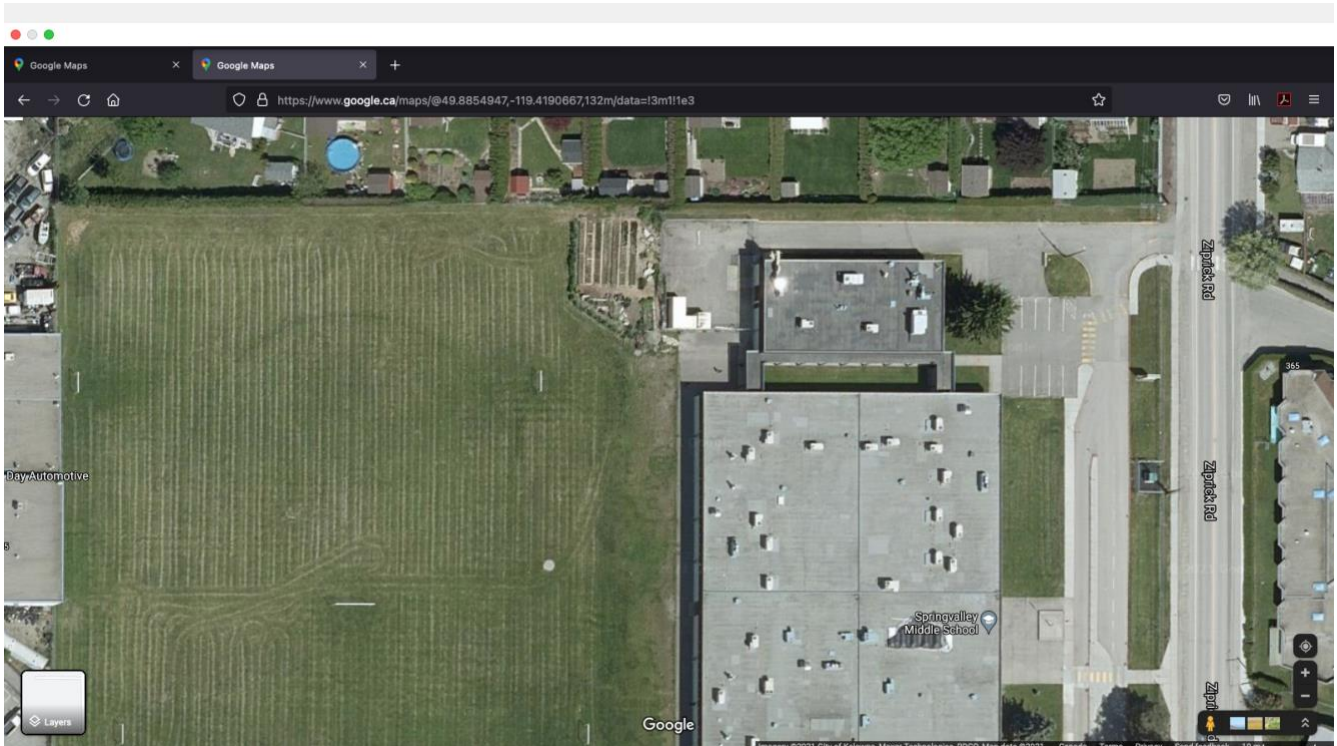


Figure 10. - Google Map (Satellite Photo) – Showing fenced in middle school yard, residential neighborhood at Carshyl Crt. and Costco parking lot.

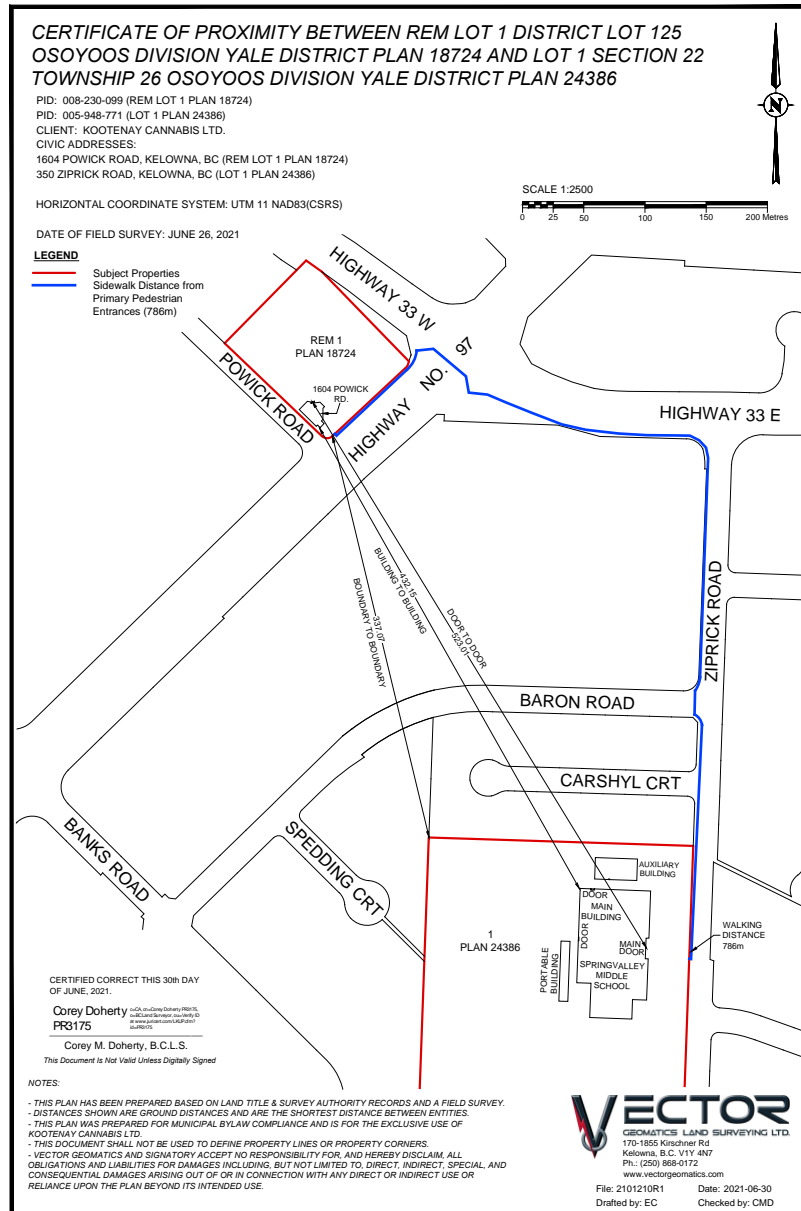


Exhibit L. Surveyors Map (Vector Geomatics and Land Surveying Ltd.) showing distances from 1604 Powick Road to Springvalley Middle School and dated June 30, 2021.

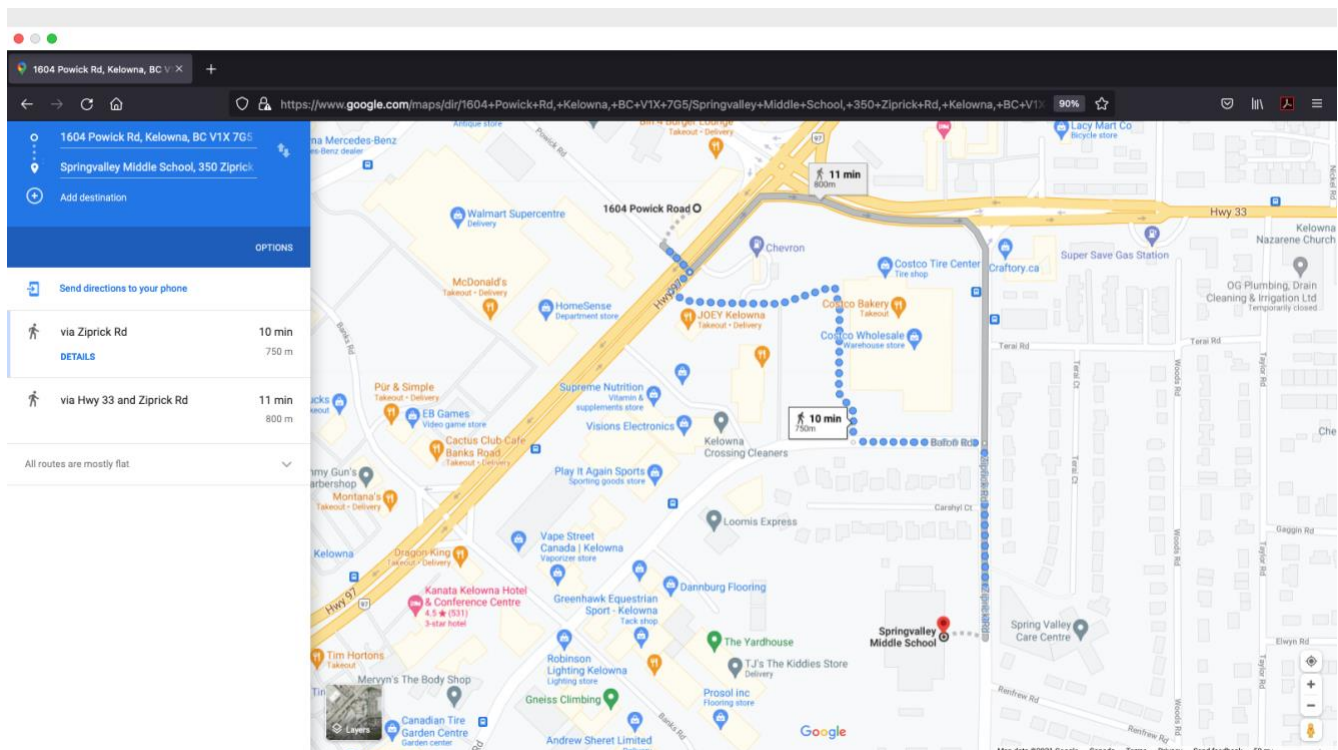
A summary of the distances and the different measurement methodologies for the Applicant in relation to the proximity to Springvalley Middle School in Kelowna are as follows:

