

Request for Enforcement and Planning Action

Pelee Island Winery, 455 Seacliff Drive

Purpose of Delegation

We, the undersigned residents of Gregory and Emily Avenues, submit this delegation to formally raise serious concerns about the Town of Kingsville’s ongoing failure to enforce its planning approvals and by-laws as they pertain to the Pelee Island Winery (PIW) at 455 Seacliff Drive. This issue is not merely administrative in nature—it is a legal and policy failure with real-world consequences for adjacent residents.

This matter now represents a critical test of the Town’s obligation to uphold the public interest, adhere to the *Planning Act*, and maintain the credibility of its land use planning regime. At stake is the enforceability of the Town’s site plan control system, the integrity of its Official Plan, and the confidence of residents in their municipality’s ability to ensure lawful, compatible development.

Land Use Designation and Policy Context

The lands at 455 Seacliff Drive are designated Highway Commercial under the Town of Kingsville’s 2023 Official Plan. This designation contemplates commercial development that is high-profile, well-designed, and integrated sensitively with its surroundings. The Plan specifically requires that:

“Loading spaces will be designed and located with separation from adjacent residential uses. Extra buffering and noise attenuation measures will be applied on site and in the site plan agreement to mitigate and reduce noise generated by the commercial use.”
(*Town of Kingsville Official Plan, 2023, Section 3.2.3.2*)

These provisions clearly recognize the need to protect residential uses from the adverse impacts of adjacent commercial development. Yet despite this, the current configuration and operations of the PIW site exhibit no meaningful compliance with these requirements.

1. Non-Compliance with Site Plan Control - Legal Breach

Section 41 of the *Planning Act* mandates that municipalities must ensure all development within a Site Plan Control Area conforms precisely to the site plan approved by Council. Where a municipality becomes aware of deviations, it has a statutory obligation to enforce compliance.

In this case, the Town has long been aware of significant deviations from the approved site plan at PIW, including:

- The unapproved construction of a banquet hall, balcony, and loading bays;
- The daily operation of industrial equipment and delivery vehicles adjacent to residential lots;

- An uncontrolled and unpaved parking area linking commercial and residential uses;
- A large commercial HVAC unit emitting continuous mechanical noise, facing residential backyards;
- Headlights, amplified music, and event-related noise spilling into private residential space;
- Recurring nuisance behaviour from event patrons, including trespass, disorderly conduct, and property damage.

These are not isolated incidents; they are persistent, documented, and acknowledged by the municipality. The Ontario Land Tribunal (OLT) has consistently held that municipalities may be found in breach of their planning obligations when they fail to act in the face of such evidence. Under Rule 26 of the *OLT Rules of Practice and Procedure*, the Tribunal may grant relief in cases of municipal inaction where it results in demonstrable harm to adjacent landowners.

This is a textbook case of municipal nonfeasance: a failure to enforce existing approvals, despite clear authority, legal obligation, and evidence of harm.

2. Systemic Deficiencies in the Regulatory Framework

Beyond enforcement, Kingsville's current zoning and by-law framework lacks the necessary safeguards to prevent land use conflict of this nature. The zoning by-law and related instruments fail to:

- Establish enforceable noise and vibration thresholds for mechanical systems;
- Impose lighting controls, including shielding and operational curfews;
- Regulate commercial event conduct, hours of operation, or capacity;
- Require vegetative buffers, setbacks, or transitional land use zones;
- Mandate proactive inspections or apply graduated penalties for violations.

Without these tools, Kingsville remains ill-equipped to manage growing commercial-residential interface conflicts. This is a policy failure that undermines public trust and exposes the municipality to ongoing risk.

3. Real and Actionable Harm - Legal Standing for Tribunal Relief

As a result of enforcement inaction and regulatory gaps, residents continue to suffer harms that are both measurable and actionable under Ontario law, including:

- Chronic sleep disruption, elevated stress, and negative health outcomes;
- Diminished enjoyment and use of private property;
- Encroachment on safety, privacy, and quiet enjoyment;
- Measurable devaluation of property values.

Each of these impacts meets the legal test for private nuisance and supports standing under the OLT's public interest mandate. Should Council continue to delay or decline enforcement, we are

prepared to pursue relief through the Tribunal, supported by photographic evidence, correspondence, site documentation, and legal precedent.

4. Requested Municipal Action

In the spirit of good governance and lawful resolution, we respectfully request the following actions:

Enforcement

- Immediate site inspection and compliance audit of the PIW property;
- Issuance of *Planning Act* enforcement orders to address all site plan violations;
- Enforcement of all applicable by-laws relating to nuisance, parking, lighting, and noise;
- A written compliance strategy and timeline provided to affected residents.

Policy Reform

- A comprehensive review of Kingsville's zoning and site plan control framework to:
 - Introduce enforceable noise and vibration standards;
 - Require lighting controls and curfews;
 - Regulate event capacity, hours, and conduct near residential uses;
 - Mandate transitional land use buffering and setbacks;
 - Apply proactive inspections and progressive penalties for non-compliance.

Public Accountability

- Annual public reporting on site plan enforcement and compliance activities;
- Creation of a centralized complaint registry with tracking and public access.

These actions are well within the Town's legal authority and align with planning best practices across Ontario.

5. Reservation of Rights - Notice of Tribunal Escalation

Should the Town fail to act within a reasonable timeframe, we will initiate proceedings under Rule 26 of the *Ontario Land Tribunal Rules of Practice and Procedure*. The Tribunal has clear jurisdiction to review and compel municipal enforcement where a failure to act results in demonstrable and ongoing harm to residents.

This is not a request for special treatment. It is a respectful assertion of the right to lawful, compatible, and planned development; rights that are enshrined in the *Planning Act*, supported by the 2023 Official Plan, and protected through recourse at the OLT.

We thank Council for its attention to this matter and request a formal written response outlining the Town's intended enforcement measures, timelines, and by-law review process.

Respectfully submitted,

The Pelee Island Winery Neighbours

(including but not limited to):

L.Myers

D. Le

P. Singh

E. Medici

C. Mastronardi

P.Najem

A.Galy

S.Nehme