



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, MARCH 19, 2019**

SUBJECT **Temporary Use Permit for Lot 4, Section 47, Otter District, Plan VIP52344 – 7861 Tugwell Road**

ISSUE

A request has been made for a temporary use permit to allow the proposed expansion of a home based microbrewery in the Rural Residential 2 (RR-2) zone.

BACKGROUND

The 1.0 ha property is located at 7861 Tugwell Road in Otter Point (Appendix 1) and is zoned Rural Residential 2 (RR-2) under the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040. The property fronts onto Tugwell Road to the east, and other RR-2 zoned properties to the east, west and south.

The Home Based Business Category 3 (Home Industry) regulations specify that home industries are restricted to lots over one hectare. The subject property is slightly greater than one hectare and has been the site of a home based microbrewery in accordance with the regulations. The owner now requires additional floor area to expand the operation in response to market demand. Changes include moving the sales area to a currently unused portion of the building and expanding the brewing operation to include the area currently used for sales. Two outdoor, covered storage areas for refrigeration equipment, an air compressor, forklift, empty kegs and other brewery equipment would also be added.

The current operation occupies an indoor floor area of 59.4 m² (640 sq. ft.) within an accessory building. The proposed expansion would increase the indoor floor area to 96.7 m² (1,040 sq. ft.), and create 82 m² (884 sq. ft.) of covered, outdoor storage (Appendix 2). The Home Based Business regulations limit the area devoted to the home industry to 60 m² (645 sq. ft.) or 40% of the area of the dwelling, whichever is less; therefore, the property would either need to be rezoned, or the owner would need to obtain a temporary use permit to allow the expansion. The home based business regulations place no limitation on the total area that may be used for outdoor storage.

In response to market demand and the limitations of the home based business regulations, the owner has applied for a temporary use permit to authorize the proposed expansion, with the intention of finding appropriately zoned industrial land within the next several years.

The owner has been issued a Manufacturer's Brewing Licence with Picnic Area endorsement (Appendix 3) from the Liquor and Cannabis Regulation Branch. The Picnic Area endorsement allows the operator to host up to 30 persons on the property for the purpose of consuming products outdoors.

At its meeting on November 20, 2018, the Juan de Fuca Land Use Committee directed staff to proceed with referral of the application to the Otter Point Advisory Planning Commission (APC) and to agencies for comment. Referral comments are included in Appendix 4.

Staff have prepared temporary use permit TP000009 (Appendix 5) for consideration.

ALTERNATIVES

Alternative 1:

That the Land Use Committee recommends to the Capital Regional District (CRD) Board:

- a) That the referral of Temporary Use Permit TP000009, directed by the Juan de Fuca Land Use Committee on November 20, 2018, to the Otter Point Advisory Planning Commission, BC Hydro, District of Sooke, Island Health, the Ministry of Transportation and Infrastructure, the Ministry of Public Safety and Solicitor General – Liquor and Cannabis Regulation Branch, the RCMP and T'Sou-ke First Nation, be approved and the comments received;
- b) That Temporary Use Permit TP000009, to allow the expansion of a home based microbrewery in the Rural Residential 2 (RR-2) zone, on Lot 4, Section 47, Otter District, Plan VIP52344, be approved; and

- c) That a covenant be registered prior to issuance of the permit pursuant to Section 219 of the *Land Title Act* to permit the temporary use for the period of the permit. The covenant shall also include an agreement by the owner to indemnify and save harmless the CRD against all costs and expenses incurred by the CRD, in default by the owner, in the conversion, demolition or removal of the temporary use, and/or legal costs incurred in pursuing such legal remedies as the CRD sees fit.

Alternative 2:

That the agency referral comments and public submissions be received, and that Temporary Use Permit TP000009 be denied.

Alternative 3:

That more information be provided by staff.

LEGISLATIVE IMPLICATIONS

Section 492 of the *Local Government Act (LGA)* authorizes local government to issue temporary use permits within areas designated by the Official Community Plan (OCP). Temporary use permits may be issued throughout the Otter Point OCP area as outlined in Bylaw No. 3819 and in accordance with Sections 493 to 497 of the *LGA*.

PUBLIC CONSULTATION IMPLICATIONS

CRD Bylaw No. 3885, Juan de Fuca Development Applications Procedures Bylaw, states that a notice of intent must be mailed to the owners and occupants of land adjacent to the site under consideration within a distance of not more than 500 m.

If a local government proposes to pass a resolution to issue a temporary use permit, it must also give notice in accordance with Section 494 of the *LGA*. A public notice of intent to issue temporary use permit TP000009 will be published in the Sooke News Mirror prior to the CRD Board meeting at which the resolution to issue the permit will be considered.

REFERRAL COMMENTS

Referrals were sent on November 26, 2018, to 7 agencies, the Otter Point APC and to appropriate CRD departments. Comments are noted below and included in Appendix 4.

CRD Bylaw Enforcement advised that the business is currently open to the public from Wednesday to Sunday from 12:00-6:00 pm, which is not in compliance with the home based business regulations. They noted that despite this, they had not received any complaints from the neighbours. They recommended that consideration be given to whether or not an expanded operation might lead to future nuisance complaints.

Island Health stated that the onsite septic system must be able to handle the additional daily flow due to the proposed expansion and that the homeowner must obtain a letter from an Authorized Person (AP) under the *Sewerage Regulations* confirming septic system capacity.

MoTI noted that the 7861 Tugwell Road falls outside of the controlled access area (800 m of a controlled access highway). Although a response is not required from the MoTI, the Ministry asked that consideration be given to the applicant obtaining a commercial access permit from the MoTI for the access onto Tugwell Road in order to maintain the integrity of the road in conjunction with the property's use.