1. Proximity to Middle School: Distance and Measurements – Applicant (Kootenay Cannabis) to Springvalley Middle School

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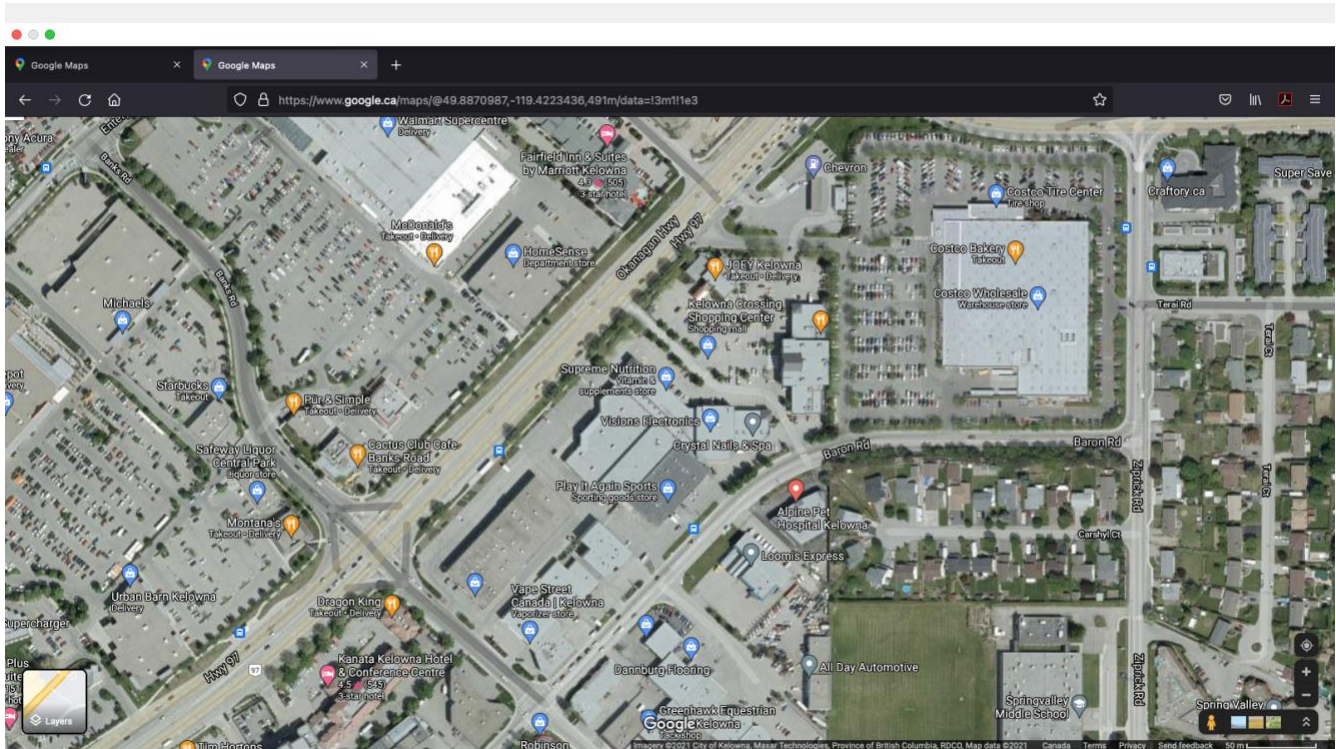
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (i.e. 350 Ziprick Rd.), measuring “Boundary to Boundary” (Lot Line to Lot Line) = **337.07 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (i.e. 350 Ziprick Rd.), measuring “Building to Building” = **432.15 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (350 Ziprick Rd), measuring “Door to Door” **523.01 meters**; and
- From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (i.e. 350 Ziprick Rd.), measuring “Google Maps” (route for travelling by foot and car) = **800 meters**.

As can be seen, the Applicant would meet the 500-meter setback requirement if other measuring methodologies, but for “lot line to lot line” was adopted and utilized by the City of Kelowna. Where a Building-to-Building measurement is used, the distance from Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley Middle School (350 Ziprick Rd) is 432.15 meters. The amount is significantly larger than the 330-meter lot line to line measurement. Further, when measuring the setback distance measuring “Door to Door”, the distance from Kootenay Cannabis Ltd. to Springvalley Middle School is 523.01 meters.



“Exhibit N”. Google Maps (Screenshot) showing distance from 1604 Powick Road to Springvalley Middle School.

From Kootenay Cannabis Ltd. (i.e. 1604 Powick Rd.) to Springvalley middle School, measuring the distance utilizing “Google Maps, the distance is **800 meters** (taking 11 mins on foot) via Hwy 33 and Ziprick Rd. Again, people do not fly (as crows do) or float through walls, they walk or drive, travelling on established routes. Google Maps measures the distance people actual travel and provides a more accurate measurement considering the route traveled between two distances by foot and car.



Google Map (Satellite Photo).

Analysis – Inconsistent Measurements and Site-Specific Hardship

The City of Kelowna by virtue of the administrative principles of natural justice and procedural fairness, has discretion and authority to remedy instances where the strict interpretation of a bylaw, such as Section 9.16.1 of the Zoning Bylaw, would represent a site-specific hardship and result in prejudice to the Applicant (i.e. Kootenay Cannabis Ltd).

These principles of natural justice and procedural fairness, plus the factors surrounding site-specific hardships, including the inconsistency (and unreliability) of measurements, should be taken into consideration in this instance by the City of Kelowna. Accordingly, the City of Kelowna should have no problem granting the Applicant the necessary text amendment necessary under Section 9.16.1 and 9.16.4 of the Zoning Bylaw.

Analysis: Characteristics of the Applicant Premises (Site-Specific Considerations)

Applicant Property – Heavy Commercial Area (Not Appealing to Children)

It should be noted that the Applicant Property at 1604 Powick Road, Kelowna is in a heavy commercial area with many big retail outlets around. These factors make it more likely than not that children, especially unaccompanied minors, will not try and access cannabis retail or be enticed by it. The circumstances and location of Kootenay Cannabis furthers the City of Kelowna policy objectives of protecting young people from promotions or enticements to use cannabis manner. Due to the nature of the businesses around the Applicant and the distance of over 500 meters between the store in question, clustering is not really an issue.

High Volume Traffic and Proximity to Businesses

The Applicant Property is a unit in a standalone general purpose commercial building located near the Holiday Inn across from Costco at one of the highest volume traffic intersections in Kelowna. Other neighbouring retail tenants in proximity to the Applicant Premises include two hotels, and well-known businesses including, Rogers Cellular, Bin 4 Burger Lounge, Booster Juice, Red Wing Shoes, and Mucho Burrito.

Kootenay Cannabis would be a welcomed addition at this location. Kootenay Cannabis' specific location would also lead to fewer cars on the streets and less traffic congestion because patrons of the two hotels directly beside our location would not be driving to purchase cannabis from retailers located further away. Please see letters of reference at "Exhibits O" through to "Exhibit S" as appended to this Letter of Rationale forming a part of the Development Application.

Fair and Reliable Business Environment

The second point city planners consider with respect to the 500-meter (Section 9.16.1 and Section 9.16.4) requirements of the Zoning Bylaw regards the policy objective by the City of Kelowna to create a fair and reliable business environment.

One of the initial purposes of Section 9.16.1 of the Zoning Bylaw was to have positive intentions but as we have seen in the case of Kootenay Cannabis, can have negative or prejudicial results. There are several unintended consequences associated with 500-meter setback requirement, that city planners in Kelowna may not have accounted for (including unusual lot sizes, traffic flows and the consideration of natural barriers (like roads, subdivisions and walls)).

Enhancing Public Health and Safety

With the restrictions on additional business, arguably the bylaw in fact is creating an oligopoly within the cannabis retail industry, allowing only a relatively small number of retailers to keep their prices higher than what the free-market system would dictate. This has a few major negative consequences, the first being that stores who are not directly competing with one another are keeping prices much higher and are inadvertently continuing to allow the black-market to be successful and thrive. The Kootenay

Cannabis sales method of volume over pricing has a direct crippling impact on the black-market, with major successes in encouraging the public to purchase from legal cannabis retailers.

Additionally, the cannabis consumers are the ones directly impacted by this bylaw. With limited stores throughout Kelowna, consumers are forced to pay more for products with less effort needed by retail vendors in terms of offering a high level of service, education and earning the business of their customers.

Unduly Restrictive Land Use and Zoning Assists the Black Market

Lastly, Section 9.16.1 and Section 9.16.4 of the Zoning Bylaw negatively impacts the business community as a whole and can potentially limit the success of other business owners within the community. Limiting the number of stores, especially in a large commercial zone or plaza, limits the opportunity of other businesses within that zone to work with a cannabis retailer and have shared success. There are many groups of people that share the same consumer demographics as the existing retailers within our proposed location.

Kootenay Cannabis benefits from customers being drawn to the restaurants, hotels, etc. within the commercial plaza, but in turn, these businesses benefit from the customers that Kootenay Cannabis will bring in. The local community and neighboring businesses support the Applicant and the proposed cannabis retail location. Please see letters of reference at “Exhibits O” through to “Exhibit S” as appended to this Letter of Rationale forming a part of the Development Application.

About Kootenay Cannabis – Details About the Applicant

Founded By Local Business Graduates, Brian Gray and Mark Yeung

Kootenay Cannabis was founded by business partners Mark Yeung and Brian Gray. Both Mark and Brian hold Bachelor of Business Administration degrees from UBC Okanagan/Okanagan College and spent several years living in Kelowna after graduating.

Brian and Mark come from business backgrounds and have never previously worked on the black-market side of cannabis prior to legalization. The founders have families with children ranging in age from 4 years old to 16 years old. Kootenay Cannabis came about as an opportunity to start a business in the retail cannabis sector very differently than other existing cannabis providers.

Community Engagement and Volunteer Support

The Applicant takes a very active approach to engaging with the community and giving back at every opportunity while ensuring they abide by all regulations the province and federal governments have laid out. The Applicant participates, donates, and volunteers to such events and organizations (including Adopt-A-Road, Castlegar Soup Kitchen, Communities in Bloom and the Castlegar Sculpturewalk).

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Please see letters of reference at “Exhibits O” through to “Exhibit W” as appended to this Letter of Rationale forming a part of the Development Application.

