

# Regulating Cannabis in the Town of Pelham

Prepared for the Cannabis Control Committee

April 14, 2020

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**Appendix 1:** Draft Official Plan Amendment

**Appendix 2:** Draft Zoning By-law Amendment

## 1.0 REPORT PURPOSE

The purpose of this report is to discuss the background relied upon and the land use policies considered in developing draft Official Plan and Zoning By-law amendments dated April 7, 2020 that are intended to regulate cannabis-related uses and industrial hemp-related uses in the Town of Pelham.

These two draft amendments are attached as Appendix #1 and Appendix #2 to this report and are referred to as the Meridian Planning Consultants Official Plan Amendment ('MPC OPA') and Zoning By-law Amendment ('MPC ZBA') for the balance of this report.



### 1.1 DRAFT OFFICIAL PLAN AMENDMENT

The MPC OPA proposes to establish a Cannabis Overlay designation that applies to the Good General Agricultural designation and the Industrial designation as identified on Schedule A: Land Use Plan

of the Town of Pelham Official Plan.

For lands within the Cannabis Overlay, cannabis-related uses and industrial hemp-related uses (indoor and outdoor) would be permitted, subject to certain criteria being satisfied, including the establishment of appropriate setbacks to avoid, minimize and mitigate adverse effects.

In order to trigger the consideration of the criteria, the MPC OPA establishes the requirement for a Zoning By-law amendment to develop a new cannabis-related use or industrial hemp-related use. The MPC OPA also indicates that Site Plan Approval would also be required for such uses.

The Cannabis Overlay designation is not proposed to include lands that are designated Specialty Agricultural in the Town of Pelham Official Plan (Pelham OP) and which are subject to the Greenbelt Plan. The Cannabis Overlay will not apply in this designation primarily because of a combination of topography that is unique to the Greenbelt Plan and its relationship to odour concerns. In other words, the adverse effects from odour from cannabis-related uses and industrial hemp-related uses would be very difficult to avoid, minimize and mitigate as a consequence. This means that an Official Plan amendment would be required, in addition

to a Zoning By-law amendment, to permit these uses within the Specialty Agricultural designation.

The MPC OPA also identifies the studies that are required to support the establishment of a cannabis-related use or industrial hemp-related use to ensure that all potential adverse effects are studied in advance. In this regard, required studies include an Odour Emission and Dispersion Modelling Report, Contingency Odour Mitigation Plan, Light Mitigation Plan, Contingency Light Mitigation Plan, Agricultural Impact Assessment and Traffic Impact Study.

These studies would be in addition to all of the other required studies typically submitted as part of an application for re-zoning. The results of these studies are intended to establish the minimum setback from sensitive land uses to be included in the required site-specific Zoning By-law amendment and may establish a maximum facility size for the use, if it has been determined that the siting of the use can be supported. These studies will also establish minimum separation distances between cannabis-related uses and industrial hemp-related uses, as required.

The MPC OPA also sets out guidelines on what setbacks will be considered as a minimum if a cannabis-related use or an

industrial hemp-related use is proposed through a Zoning By-law amendment, when the aforementioned studies do not call for larger setbacks.

These setbacks are based on best practices and knowledge of the adverse effects currently experienced by residents in the Town. Given that these minimum setbacks are guidelines, they can be increased or decreased based on the merits of an individual application.

Given the known adverse effects experienced by residents of the Town, the MPC OPA lastly indicates that the expansion of existing cannabis-related uses will also require the submission of appropriate studies before they can be considered.

## **1.2 DRAFT ZONING BY-LAW AMENDMENT**

The MPC ZBA has been prepared to implement the MPC OPA. The MPC ZBA indicates that cannabis-related uses and industrial hemp-related uses will not be permitted as-of-right in any zone in the Town. This will ensure that a trigger exists to require the completion of the appropriate studies and the establishment of a setback that relates specifically to the use proposed.

The MPC ZBA establishes two new zones to be added into the Town's Zoning By-law. When a site-specific Zoning By-law amendment is proposed, one of these new zones would be applied, if the application can be supported.

The first zone is the Agricultural – Cannabis (A-CAN) zone. This zone would be applied through a site-specific Zoning By-law amendment to any cannabis-related use or industrial hemp-related use for lands that are within the Good General Agricultural designation in the Pelham OP.