The Otter Point APC considered the application on January 22, 2019, and 5 members of the public were present at the meeting. The APC asked questions of the applicant regarding licencing and provincial regulations, water resources and client base. The applicant responded that the brewery is regulated by the BC Liquor & Cannabis Regulation Branch and by Island Health, that water samples are provided to Island Health on a weekly basis, that water is sourced either from a well on the property or via a truck during the summer, and that the majority of the clients are local, except in the summer when up to 50% are tourists. A member of the public stated no objection to the application and commented that the business is an asset and that the owner is respectful of water resources. The Otter Point APC made the following motion:

MOVED by Bud Gibbons, **SECONDED** by Anne Miller that the Otter Point APC supports Temporary Use Permit TP000009.

CARRIED

PLANNING ANALYSIS

The subject property is designated as Settlement Area 1 under the Otter Point OCP, Bylaw No. 3819. In accordance with Section 4.1(b), the Settlement Area 1 designation supports industrial uses on lands zoned industrial, as well as temporary industrial uses with a valid temporary use permit on non-industrial zoned lands. The designation also supports home based business uses that are compatible with the community's character, including having minimal traffic, parking, noise or nuisance impacts.

The Otter Point OCP directs that the following should be considered during the evaluation of a temporary use permit application:

- The use must be clearly temporary or seasonal in nature.
- The use should be compatible with adjacent uses.
- The potential impact of the proposed use on the natural environment.
- The intensity of the proposed use.
- The opportunity to conduct the proposed use on other land in the Plan area.
- Remedial measures to mitigate any impact to the natural environment.

The existing microbrewery operation has operated in its present location since 2017 under the Home Based Business Category 3 (Home Industry) regulations. Based on the size of the dwelling, the regulations restrict the area devoted to the microbrewery to 60 m² (640 sq. ft.), which allows the use to occupy only part of an existing accessory building. While the microbrewery would continue to be operated from the same building, the temporary use permit (Appendix 5) would authorize the use to be carried out at a scale greater than the home based business regulations allow, and occupy the entire 96.7 m² (1,040 sq. ft.) building, as well as 82 m² (884 sq. ft.) of additional outdoor covered storage space.

The owner has obtained a manufacturer's brewing licence with picnic endorsement from the BC Liquor and Cannabis Regulation Branch. The picnic endorsement allows the operator to host up to 30 members of the public. Liquor consumption in the picnic area is restricted to that served or sold from the on-site store and to that registered under the manufacturer's licence. To limit impact on the public road, the permit includes a condition that all parking spaces required for temporary use must be located on the subject property. To limit nuisances caused by the temporary use, the permit includes a condition to restrict nuisances or annoyances caused by noise, odour or unsightliness. The owner has also agreed to restrict the hours of operation of the store and picnic area to 11:00 am to 7:00 pm. As a final condition of the Permit, staff recommend that the owner register a covenant under Section 219 of the Land Title Act, indemnifying and saving the CRD harmless from all costs associated with conversion, demolition or removal of the temporary use.

To date, the Juan de Fuca planning office has received no complaints from neighbouring residents regarding noise, odour or traffic related to the existing use. One letter of support (Appendix 6) was received as a result of public notification of the Otter Point Advisory Planning Commission meeting. Should further expansion of the business be required in the future, the applicant would need to either request an amendment to this permit or find appropriately zoned industrial land.

Given the proposed scale of the use, the lack of complaints from the neighbouring property owners regarding the present operation and the apparent community support expressed through the APC, staff recommend that temporary use permit TP000009 be approved, subject to public notification.

CONCLUSION

The application for temporary use permit TP000009 to authorize the expansion of a home based microbrewery is in keeping with the Otter Point OCP policies. Should further expansion of the business be required in the future, the applicant would need to either request an amendment to this permit or find appropriately zoned industrial land.

Staff recommend that the referral of the application to the Otter Point APC, noted agencies and T'Sou-ke First Nation be approved; that the public submissions and referral comments received; and that temporary use permit TP000009 be approved subject to public notification.

RECOMMENDATIONS

That the Land Use Committee recommends to the Capital Regional District (CRD) Board:

- a) That the referral of Temporary Use Permit TP000009, directed by the Juan de Fuca Land Use Committee on November 20, 2018, to the Otter Point Advisory Planning Commission, BC Hydro, District of Sooke, Island Health, the Ministry of Transportation and Infrastructure, the Ministry of Public Safety and Solicitor General – Liquor and Cannabis Regulation Branch, the RCMP and T'Sou-ke First Nation, be approved and the comments received; and
- b) That Temporary Use Permit TP000009, to allow the expansion of a home based microbrewery in the Rural Residential 2 (RR-2) zone, on Lot 4, Section 47, Otter District, Plan VIP52344, be approved; and
- c) That a covenant be registered prior to issuance of the permit and pursuant to Section 219 of the *Land Title Act* to permit the temporary use for the period of the permit. The covenant shall also include an agreement by the owner to indemnify and save harmless the CRD against all costs and expenses incurred by the CRD, in default by the owner, in the conversion, demolition or removal of the temporary use, and/or legal costs incurred in pursuing such legal remedies as the CRD sees fit;

Submitted by:	Iain Lawrence, MCIP, RPP, Manager, Local Area Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

IL:wm

Attachments:

- Appendix 1: Subject Property Map
- Appendix 2: Site and Building Plans
- Appendix 3: Manufacturer's Brewing Licence
- Appendix 4: Referral Comments
- Appendix 5: Temporary Use Permit TP000009
- Appendix 6: Letter of Support