If granted the opportunity to open a cannabis retail location in Kelowna, the Applicant would look to actively participate within the city of Kelowna in the same capacity as we have done in Castlegar. The Applicants are open to working with all groups but specifically the Gospel Union Mission and Kelowna Arts are of particular interest.

Financially, the Applicant donates to all the charitable initiatives as previously mentioned and pays staff to volunteer within the communities that Kootenay Cannabis Ltd. stores operate. This is where Kootenay Cannabis starts to differentiate itself from other retail cannabis stores by having a different business model and culture.

Corporate Social Responsibility

In the opinion of Kootenay Cannabis Ltd., no other retail cannabis company participates so passionately within the community of where it operates. Kootenay Cannabis Ltd. has been a catalyst within Castlegar to push other cannabis stores to actively engage in giving back to the community and develop principles of corporate social responsibility and business strategy. Accordingly, these factors should be taken into consideration by the City of Kelowna.

The Applicants pride themselves on being a socially responsible company, which is why Kootenay Cannabis Ltd. joined the Kelowna Chamber of Commerce, without currently having a business. Kootenay Cannabis is excited to hit the ground running and become positive leaders in the community. To the surprise of the Applicant, Kootenay Cannabis is currently the only cannabis retailer who is part of the Chamber of Commerce. It should be noted that a very similar phenomena took place in Castlegar where all the retail cannabis stores in that municipality, are now part of the Castlegar Chamber of Commerce, following the lead of Kootenay Cannabis.

Experienced Operator (Approved Stores in B.C. and Ontario)

Kootenay Cannabis opened its first provincially licensed store in Castlegar, B.C. in 2019 and is a small privately owned corporation with provincially approved stores in Ontario and British Columbia.

With experience in operating legal cannabis stores for the last two years Kootenay Cannabis Ltd. has never had any incidents of selling to minors, regulatory infringements, or police dealings of any kind. Kootenay Cannabis Ltd. staff are diligent in asking for legal identification from anyone looking under the age of 35 and do not let minors into our store even if accompanied by an adult. Their staff are required to go through thorough security checks in addition to a ‘Selling it Right Cannabis Training’ program prior to working in the store.

Providing Quality of Product and Retail Experience

Along with the Applicant's community-first business model, Kootenay Cannabis Ltd. also offer cannabis at much lower price points than their competition. I am instructed the Applicant sells higher quality cannabis for less cost than most dealers on the black-market. The low pricing strategy of Kootenay Cannabis Ltd. has had a direct negative impact on the black-market in the locations where the business operates stores.

Kootenay Cannabis Ltd. has heard from numerous locals that its pricing has closed many black-market dealers and has detrimentally impacted their profits, drawing more customers into our stores. Kootenay Cannabis Ltd. will be a valued contributor to the economy and needs of Kelowna and its citizens. Please see letters of reference at "Exhibits O" through to "Exhibit W" as appended to this Letter of Rationale forming a part of the Development Application.

Final Conclusions and Summary

The City of Kelowna by virtue of the administrative principles of natural justice and procedural fairness, has discretion and authority to remedy instances where the strict interpretation of a bylaw, such as Section 9.16.1 and 9.16.4 of the Zoning Bylaw, would represent a site-specific hardship and result in prejudice to the Applicant (i.e. Kootenay Cannabis Ltd). These principles of natural justice and procedural fairness, plus the factors surrounding site-specific hardships, including the inconsistency (and unreliability) of measurements and lot size anomalies, should be taken into consideration in this instance by the City of Kelowna. Accordingly, the City of Kelowna should grant the Applicant the necessary text amendment as required under Section 9.16.1 and 9.16.4 of the Zoning Bylaw.

The Applicant asks that the City of Kelowna consider the site-specific considerations that are unique to the Applicant Property and to relax a strict application of Section 9.16.1 of the Zoning Bylaw, establishing a 500-meter (minimum) setback for retail cannabis stores from public schools, and specific community, recreation and city parks and a minimum proximity distance of 500-meters between retail cannabis store locations. Doing so will render the Applicant as eligible for licensing under both the municipal and provincial retail cannabis licensing regimes, enabling the City of Kelowna to achieve the twin cannabis retail policy objectives of (1) declustering and (2) creating a fair and reliable business environment.

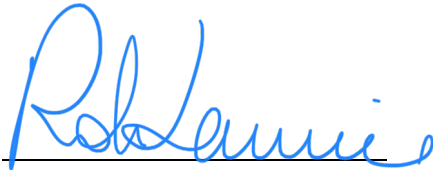
Furthermore, the principles of natural justice and procedural fairness, plus the factors surrounding site-specific hardships, including the inconsistency (and unreliability) of measurements, lot size anomalies, and property line measurement limitations, should be taken into consideration by the City of Kelowna prejudicial distancing considerations and site-specific hardships unique to the Applicant. Also the downtown and commercial nature of the property, located in a business corridor off a major thoroughfare, with one of the high-volume intersections in Kelowna, contribute to the unique circumstances of the Applicant.

Kootenay Cannabis Ltd. (Letter of Rationale) – Development (Text Amendment) Application

In conclusion, the City of Kelowna should grant the Applicant the necessary text amendment as required under Section 9.16.1 and 9.16.4 of the Zoning Bylaw. Should you require further clarification or have any questions regarding this Letter of Rationale in support of the Text Amendment Application from Brian Gray on behalf of Kootenay Cannabis Ltd., please not hesitate to contact me.

Thank you for your attention and consideration.

Sincerely,



Robert W.E. Laurie

President, AD LUCEM LAW CORPORATION

Barrister & Solicitor British Columbia, Solicitor England & Wales

M.A. Juris. (Hons) Oxford (Oxon), B.A. Poli Sci/IR (Hons) UBC.

Encl.

Supplemental Arguments and Distancing Considerations

Please note, the purpose of providing the City of Kelowna with the following Supplemental Arguments are to provide further detail and insights behind distancing considerations and cases of site-specific hardship.

1. 500 Meters is a Arbitrary Measurement

What is an approximate measurement? As discussed, the City of Kelowna with Section 9.16.1 and Section 9.16.4 of the Zoning Bylaws decided on a 500-meter setback measurement, while Vancouver decided on 300-meter buffer system under their respective authority regarding land use.

In Vancouver the number of Cannabis retail outlets doubled each year between 2013 and 2015. In response to this growth, in June 2015, Vancouver council decided to regulate the medical marijuana-related businesses, limiting them to commercial zones and setting out necessary distances from schools, community centres and youth facilities, based on best practice from Colorado and Washington State. The Community Charter accords Council and the City of Kelowna similar powers as discussed earlier.

Unlike Kelowna, the City of Vancouver relies on the License By-law No. 4450 (the “Vancouver License Bylaw”) section 3(1) which states:

“No person shall carry on within the City any business, trade, profession or other occupation without holding a subsisting City license therefor.”

Section 11.28.2 of the Zoning and Development Bylaw No. 3735 (the “Vancouver Zoning Bylaw”) states that:

A Medical Marijuana-related Use is not permitted:

- a. within 300 meters of the nearest property line of a site containing another Medical Marijuana-related use;***
- b. within 300 meters of the nearest property line of a site containing a School – Elementary or Secondary School, Community Centre of Neighborhood House***

On April 21, 2015, the Chief Licensing Inspector and the General Manager of Planning and Development Services produced a Policy Report on Health to Vancouver City Council regarding and entitled the “Regulation of Retail Dealers – Medical Marijuana-Related Uses” (MMRUs).

The MMRU’s have since been replaced by the Cannabis Store Retail Provisions. According to the City of Vancouver report (Regulation of Retail Dealers), the MMRU regulations aimed to achieve a careful

balance between ensuring adequate availability of medical marijuana for those in need with community health, safety, security, aesthetics, equity, and enjoyment of property.

2. Inconsistency of Measurement Methodologies

The strict application of the 300-meter rule as applied in Vancouver effectively rendered 80 to 90 per cent of the 100 existing cannabis retailers ineligible from participating in the MMRU licensing scheme. At Appendix A of the Regulation of Retail Dealers document, there is a table that says: “Best Practice” with respect to “minimum distancing from sensitive uses” and included Washington and Colorado. Specifically, it was stated that:

- *“Washington State requires 1,000 ft (300m) from school, playground, recreation centre, library or game arcade.”*
- *“Colorado requires 1,000 ft (300m) from school, preschool, day care establishment, medical marijuana centre or alcohol or drug treatment facility.”*
- *“City of Vancouver requires 150m between liquor retail and a church, park, school, community centre or neighborhood house.”*

The City of Kelowna and Vancouver maintain their setback or buffering distances are based on “best practice” from Colorado whereby Colorado requires minimum of 1,000ft (300m) between retail marijuana stores. In fact, this concern (the 300m requirement) was realized in January of 2012, before the state passed adult-use legalization later that year, when then U.S. Attorney for the state of Colorado John Walsh sent letters to 23 dispensaries located within 1,000 feet of a school that instructed them to close or relocate within 45 days or face criminal prosecution and asset forfeiture proceedings.¹⁵

A limited number of cannabis retailers that existed before applicable state and local laws were finalized had been permitted to remain within 1,000 feet of a school based their grandfathered status at the local level. The U.S. Attorney clearly explained that this enforcement action was based on the desire to enforce federal Drug-Free Zone Laws. “One of those interests, without question, is protecting drug-free zones around schools,” he said.¹⁶

United States federal law known as “Drug-Free Zone Laws”, passed during the War on Drugs, increase penalties for those caught distributing, possessing with intent to distribute, or manufacturing a controlled substance on or within one thousand feet of a school.¹⁷ Colorado was one of the first states to regulated medical marijuana businesses. As such, legislators were exercising an abundance of caution in an attempt to prevent new establishments from opening within these areas and discourage federal enforcement against the state’s newly established medical cannabis regulatory system.