The second zone is the General Industrial – Cannabis (M2-CAN) zone. This zone would also be applied through a site-specific Zoning By-law amendment to any cannabis-related use or industrial hemp-related use for lands that are within the Industrial designation in the Pelham OP.

The MPC ZBA also includes a set of new definitions for cannabis-related and industrial hemp-related uses and a definition of sensitive land use.

The definitions for cannabis-related use and industrial-hemp related use distinguish between indoor and outdoor activities that are authorized by the Cannabis Regulation and the Industrial Hemp Regulation, respectively, under the Cannabis Act.

The sensitive land use definition is the same definition that was included in the Odorous Industries Nuisance By-law 4202(2020) that was adopted by Town Council on March 23, 2020.

The MPC ZBA proposes to add the new Agricultural – Cannabis (A-CAN) zone as a subsection into the section of the Town's Zoning By-law that contains the existing Agricultural (A) Zone provisions.

In the Agricultural Cannabis (A-CAN) zone, the permitted uses include cannabis-related uses (indoor and outdoor) and industrial hemp-related uses (indoor and outdoor). Also included in this subsection are regulations that apply to the permitted uses. Some of the regulations mirror the regulations that currently apply in the Agricultural (A) zone.

However, the majority of the regulations are more restrictive than those that currently apply in the Agricultural (A) zone with these standards intended to minimize the impacts of these uses on adjacent land uses and on the broader community in terms of visual impact. These standards can be reviewed on a case-by-case basis through the review of an application for re-zoning to establish a cannabis-related or industrial hemp-related use.

The MPC ZBA also proposes to add the

new General Industrial – Cannabis (M2-CAN) zone as a subsection into the section of the Town’s Zoning By-law that contains the existing General Industrial (M2) Zone provisions.

In addition to the above, the MPC ZBA also establishes two exception zones in Sections 30-290 and 30-291 to the Town’s Zoning By-law, to address the large existing CannTrust and RedeCan operations in the Town.

These exceptions indicate that only the gross floor area that exists, respectively, on the date that the Zoning By-law amendment is passed is permitted. This effectively means that any expansion of either of the existing uses would require an approval under the Planning Act, with such an approval process requiring some form of public consultation.

It is noted that an exception is not proposed for the third existing cannabis operation as it is within the Niagara Escarpment Commission Development Control Area, as defined by Provincial Regulation, and is not subject to the Town’s Zoning By-law.

### 1.3 REPORT OUTLINE

It is noted that two other reports on regulating cannabis have already been

prepared, one by Town staff and the other by the Cannabis Control Committee.

Town staff presented the Cannabis Land Use Report, dated February 2020 to Council on February 18, 2020 (referred to hereinafter as the ‘Staff Cannabis Land Use Report’). The covering Council Report indicated that the Staff Cannabis Land Use Report serves as the review and study of land use impacts and recommends proposed policy changes and a regulatory framework for cannabis production and related land uses in the context of the Town of Pelham. In this regard, draft Official Plan and Zoning By-law amendments were attached.

Council formed an advisory committee known as the Cannabis Control Committee (CCC) to provide advice to Council, review options provided by the Town’s Community Planning and Development staff and to conduct research. As part of their updates to Council, the CCC has prepared a number of Draft Recommendation Reports to Council. On March 23, 2020, the CCC presented a 3<sup>rd</sup> Draft Recommendation Report on Managing Cannabis Nuisances in the Town of Pelham (referred to hereinafter as the ‘CCC Cannabis Report’). The CCC Cannabis Report covered similar topic areas as the Staff Cannabis Land Use Report, and included a review of regulatory

considerations, public concerns and a brief overview of the planning context. Other sections in the CCC Cannabis Report also spoke to the Odorous Industries Nuisance By-law (adopted by Council on March 23, 2020), Noise Nuisance By-law (future by-law) and Light Nuisance By-law (future by-law).

The primary focus of the CCC Cannabis Report was on how the adverse effects of odour could be dealt with specifically.

Given the above, a considerable amount of background on this planning issue already exists and for this reason, this report is intended to build upon and supplement the work already completed, with a particular focus on providing the supporting rationale for the MPC OPA and MPC ZBA.