¹⁵ <https://www.denverpost.com/2012/01/12/feds-colorado-medical-marijuana-dispensaries-within-1000-feet-of-a-school-must-close/>

¹⁶ <https://www.denverpost.com/2012/01/19/u-s-attorney-john-walsh-justifies-federal-crackdown-on-medical-marijuana-shops-2/>

¹⁷ 21 U.S.C. § 860

3. The Problem with “Drug Free Zone” Laws (Applied by the City of Kelowna to Cannabis Retail)

It is important for the City of Kelowna to appreciate that Drug-Free Zone Laws at the state and federal level increase penalties or establish mandatory minimum penalties for those caught distributing, possessing with intent to distribute, or manufacturing illegal drugs within a set distance to schools, playgrounds, housing facilities, youth centers, and other places where children often congregate. The metric of 300 meters (in Vancouver) is less than 500-meters as was adopted in Kelowna. It would appear the twin policy considerations (i.e. declustering and fair business environment) have absolutely nothing to do with “best practice” concerning municipal land use consideration.

These (drug free zone) laws, which differ amongst the states and federal government, were passed during a time in the United States when politicians and prosecutors were concerned with ways to increase penalties for drug related activity. This period, often referred to as the “height of the Drug War”, sought to address the issues of drug addiction by being “tough on crime”. Accordingly, the situation in which the City of Kelowna finds themselves in 2020 is very different than when city staff initially considered the issue.

By the 2009 and 2010 when the state of Colorado was first establishing its state and local medical marijuana regulatory structures, much of the 1980’s drug war concerns had calmed. But these punitive provisions still existed in federal law and similar provisions had previously been enacted at the state level.¹⁸ Although federal and state Drug-Free Zone laws were never designed as business zoning ordinances, their existence influenced legislators to establish greater setback restrictions for medical dispensaries than occurred in the state at the time for liquor stores, bars or other regulated industries.

For minority populations in dense urban areas with a large number of schools, playgrounds, and other sensitive use areas, the negative effects of Drug-Free Zone laws have been particularly burdensome. In fact this has led many US municipalities to reduce their buffering or set back distances to metrics closer to 150-meters. In Connecticut, for example, where the setback restriction for drug-free zones extend to 1,500 feet, over 90% of residents in the City of Bridgeport live within a drug free zone.¹⁹ For the less densely town of Bridgewater, just eight percent of residents lived within these zones.

The results have been devastating for poor minority communities that are more likely to live within urban centers. In Tennessee, Drug-Free Zone laws meant that a first-time offender caught with less than a gram of cocaine with intent to sell can be charged at the same felony level as someone who committed second degree murder. The main difference is that the individual charged with murder would have eligibility for parole while the minor drug offender would face a mandatory minimum sentence.

¹⁸ C.R.S. § 18-18-407 (2)(a)

¹⁹ According to a 2014 study from the Prison Policy Initiative as reported by Pew Charitable Trusts <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/09/15/why-states-are-taking-a-fresh-look-at-drug-free-zones>

According to a former narcotics prosecutor, and current Massachusetts State Senator William Brownsberger, who has studied and reported on this issue, Drug-Free Zone laws have been overly punitive and ineffective.

“Did the presence of school zones move drug dealing away from the schools? The answer to that question is clearly no. It’s not a deterrent. If every place is a school zone, then no place is a school zone.”²⁰ In response to the issues of over-criminalization and density of Drug-Free Zones in urban areas, multiple states have passed reforms to exempt private residences and juvenile defendants. Other states have exempted small quantities of marijuana or established time restrictions so that Drug-Free Zone laws only apply when children are present, according to a briefing paper written published by The Sentencing Project in 2013.²¹

In New Jersey, where a state commission to review criminal sentencing found that 96% of all defendants convicted in drug-free zones in the state were black or Latino, former Governor Jon Corzine signed a law that eliminated mandatory minimum sentences for Drug-Free Zone violations²².

4. Are ‘Drug Free Zone’ Laws “Best Practice” as Applied to the City of Kelowna or Vancouver?

Arguably no. The 300 meters, approximately 1,000-feet, distance requirement as applied by the City of Vancouver, or the 500-meter setback in the case of Kelowna, is not truly a best practice. It should be noted, in the Vancouver instance, the Board of Variance process has been used as an elimination strategy by the Department of License of Planning. The same could be said about the unduly restrictive text amendment procedure and requirements required in Kelowna by virtue of Section 9.16.1 and 9.16.4 of the Zoning Bylaw.

By comparison in both Colorado and Washington, the 1,000-foot setbacks are not a state-wide requirement. As previously mentioned, Washington amended the 1,000-foot setback in 2015 by allowing local governments to establish shorter distance restriction. In Kelowna, by comparison, the 500-meter setback is grossly responsible for the limited number of applications where a text amendment to Section 9.16.1 (and 9.16.4) of the Zoning Bylaw is necessary before (provincial and municipal) licenses will be issued.

In Colorado, HB 1284 permitted local governments to continue licensing existing dispensaries that had been operating within 1,000 feet of sensitive use since before the law passed, and always permitted a local government to pass an ordinance or resolution to vary the distance restrictions or eliminate types of schools or other facilities from the list of sensitive uses. This is unlike the situation in Vancouver or Kelowna.

²⁰ Ibid.

²¹ <https://sentencingproject.org/wp-content/uploads/2015/12/Drug-Free-Zone-Laws.pdf>

²² Ibid.

In Massachusetts, which legalized cannabis for adults 21 years of age and older in 2016, there is a 500-foot setback from pre-existing schools and cities and towns are permitted to adopt local laws that reduce this distance requirement.²³ Kelowna by comparison does have the jurisdiction and discretion to vary the strict application of the bylaw where to do otherwise would amount to a site-specific hardship.

In California, which similarly passed a cannabis legalization initiative in 2016, adopted a 600-foot setback between cannabis businesses and schools, day care centers, and youth centers. But just like in Colorado, Washington, and Massachusetts, (unlike Kelowna) an exemption exists for local jurisdictions to specify a different setback requirement.²⁴ Claiming that a universal 1,000-foot setback from schools and other sensitive use areas at the local level is based on “best practice” from the state-level in Colorado and Washington, or Massachusetts and California, would be incorrect. This is exactly what the City of Vancouver and Kelowna have done. Accordingly, to say Vancouver and Kelowna have adopted best practice from US jurisdictions is not entirely correct. It should be noted that in the case of Vancouver, the adoption of the 300-meter buffering zone for cannabis amounted to an elimination strategy as opposed to a regulatory policy.

Unlike the City of Kelowna and Vancouver, all four states (California, Washington, Colorado and Massachusetts) recognize the need for zoning variability to be established at the local level as urban and rural differences across states can be significant. An actual best practice for setback restrictions from sensitive uses such as schools or child-care centers would be one that appreciates and considers the density and character of each city or town. To some extent the Kelowna provisions address this but do not go far enough with respect to providing mayor and counsel the discretion to avoid site-specific hardships. Large setback restrictions that prevent the majority of cannabis retail within a city from operating act not as best practice for zoning but as de-facto prohibitions. I do not believe the City of Kelowna intended such a result.

5. Site Specific Hardships Are Created by the 300-Meter and 500-Meter Zoning Restrictions.

Despite the better judgement of the City of Vancouver, a 300 meter, or 1,000-foot, standardized setback restrictions for enhanced criminal penalties, as well as those restricting the placement of a licensed medical marijuana dispensary, do not account for the differences in zoning and density between rural and urban areas. Kootenay Cannabis Ltd. with respect to its Kelowna application is caught in the middle of these policy decisions. In an urban area, such as where the Applicant proposes to operate, the density of all activities and sensitive use areas are concentrated.

Schools, parks, daycares, and other areas where children congregate are both more frequent and consolidated. As such, cities often become one large Drug-Free Zone, which is a comparable analogy to Kelowna. Finding a location for regulated cannabis retail to provide convenient access becomes almost

²³ MA ST 94G § 5 (b)(3)

²⁴ CA BUS & PROF § 26054 (b)

impossible, which is the situation created (more or less) by the distancing policies adopted by the City of Kelowna as per Section 9.16.1 of the Zoning Bylaw.

If an individual does not know they are within a Drug-Free Zone (based on 300- or 500-meter distancing) or a physical barrier, such as a building or highway, blocks their way and would place them further than 1,000-feet if walked by a route of direct pedestrian access, the buffer should not apply. In the case of Kelowna, the municipality should be able to remedy instances of site-specific hardship of the type the Applicant is encountering. The City of Kelowna accordingly has set up a system designed to fail from the outset unless issues of site-specific hardship can be addressed where failure to do so would prejudice the applicant (as is the case with Kootenay Cannabis Ltd. at 1604 Powick Rd.).

As has been learnt from the American examples, rural areas and city areas must be zoned in different ways because zoning regulations are tied directly to the character and makeup of the area they regulate. Establishing a uniform statewide restriction for setbacks from schools and other sensitive use areas that does not allow for local variation is inappropriate for both rural and urban areas. A 500meter setback as in the case of Kelowna, could be considered too close to a school in a rural farming community where only an open space separates the two uses.

Conversely, 500-meters buffering could be considered impractical in an urban are where four city blocks and a dozen high-rise buildings block not only direct pedestrian access but also any visibility between the school and dispensary. This is exactly the circumstance confronting Kootenay Cannabis Ltd. as discussed earlier, amounting to site-specific hardship.

For these specific reasons, the state of Colorado permitted local variability and exemptions to the 1,000-foot (300-meter) buffer restriction from schools and other sensitive use areas when it first regulated its existing medical marijuana dispensaries in 2010 with the passage of House Bill 10-1284 (“HB 1284”). As passed, Colorado HB 1284 permitted the local licensing authority of a city or county to vary the distance restrictions or eliminate one or more of the sensitive use designations for the state 1,000-foot setback from schools.²⁵

Why did Vancouver adopt a 300-meter buffer? Because such, according to the City of Vancouver, is “best practice” adopted from Washington and Colorado. As the above suggests, the 300meter buffer adopted by the City of Vancouver as applied against dispensaries is anything but best practice. The same could also be said for the setback approach and 500-meter buffering introduced by the City of Kelowna.

6. Is the 500-meter distancing requirement of Section 9.16.1 and Section 9.16.4 of the Zoning Bylaw unduly restrictive as applies to Kootenay Cannabis Ltd.?

²⁵ HB 1284 section 12-43.3-208 (1)(d)(I)

Yes. Vancouver is the most density-populated city in Canada with 5,493 people per square kilometer.²⁶ Although I am not an expert on Vancouver land-use and geography, prohibiting a Medical Marijuana-Related Use within 300 meters of the nearest property line of another Medical Marijuana-Related Use, school, community center or Neighborhood House, as required by Section 11.28.2 of the Zoning and Development Bylaw No. 3735, limited the number of storefront locations for retail cannabis to such an extent as to put medical patient access in jeopardy. This is certainly the case when considered in the context of Kelowna and Section 9.16.1 and Section 9.16.4 of the Zoning Bylaw in the case of the Applicant.

In Boston Massachusetts, which has a 2016 city population of 672,840 and a nearly identical population density of 5,381 people per square kilometer (comparable to Vancouver more so than Kelowna), city elected officials established a shorter 500-foot setback (152.4 meters) from pre-existing schools. Cannabis is used as a medicine by over two hundred thousand Canadians. If cannabis for medical purposes is not readily accessible in convenient locations throughout the city, patients will continue to obtain their supply from black and grey market actors that may not provide tested and safe cannabis products. It should be noticed that Kelowna and Vancouver regulate liquor with setback distances using a 150-meter distancing requirement.

As the federal and provincial governments continue to modernize their medical and adult-use cannabis laws following the passage of C-45, it is essential that progressive local governments such as Kelowna lead the way to ensure that regulated cannabis establishments have a fighting chance against the existing black market. Without the necessary changes, customers will likely continue to cultivate or purchase from their existing unregulated connections within areas much closer than 500 meters from a school or other sensitive use. Such a consequence is not in line with the City of Kelowna policy considerations dealing with creation of equal and fair system for cannabis retail sales.

7. Is the 500-meter rule or land use requirement unduly restrictive in its application to Kootenay Cannabis Ltd. in Kelowna?

Arguably yes. Instituting a 300-meter setback requirement has been shown in cities like Denver to push cannabis retail into industrial areas that are further from public transportation and more difficult to access generally. This has been the indirect result of the 300meter buffer introduced by the City of Vancouver and to a limited extend, the City of Kelowna with their 500meter setback requirement (Section 9.16.1 and 9.16.4 of the Zoning Bylaw). Although retail cannabis in Canada can be accessed through delivery, the relationship between a patient and the representative at a licensed and legal cannabis operator, such as Kootenay Cannabis Ltd. is valuable for learning about the effects of different products and how to safely consume them.

According to the City of Vancouver's analysis²⁷ there were approximately 19 medical marijuana related retail dealers and compassion clubs with both a development permit and business license at or about June

²⁶ <https://biv.com/article/2017/02/vancouver-has-highest-population-density-canada-ce>

²⁷ <http://vancouver.ca/doing-business/medical-marijuana-related-business-licence.aspx>

2018. Another 21 businesses have a development permit but no business license. But there were also sixty locations operating without City permission and subject to enforcement. Out of approximately 100 dispensaries in Vancouver, 60% were slated for closure at the outset of the introduction of an untenable licensing system introduced by the City of Vancouver (and modified further by the City of Kelowna). In the Kelowna context, there have been significantly less text amendment variations recommended by staff which suggests the 500-meter setback requirement is flawed and unduly restrictive (especially in instances of the Applicant's site-specific hardship).

Land use restrictions and distance requirements directly affect where retail operators can be located because when customers seek to purchase recreational cannabis, they have historically been concerned with quality, selection, convenience, and price (more so than location). Kelowna is no exception to these principals in that land use and setback regulations do and will affect whether retailers will be permitted in dense urban residential areas or nearby transition stations. If requirements are instituted by the City of Kelowna that force retailers, like Kootenay Cannabis Ltd., to be far from the places where current and potential customers can conveniently access, then it is likely that customer will factor this into their decisions as to whether to purchase cannabis from the legal channels or the more convenient black market. This is precisely the situation confronting Kootenay Cannabis Ltd., as discussed earlier.

8. Why have American Jurisdictions Amended or Changed the 300-meter (or 1000 ft Buffer)?

Unlike the City of Vancouver, who has had since 2015 to amend the 300meter buffer (2018 in the case of Kelowna), many states have amended or changed their 1,000-foot Drug Free Zone laws as they pertain to enhanced and or mandatory penalties for drug violations. In many cases these amendments were in response to state justice commissions or studies that shows severely discorporate impacts against minority racial groups.

A Sentencing Project report states that both liberal and conservative status including: Connecticut, Delaware, Indiana, Kentucky, Massachusetts, New Jersey and South Carolina. These states have modified their restrictions in different ways to reduce their scope and punishment. Some states have reduced the distance from 1,000-feet to 300-feet (i.e. 91.4 meters) while others have limited their hours of applicability or required an individual to have knowledge that they were within the restricted area with the intention of selling a controlled substance. 300-meter distances have accordingly been reduced to distances ranging from 90-meters to 150-meters. Compared in this fashion, it would appear the 500-meter setback distancing is unduly restrictive and unnecessary.

For cannabis businesses, in 2015 the State of Washington passed House Bill 2136,²⁸ which amended their adult-use marijuana regulatory initiative I-502 to permit local governments to ease the existing 1,000-foot setback restriction. Washington's initial cannabis legalization law set a 1,000-foot setback restriction for all cannabis businesses and any school, playground, recreation center, childcare center,

²⁸ WA House Bill 2136

public park, public transit center, library, or any game arcade admission not restricted to individuals twenty-one years or older.

This provision was particularly problematic for the City of Seattle, which had very few permissible locations for cannabis businesses to operate. The altered provision allows a local city, county, or town to permit cannabis businesses within 1,000 feet, but not less than 100 feet, of the above sensitive use areas with the exception of schools and playgrounds. The Seattle Mayor’s office responded positively to this change in state law and moved to amend the City’s land use rules to permit cannabis businesses within 500 feet of the permitted sensitive use areas. “The new rule would establish an additional 1,650 acres for retail locations to be sited in Seattle.”²⁹

9. The 500 Meter Buffer or Setback is Arbitrary – Comparison to City of Vancouver Alcohol Regulation

The development of a “best practice” is an iterative process which requires continuous feedback from an evidence-based process which allows an “initial practice” to evolve incrementally into a “best practice”. The best practice for cannabis regulation is not yet developed in Canada as there is limited evidence to support this process. While evidence from other countries can be considered the relevance for the Canadian context has yet to be determined.

Washington and Colorado have an initial practice of requiring dispensaries to have 300-meters distance from schools, parks, community centres, libraries, daycares, and other cannabis stores. This distance from schools is based on historical “drug free zones” in the USA which is a process with is both variable and arbitrary.

Increasingly, drug free zones are being challenged as being more harmful than helpful. The 300-meter distance requirements can also be observed as inconsistent as other locations like the City of Saskatoon, which only require 160 meters. Therefore, the 300-meter distance limitation is an Initial practice, which has not yet had sufficient time and evidence-based feedback to evolve into a best practice.

However, unlike Cannabis, under the Liquor Store Guidelines (in the case of Vancouver):

“No liquor store should be located within 150m of a church, park, elementary or secondary school, community centre or neighborhood house.”

The City of Vancouver indicates in the Regulation of Retail Dealers document that alcohol is a more harmful drug than cannabis. Unlike cannabis, which has a 300meter zoning restriction, liquor retail in Vancouver is subject to a 150-meter zoning guideline. Marijuana or medical cannabis is not sold legally in Colorado or Washington States and is accessible under a recreational model, contrary to United States federal criminal law and the 300meter distancing requirement is based, in part, on the concept known as

²⁹ <http://murray.seattle.gov/mayor-introduces-new-land-use-rules-to-accommodate-upcoming-increase-of-state-licensed-marijuana-stores/>

“Drug-Free Zone Laws” (discussed earlier). Since the inception of COVID-19 retail cannabis, like alcohol, are regarded as an essential service and is discussed below.

Cannabis retail through cannabis retail establishments in Kelowna (despite not being classified as medicinal) offer a potential public health benefit and the extent to which the retailer are beneficial, depends on four factors:

- A) The increased access to individuals who use cannabis as medicine
- B) The presentation of cannabis as a product which is not attractive to youth
- C) The extent that cannabis replaces alcohol
- D) The extent to which cannabis replaces drugs like heroin and cocaine

As discussed earlier, Kootenay Cannabis Ltd. has successfully introduced policies and protocols to ensure the aforementioned four factors continue to guide the Applicant’s administrative and business decision making and community engagement (i.e. corporate social responsibility).

10. Flawed Analysis Surrounding Alcohol Regulation

The World Health Organization ranks alcohol consumption second (behind tobacco) as a causal risk factor for world health burden of disease. The estimated direct health care cost in Canada directly related to alcohol consumption is \$3.3 billion and the direct and indirect cost is \$14 billion (tobacco is \$17 billion). As defined in the Canadian Alcohol and Drug Use Monitoring Survey, alcohol-related harms can occur in the following eight domains: physical health; friendship and social life; financial position; home life and marriage; work, studies or employment opportunities; legal problems; difficulty learning; and housing problems.

Alcohol is currently a commercialized product with recognizable branding and wide public acceptance. While some individuals use alcohol responsibly a percentage of individuals will develop significant physical or behavioral problems associated with alcohol. From a population perspective, outlet density is associated with increased alcohol consumption and related harms, including medical harms, injury, crime, and violence and other drug use by youth (e.g. solvents).

Despite being regulated in a manner similar to alcohol retail, cannabis (medical and recreational access) has been observed in a number of research studies to be an “exit strategy” or a less harmful replacement for drugs, which are more dangerous (i.e. heroin, cocaine). It is important to note that the City of Kelowna recommendations and land use policies concerning cannabis retail establishments were created in 2019 before the arrival of Covid-19.