On the basis of the above, below is a description of each of the remaining sections in this report.

**Section 2** provides a brief description of the process leading to the preparation of the MPC OPA and MPC ZBA.

**Section 3** provides a summary of the current situation and experiences of the community in the Town of Pelham and provides a summary of key elements of the Staff Cannabis Land Use Report and the

CCC Cannabis Report that were relied upon to prepare the MPC OPA and MPC ZBA.

**Section 4** reviews the Provincial, Regional and local land use policies that were considered in preparing the amendments.

**Section 5** provides a summary of the approach to regulating cannabis-related and industrial-hemp related uses.

## 2.0 BACKGROUND

On October 15, 2018, the Council for the Town of Pelham (Town) passed an Interim Control By-law (ICBL) 4046-2018 that applied to all lands within the municipality, except those that are under the Development Permit Control Area of the Niagara Escarpment Commission. In this regard, the ICBL restricted the following on any land within the Interim Control Area:

*Notwithstanding any other by-law to the contrary, no person shall within the Interim Control Area:*

- (a) Use any land, building or structure for any commercial or industrial cannabis purpose whatsoever, except for a use that lawfully existed on the date of passage of this By-law as long as it continues to be used for such purpose; or*
- (b) Be permitted to construct, alter or expand any building or structure for*

*any commercial or industrial cannabis purpose whatsoever, save and except where such construction, alteration or expansion is a continuation of a lawful use in existence on the date of passage of this By-law.*

The ICBL had the effect of restricting the use of all land within the municipality for any cannabis-related land uses for a period of one year. On September 23, 2019, the ICBL was extended to July 15, 2020. During this time, it was intended that the municipality would develop an approach to regulating cannabis.

Following the passage of the ICBL, Town planning staff began conducting research on best practices to inform an approach to regulating cannabis in the Town with the intention of bringing forward amendments to the Official Plan and Zoning By-law to implement the recommended approach.

On September 10, 2019, a statutory Public Meeting was held to consider amendments to the Town's Official Plan and Zoning By-law prepared by the Town to regulate cannabis-related uses. In addition, the following draft by-laws were presented as part of a comprehensive approach to regulating cannabis and particularly, the adverse effects from cannabis-related uses:

- A draft amended Fence By-law;
- A draft Fortification By-law;
- A draft Cannabis Nuisance By-law; and,
- A draft Odour By-law.

It was noted in the statutory Public Meeting staff report that Council had also previously made changes to the Site Plan Control By-law and was in the process of updating the Development Charges By-law that would also require development charge fees for future cannabis facilities.

As mentioned in the previous section, Council formed an advisory committee known as the Cannabis Control Committee (CCC) to provide advice to Council, review options provided by the Town's Community Planning and Development staff and to conduct research. The purpose of the CCC is as follows:

*The Town of Pelham Cannabis Control Committee shall be an advisory committee providing advice to Council on opportunities to mitigate against adverse land use impacts of cannabis production facilities and cannabis related uses in the Town.*

The CCC was charged with the following objectives:

*This Cannabis Control Committee is an*

*advisory committee that provides advice on strategies to mitigate against adverse land use impacts from cannabis production facilities including, but not limited to:*

- *Odour impacts*
- *Light impacts*
- *Traffic and parking impacts*
- *Impacts on adjacent agricultural lands and properties*
- *Stormwater management*
- *Safety, health and environmental concerns*
- *Other nuisances and loss of enjoyment*
- *Financial costs to the community*

*The Cannabis Control Committee will review options provided by staff and conduct research related to best practices of other jurisdictions to address these land use impacts and will assist with the development of appropriate land use policies, regulations and procedures for better managing the impacts of cannabis producers in the Town of Pelham.*

On January 13, 2020, the Town of Pelham retained Meridian Planning Consultants (MPC) to provide professional planning advice on the planning approach and planning instruments being proposed to regulate cannabis within the community. Since being retained, MPC:

- Reviewed all available materials including the Staff Cannabis Land Use Report (which included a draft OPA and ZBA);
- Reviewed all available materials provided by the CCC and the Town;
- Reviewed other best practices;
- Met with the CCC on March 11, 2020 and then met by phone on March 25, 2020; and,
- Prepared the MPC OPA and MPC ZBA in consultation with the CCC that is attached to this report.