Since the advent of the Covid-19 pandemic, Canada’s federal government has deemed medical cannabis production “essential” to the country’s critical health-care infrastructure during the COVID-19 pandemic. The designation is intended to assist provinces, municipalities and businesses in their decision making around the types of employees considered essential for the health, safety, security, and economic

well-being of the country. Canada had 370,000 active medical cannabis registrations as of September 2019, plus another 30,000 personal or designated production registrations, making it the largest federally regulated scheme in the world.³⁰

When evaluating the comparative harm of both alcohol and cannabis the research is consistent that alcohol is clearly more harmful than cannabis on all populations (see Nutt, Gable and Van Amsterdam). Understanding the specific nuances for the youth population requires consideration of other factors. Both cannabis and alcohol use in youth occur across a spectrum from beneficial to severely harmful. Many of the factors which predict a problematic relationship with drugs in youth have been explored in reports by the McCreary Centre Society.

Housing instability, suicidality, school disengagement, sexual and physical abuse, mental health diagnosis, physical disability and long-term illness, hunger at bedtime, physical abuse, LGB issues, and early use of alcohol and other drugs are all factors which add to the complexity of the interaction between youth and drug use. Conversely, it is also well established that positive early childhood experiences and environment can be protective against addiction and other harms associated with drugs. Therefore, problematic substance use may be understood as a symptom of underlying biopsychosocial distress, and not a condition caused by simply using drugs.

When examining youth drug use patterns, vulnerable youth populations demonstrate a greater propensity to develop problematic relationships with all substances. Also, the overall number of youth users increases the risk factors in the youth population. Therefore, the City of Kelowna's land use policy goals with youth should be to find a balance which:

- A) regulates cannabis in a manner which is not more restrictive than alcohol as alcohol is more harmful to all populations including youth;
- B) makes cannabis available in a way which is not attractive to youth (see below for details); and
- C) find ways of supporting at risk youth who will demonstrate a wide variety of problematic behaviors.

There is no serious research consideration proposing that alcohol be used as a substitute to more dangerous substances as the wide range of physical and social harms from alcohol are significant. Also, the disinhibiting effect of alcohol is a factor, which links its use to a variety of unhealthy behaviors. Therefore, alcohol will never be seriously considered as a harm reduction replacement for heroin and cocaine and cannabis, if skillfully regulated, may play this role.

Recreational consumers and cannabis medical patients, who need cannabis, should be able to access their medicine or substance of choice at least as easily as they can access alcohol. The 300-meter distance

³⁰ <https://mjbizdaily.com/canada-classifies-medical-cannabis-essential-amid-covid-19-pandemic/>

regulation has proven not protect children as distance from schools (etc) in Vancouver and remains a minor factor compared to the significant factor which is the look of the business and experience of the operator. This is evident in the fact that the dominant public perception is that most existing regular pharmacies are not problematic when viewed by youth in spite of the fact that they sell over the counter medications which can be used in a harmful manner. The primary protective factor which reduces the attraction of youth to cannabis is appearance and signage not location. In Kelowna the setback distancing requirements at 500-meters are significantly larger in comparison to Vancouver (300-meters) and Regina (160-meters).

The experience in the Netherlands in regulating cannabis dispensaries (coffee shops) is informative as the Dutch have successfully made cannabis use unattractive to youth which is indicated by the relatively low cannabis utilization by Dutch youth. The look of the coffee shops is mostly discrete and they do not have a dominant effect on neighbourhoods. The Dutch skillfully manage the overall messaging to youth. The information provided to youth is not that cannabis is dangerous or addictive (which will not be believed by youth) but that cannabis use is “boring” and primarily of interest to tourists not locals. We can learn from the lengthy Dutch experience (coffee shops were first opened in 1976) and sell cannabis in a manner which reduces its attraction to youth.

The 500-meter distance from schools is both unnecessary to protect youth (as the look is more important than the distance) and excessive and should be changed to make this process consistent with alcohol regulation.

11. Should retail cannabis be more regulated in Kelowna more restrictively than retail alcohol?

No, cannabis should not be more restrictively regulated than alcohol. When evaluating the relative harms of all drugs (alcohol is a drug) researchers are consistent that the harms of alcohol are consistently greater than the harms of cannabis. This conclusion applies to harms to the individual and harms to others and society as a whole. The harms of all drugs can be categorized as dependency, toxicity, or behavioral concerns. Cannabis has a lower ranking of harm than alcohol on all three factors.

The dependency potential of alcohol is relatively high (withdrawals from alcohol can include seizures, delirium tremens and death). In contrast cannabis has a low dependency potential (withdrawals are non-existent or mild and do not require medical management). Alcohol is more toxic than cannabis in both acute and chronic consumption patterns.

It is possible have a fatal overdose on alcohol but not cannabis. Long-term use of alcohol causes a wide variety of potentially fatal diseases including liver cirrhosis and cancer. Cannabis is not associated with the same toxic consequences. Alcohol is more problematic when considering harms to others and society as a whole, as alcohol is more disinhibiting than cannabis and therefore results in more problematic behaviors (e.g. violence, intoxicated driving, injuries, vomiting in public). Therefore, the extent to which cannabis replaces alcohol is the extent to which a public health benefit will be observed.

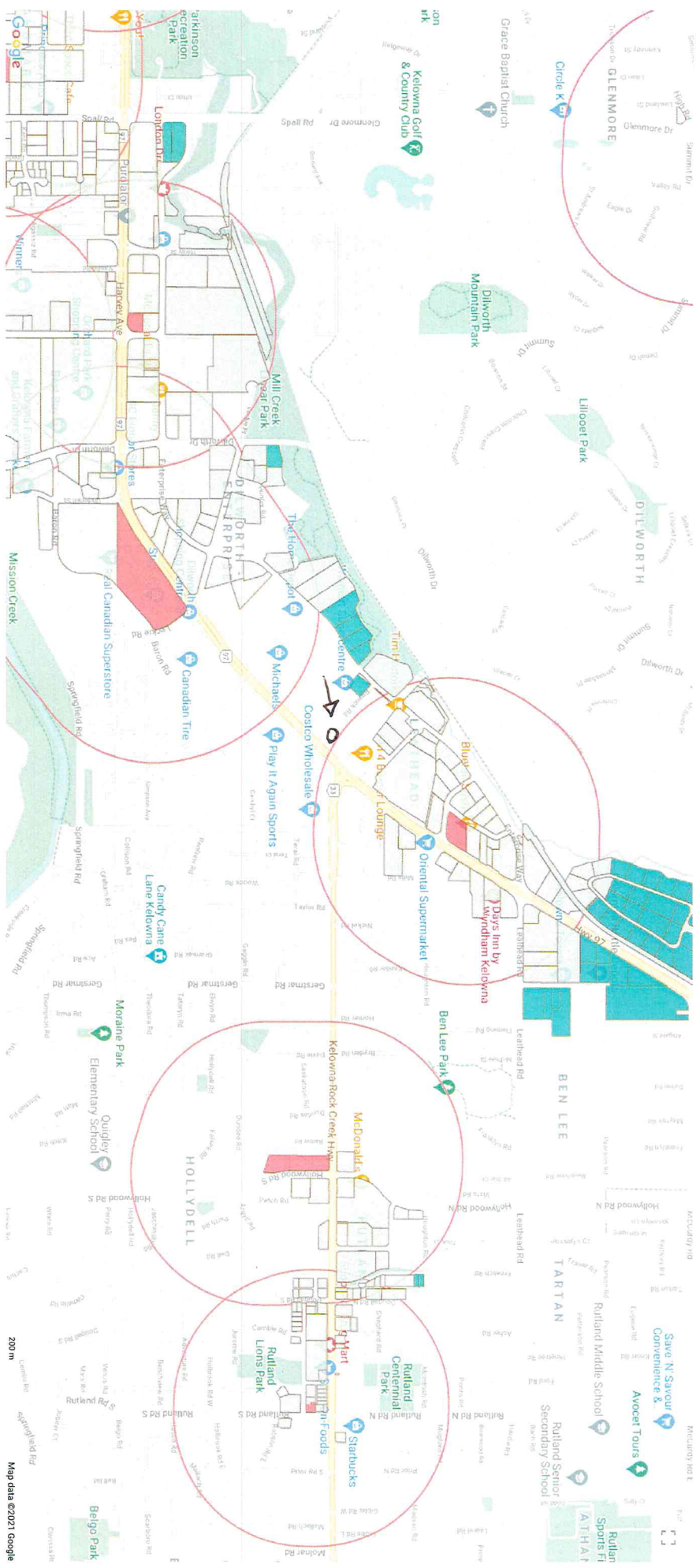
12. When compared with alcohol, is the regulation of cannabis by the City of Kelowna unduly restrictive?

Yes, the 500-meter regulation required by the City of Kelowna is again unduly restrictive. This distance is based on an arbitrary number with no research evidence or best practice documentation which demonstrates its utility. The harms are:

- A) It reduces access to individuals who use cannabis as a medicine; and
- B) It reduces the opportunity to have, to some extent, cannabis replace alcohol, which is more harmful to individuals, families, and communities.

The 500-meter setback for cannabis from schools, parks, community centres, libraries, daycares, and other cannabis stores is unduly restrictive for those who use cannabis as a medicine. As discussed earlier, there is a greater case to be made for the medical use of cannabis, than alcohol for opioid substitution and harm reduction. It is important to note that many people (in Kelowna) use cannabis to treat a wide variety of ailments including pain, insomnia, nausea, epilepsy, and cancer. Relatively easy access to their medicine is a reasonable expectation of these individuals.

By comparison to Kelowna, regular pharmacy location regulation in Vancouver does not specify distances from schools, playgrounds etc. The only distance limit mentioned in the City of Vancouver Business Specific policies and guidelines for small pharmacies is 400 meters from another pharmacy. This could, in theory, result in a pharmacy existing on approximately every 4 blocks in commercially zoned areas in Vancouver. This is reasonable as it allows individuals to access traditional medicine within a convenient distance from their homes. It would therefore also be reasonable to zone cannabis dispensaries in a similar manner which would allow for relatively easy access to those who use cannabis as medicine.