It is anticipated that the MPC OPA and MPC ZBA will be circulated for public and agency comments in the spring of 2020 before being finalized. As a result of this circulation and the consideration of comments made through that process, changes may be made to the MPC OPA and MPC ZBA. If changes are made, it is anticipated that an addendum report would be prepared that provides the rationale for any changes made.

## 3.0 CURRENT SITUATION

### 3.1 OVERVIEW

There are currently three indoor cannabis operations that exist within the Town of Pelham. The two largest facilities are the RedeCan facility on Foss Road, which has an approximate floor area of 37,191 m<sup>2</sup> and the CannTrust facility on Balfour Road, which has an approximate floor area of 72,581 m<sup>2</sup>.



CannTrust Facility on Balfour Road (Source: Google)

At the time the above-mentioned operations were established, the Town's Official Plan and Zoning By-law were silent on cannabis; meaning that the uses were considered agricultural uses and permitted as such.

Because of this, and since the licence was granted at the Federal government level,

no public consultation was required.



RedeCan Facility on Foss Road under construction (Source: St. Catharines Standard)

As mentioned in the previous section, Town staff prepared the Staff Cannabis Land Use Report and the CCC prepared a separate CCC Cannabis Report. Both reports indicated that odours from the existing cannabis production facilities have been a consistent and recurring problem in the Town of Pelham. In addition, the Staff Cannabis Land Use Report indicated that:

*The intensity and distance of odours are greatly influenced by weather, wind conditions and also dependent on the number and type of plants, stage of growth, odour mitigation technology and building construction. The potential for odour impacts also varies significantly depending on the activities taking place. For example, a facility for propagation of cannabis plants would not be associated with significant odours while a facility that is growing plants to the flowering stage*

*and doing processing has the potential for significant odour impacts*

In addition to the above, the following was stated in the Staff Cannabis Land Use Report:

*The experience in the Town of Pelham has been that the most common odour control technologies employed by the cannabis production facilities are not effective or not consistently effective which has resulted in negative impacts to residents. Cannabis production is a new and evolving industry and a number of odour control technologies are still being tested or are being applied to cannabis for the first time. Further some of the odour control technologies being employed, such as the use of masking agents, are also offensive to sensitive uses. The technology does exist to predict odours, model the areas impacted and test odour mitigation technologies. This work is commonly done in industrial applications.*

The CCC Cannabis Report also documented the concerns raised by residents within the Town, dating back to the summer of 2018. The CCC Cannabis Report included the following summary list of concerns raised by residents of the area and these included:

- *Loss of precious specialty crop*

*agricultural lands;*

- *Skyglow causing severe light pollution;*
- *Skunk-like odour;*
- *Heavy traffic and noise disrupting their quiet country streets and neighbourhoods; and,*
- *Industrial-like facilities disrupting their picturesque country streets and neighbourhoods.*



Ventilation equipment on east side of CannTrust Facility  
 (Source: Google)

Both of the reports acknowledged the unique context of the Town of Pelham. In this regard, the Town is known for its rolling topography and the presence of the Fonthill Kame and Niagara Escarpment. In turn, these features form the highest elevation in Niagara Region in a manner that influences the climate by providing a buffer from southwesterly winds. As a result, these features create a scenario that is favourable for growing of crops like tender fruit.

It is for this reason that the northern two-

thirds of the Town are subject to the Greenbelt Plan and identified as part of the Niagara Peninsula Tender Fruit and Grape Area by the Greenbelt Plan.

The Staff Cannabis Land Use Report also elaborated on the phenomenon of cold-air-runoff winds that occur when air comes in contact with the land, cools, flows and pools into lower areas. In this regard, it was noted in the report that this has a direct impact on the concentration of odours in the area as it is influenced by topography.

In addition to the above, the Staff Cannabis Land Use Report also noted that the majority of the agricultural properties in the Town are less than 40 hectares in size. Given that the majority of the agricultural properties are also the site of a dwelling, that means that there are a number sensitive receptors in the agricultural areas.