CERTIFICATION OF PROXIMITY BETWEEN REM LOT 1 DISTRICT LOT 125
OSOYOOS DIVISION YALE DISTRICT PLAN 18724 AND REM LOT A DISTRICT
LOT 125 OSOYOOS DIVISION YALE DISTRICT PLAN KAP90858

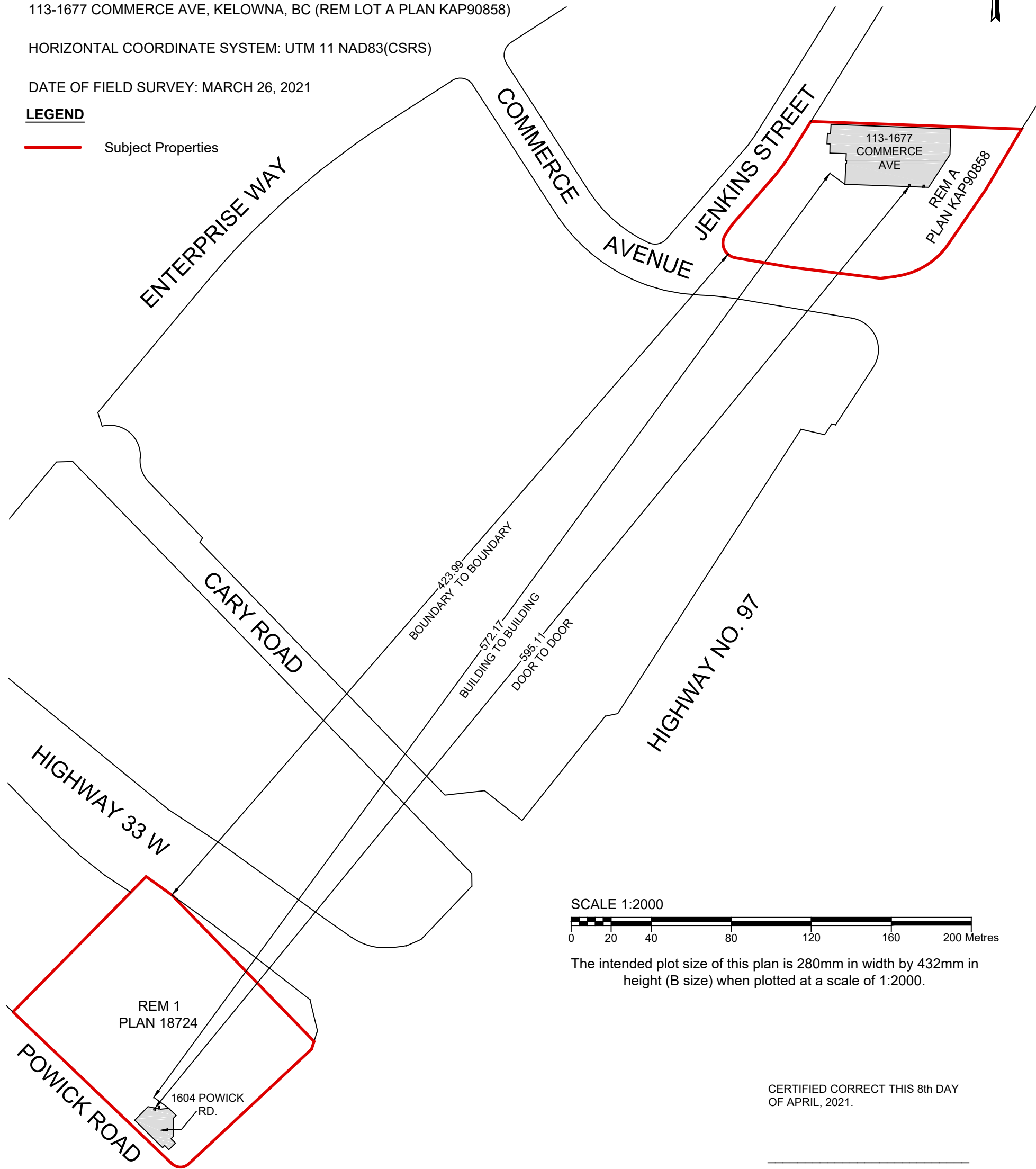
PID: 008-230-099 (REM LOT 1 PLAN 18724)
PID: 028-224-299 (REM LOT A PLAN KAP90858)
CLIENT: KOOTENAY CANNABIS LTD.
CIVIC ADDRESSES:
1604 POWICK ROAD, KELOWNA, BC (REM LOT 1 PLAN 18724)
113-1677 COMMERCE AVE, KELOWNA, BC (REM LOT A PLAN KAP90858)

HORIZONTAL COORDINATE SYSTEM: UTM 11 NAD83(CSRS)

DATE OF FIELD SURVEY: MARCH 26, 2021

LEGEND

Subject Properties



NOTES:

- THIS PLAN HAS BEEN PREPARED BASED ON LAND TITLE & SURVEY AUTHORITY RECORDS AND A FIELD SURVEY.
- DISTANCES SHOWN ARE GROUND DISTANCES AND ARE THE SHORTEST DISTANCE BETWEEN ENTITIES.
- THIS PLAN WAS PREPARED FOR MUNICIPAL BYLAW COMPLIANCE AND IS FOR THE EXCLUSIVE USE OF KOOTENAY CANNABIS LTD.
- THIS DOCUMENT SHALL NOT BE USED TO DEFINE PROPERTY LINES OR PROPERTY CORNERS.
- VECTOR GEOMATICS AND SIGNATORY ACCEPT NO RESPONSIBILITY FOR, AND HEREBY DISCLAIM, ALL OBLIGATIONS AND LIABILITIES FOR DAMAGES INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, SPECIAL, AND CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY DIRECT OR INDIRECT USE OR RELIANCE UPON THE PLAN BEYOND ITS INTENDED USE.

CERTIFIED CORRECT THIS 8th DAY
OF APRIL, 2021.

Corey M. Doherty, B.C.L.S.

This Document Is Not Valid Unless Digitally Signed



File: 2101210R0 Date: 2021-04-08
Drafted by: EC Checked by: CMD

1604 Powick Rd, Kelowna, BC V1X 7G5

113 Commerce Ave, Kelowna, BC

Add destination

OPTIONS

Send directions to your phone

via Hwy 97 N/Okanagan Hwy/BC-97 S

8 min

600 m

DETAILS

Mostly flat

1604 Powick Road

113 Commerce Avenue

8 min

600m

Layers

Google

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Send feedback

50 m

Audi Kelowna

Starwatch Audio Video

Western Star Auctions

Buy Direct Truck Centre

Dan's Tire Service

Valley Pool & Spa

OK Auto Loan

ProSmart Auto Care

Ashley HomeStore

Bin 4 Burger Lounge

Avalon Event Rentals

HomeSense

Chevron

Costco Tire Center

Craftory.ca

Super Save Gas Station

Prestige Mortgage

Microtel Inn & Suites by Wyndham Kelowna

Oriental Supermarket

City Electric Supply

Enterprise Rent-A-Car

Rack Attack K

Lacy Mart Co

Starwatch Audio Video

Western Star Auctions

Buy Direct Truck Centre

Dan's Tire Service

Valley Pool & Spa

OK Auto Loan

ProSmart Auto Care

Ashley HomeStore

Bin 4 Burger Lounge

Avalon Event Rentals

HomeSense

Chevron

Costco Tire Center

Craftory.ca

Super Save Gas Station

1604 Powick Road

113 Commerce Avenue

CERTIFICATE OF PROXIMITY BETWEEN REM LOT 1 DISTRICT LOT 125
OSOYOOS DIVISION YALE DISTRICT PLAN 18724 AND LOT 1 SECTION 22
TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 24386

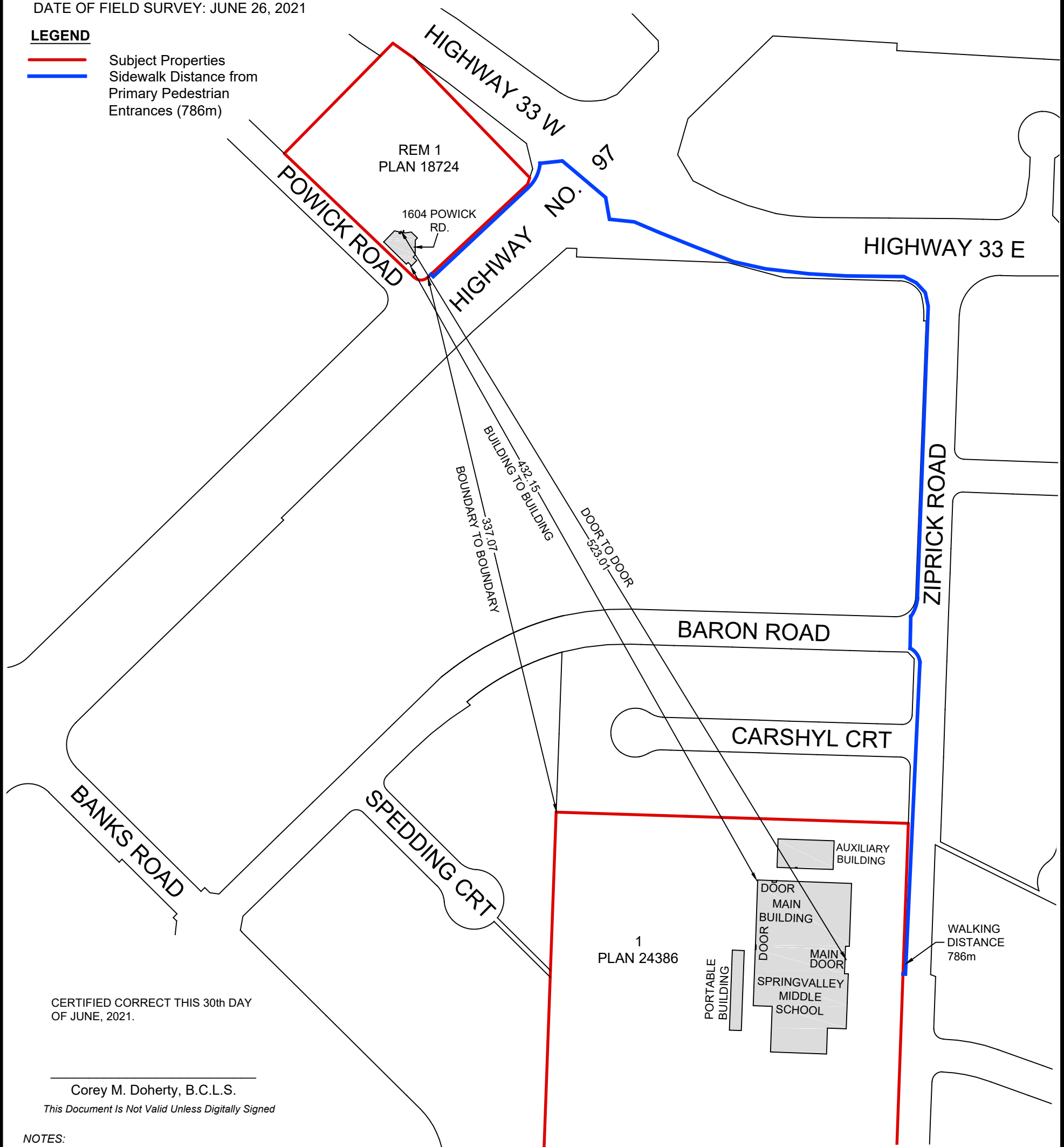
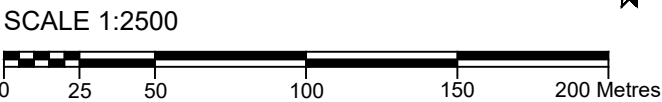
PID: 008-230-099 (REM LOT 1 PLAN 18724)
PID: 005-948-771 (LOT 1 PLAN 24386)
CLIENT: KOOTENAY CANNABIS LTD.
CIVIC ADDRESSES:
1604 POWICK ROAD, KELOWNA, BC (REM LOT 1 PLAN 18724)
350 ZIPRICK ROAD, KELOWNA, BC (LOT 1 PLAN 24386)