In this regard, a sensitive receptor is a residential use, school, day care, park, church, campground and community centre. The Staff Cannabis Land Use Report indicated that there are approximately 1,674 sensitive receptors in the agricultural area.

### 3.2 STAFF CANNABIS LAND USE REPORT

On February 18, 2020, Town staff presented the Staff Cannabis Land Use Report to Council.



The Staff Cannabis Land Use Report included a review of the existing regulatory framework that applies to cannabis uses. Included in this section of the Staff Cannabis Land Use Report was an overview of the Federal and Provincial permissions and requirements, personal recreational production, personal medication production, commercial licenses for cannabis and industrial hemp licenses.

The Staff Cannabis Land Use Report also provided a review of the planning policy

framework that focused on the impact of these uses on the rural agricultural area in the Town of Pelham. The following legislation was also reviewed in the report: Planning Act, Provincial Policy Statement 2014, Greenbelt Plan 2017, Niagara Escarpment Plan 2017, the Growth Plan for the Greater Golden Horseshoe 2019, the Niagara Region Official Plan 2014 and the Farming and Food Production Protection Act 1998.

In addition to the above, the Staff Cannabis Land Use Report included a municipal best practices review of 12 municipalities in Ontario and one municipality in the Province of British Columbia that had zoning provisions that apply to cannabis production. The best practices review included an overview of which zones permitted cannabis uses, identified the setbacks that apply and any other relevant provisions.

The Staff Cannabis Land Use Report also included a detailed review of the land use impacts that were considered as it related to land use compatibility. In order to deal with these impacts it was recommended that the outdoor storage, growing and production of cannabis not be permitted as-of-right as a consequence and that a site-specific Zoning By-law amendment and Site Plan Control be required for new outdoor cannabis operations. In addition,

it was recommended that a 150-metre setback from sensitive uses be established for greenhouses in the Zoning By-law as well; however, new greenhouses would not require a re-zoning if they met the standards set out in the Zoning By-law.

Below is a summary of the land use impacts reviewed in the Staff Cannabis Land Use Report and the recommendation that were developed to address them.

1. **Odour and Air Quality:** The Staff Cannabis Land Use Report noted that this is the most common land use impact being experienced in the Town and recommended that a minimum setback of 150 metres for new greenhouses from sensitive receptors be applied.
2. **Supplemental Lighting:** The Staff Cannabis Land Use Report indicated that light pollution has been a major land use impact associated with cannabis production in greenhouses. The concerns with light pollution range from a negative impact to residents enjoyment of their property in the evenings and impacts to outdoor crops. The report recommended that light mitigation systems be installed and operated to reduce off-property impacts and that a light control,

- maintenance, monitoring and contingency plan be prepared where supplemental lighting is proposed.
3. **Noise:** The Staff Cannabis Land Use Report stated that cannabis cultivation activities are not generally associated with significant noise impacts, however the facilities are using natural gas generators as a primary source of power for greenhouses that has a negative impact to nearby sensitive receptors. The report recommended that a minimum setback of 150 metres for greenhouses from sensitive receptors be applied and the requirement for a noise study be determined on a case-by-case basis.
  4. **Traffic:** The Staff Cannabis Land Use Report noted that cannabis production facilities have the potential to generate significant traffic depending on the type of operation, number of employees, shifts, deliveries and shipments. It was further acknowledged that the Town has received complaints that rural roads are not able to accommodate the volume of traffic associated with existing operations. The report therefore recommended that a traffic study be required as part of a complete application and that Site Plan Control also be required.
  5. **Groundwater:** The Staff Cannabis Land Use Report indicated that cannabis production facilities are generally significant water users, as water is needed for irrigation of plants, cleaning and disinfecting, processing activities and for employee use. The areas where cannabis production is permitted under current planning policies are not serviced, which means that the water supply comes from sources such as wells, ponds or cisterns. With this in mind, the report recommended that a servicing report, waste management report and Site Plan Control be required under the complete application requirements currently contained in Section E3.1 of the Official Plan.
  6. **Property Value:** The Staff Cannabis Land Use Report also reviewed complaints from residents that property values were being negatively impacted by the location of cannabis production facilities. In this regard, the report referenced recent reports from REMAX and the Municipal Property Assessment Corporation (MPAC) that did not show this impact. However, the report noted that a number of recommendations have been made to

deal with land use compatibility between sensitive land uses and cannabis production facilities to address negative impacts.