HORIZONTAL COORDINATE SYSTEM: UTM 11 NAD83(CSRS)

DATE OF FIELD SURVEY: JUNE 26, 2021

LEGEND

- Subject Properties
- Sidewalk Distance from Primary Pedestrian Entrances (786m)



CERTIFIED CORRECT THIS 30th DAY
OF JUNE, 2021.

Corey M. Doherty, B.C.L.S.

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NOTES:

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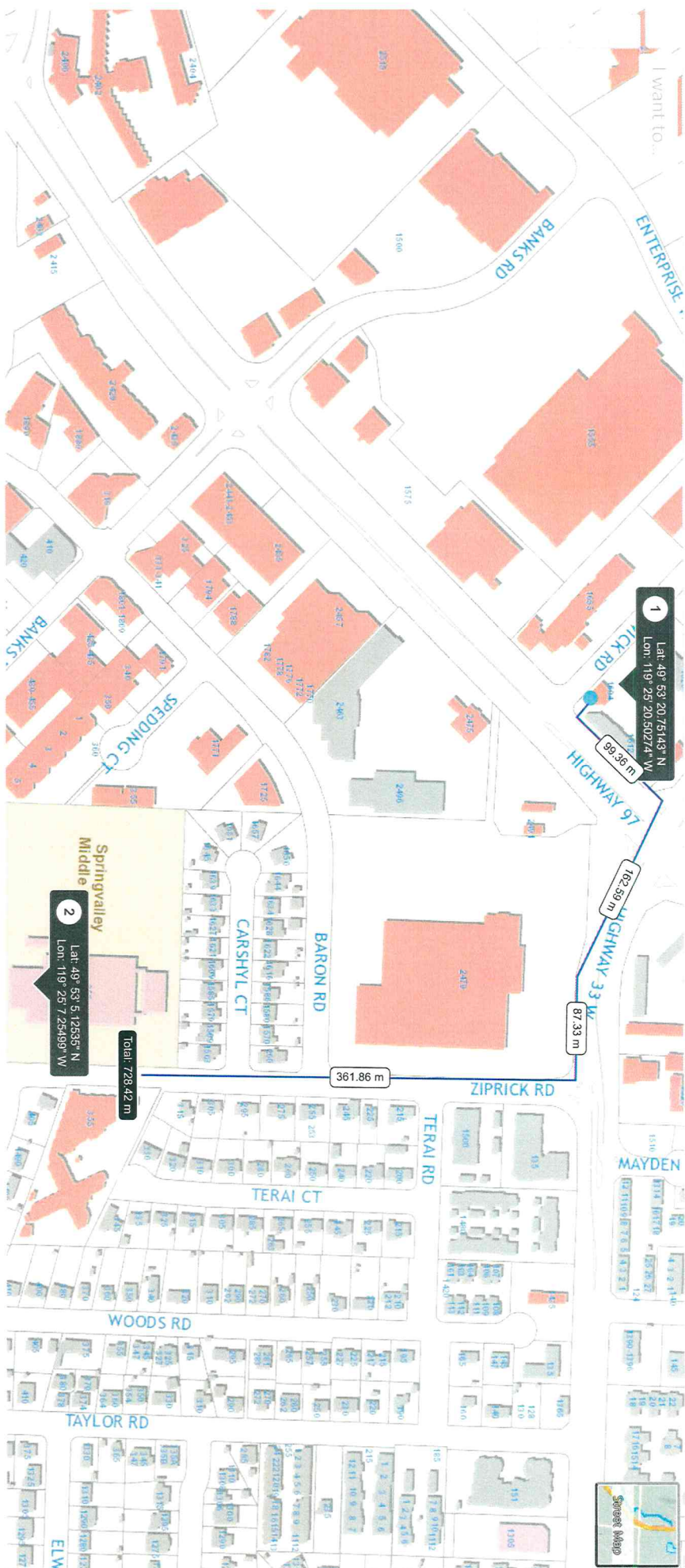


File: 2101210R1 Date: 2021-06-30
Drafted by: EC Checked by: CMD

City of Kelowna

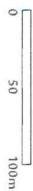
- Tools Draw and Measure Identify and Query Tools Disclaimer and Help

- Point Text Line Freehand Ellipse Circle Polygon Rectangle Plot Coordinates Distance Area Line Edit Erase Clear Export Drawings

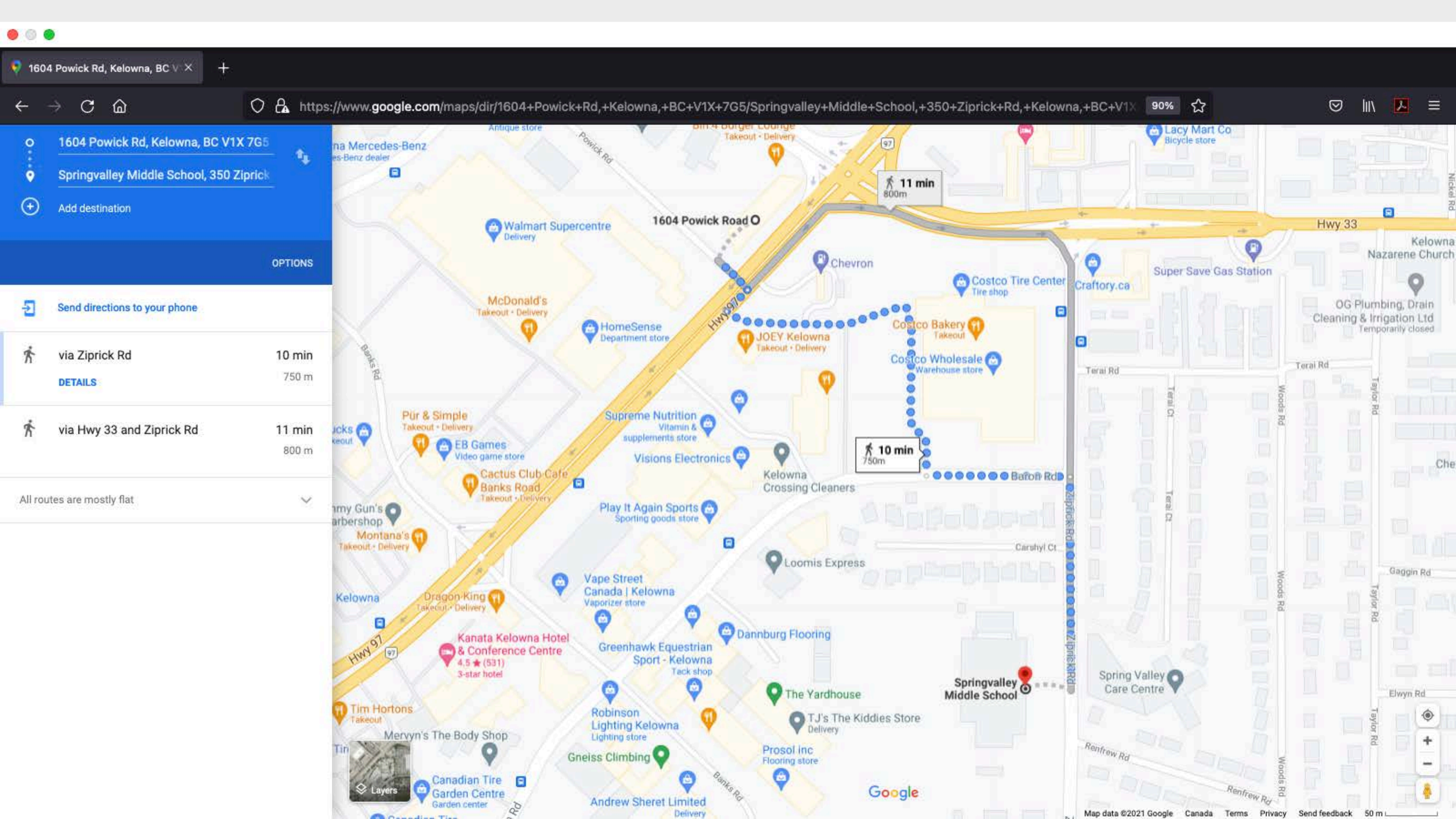


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Scale 1: 3,000



1604 Powick Rd, Kelowna, BC V1X 7G5

Springvalley Middle School, 350 Ziprick

Add destination

OPTIONS

Send directions to your phone

via Ziprick Rd 10 min 750 m
DETAILS

via Hwy 33 and Ziprick Rd 11 min 800 m

All routes are mostly flat

1604 Powick Road

11 min 800m

10 min 750m

Springvalley Middle School

Spring Valley Care Centre

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