7. **Agricultural Land:** The Staff Cannabis Land Use Report referenced concerns that have been raised about the loss of high quality lands to the construction of large greenhouses for cannabis production. The report recognized, from a planning perspective, that the cannabis production and processing is permitted in agricultural areas.
8. **Environmental:** The Staff Cannabis Land Use Report referenced concerns regarding the impacts on environmental or natural heritage features from the development of cannabis production facilities. The report indicated that the recommended approach to require Site Plan approval at the very least for new facilities would allow for environmental impacts to also be considered on a case-by-case basis.
9. **Changing Character in the Rural Agricultural Area:** The Staff Cannabis Land Use Report also referenced concerns about the impact of cannabis production facilities on the existing rural character. In addition to the

proposed 150 metre setback from sensitive receptors, the report also recommended the establishment of a minimum 5 metre landscaped buffer between all lots that permit or contain a sensitive land use and any required security fencing or required parking.

To summarize the proposed changes to the planning framework, the Staff Cannabis Land Use Report recommended that Official Plan policies be created to:

- Require the submission of an Odour Emission Summary, Dispersion Modelling and Mitigation Report that demonstrates no adverse effects on sensitive receptors;
- Require the submission of Odour Control, Maintenance, Monitoring and Contingency Plans;
- Address value-added agricultural uses (cannabis processing) in conformance with the Provincial Policy Statement and Niagara Region Official Plan;
- Require installation and operation of light mitigation systems that reduce off-property impacts; and,
- Require Site Plan Control.

The report also noted that other studies included in Section E.3.1 of the Town's Official Plan enable the Town to request

other studies that address noise, traffic, private servicing, waste management, groundwater and environmental impacts.

### 3.3 CANNABIS CONTROL COMMITTEE CANNABIS REPORT

The primary focus of the CCC Cannabis Report was on how the adverse effects of odour could be dealt with specifically. In this regard, the CCC relied upon the expertise of a local odour expert (Mr. Phil Girard, P.Eng) to provide knowledge on how odour problems can be predicted and the types of studies that could be completed to determine how odour can be mitigated. On this basis, Mr. Girard indicated that:

- *Odour can be quantitatively measured so that it can be managed. The “type” of smell is irrelevant.*
- *Ambient programs can be used to evaluate ongoing compliance.*
- *Industry is already required to prepare Emission Summary and Dispersion Modelling reports that demonstrate compliance with provincial limits.*
- *If a complaint arises, industry is required to develop an abatement plan.*
- *There are MECP protocols for contaminant reporting, odour sampling, analysis and modelling. The Town does*

*not have to re-invent the wheel.*

In addition to the above, it was noted in the CCC Cannabis Report that Pelham’s rolling hills geography and microclimates could cause odour to disperse along unexpected paths in comparison to other flat geographies where odour dispersion prediction is more accurate. In this regard, the rolling hills in the northern two-thirds of the Town are particularly susceptible to the adverse effects from odour.

On the basis of the above, it was recommended that an Emission Summary and Dispersion Modelling Report be prepared in accordance with the Ministry Guidelines.

The Ministry Guidelines are contained within the “Methodology for Modelling Assessment of Contaminants with 10-Minute Average Standards and Guidelines”, Sept 2016, which describes the modelling methodology used in predicting the worst-case odour levels to be expected from a facility. In this regard, the CCC Cannabis Report recommended that this methodology be used as the basis for preparing the Odour Emission Summary and Dispersion Modelling Report.

In addition to the above, a Contingency Odour Plan was also recommended at the

time that an application is made for a Zoning By-law amendment. The purpose of this plan would be to consider additional air filtration systems or other mitigation measures that could be relied upon in the event of future complaints.

### 3.4 APPROACH COMPARISON

While the CCC Cannabis Report did not include recommendations on Official Plan and zoning by-law changes, the CCC made a number of recommendations on policy approaches, with some of those approaches captured in the MPC OPA and MPC ZBA that are the subject of this report.

In this regard, below is a brief overview of the similarities and differences in the draft Official Plan and Zoning By-law amendments prepared by the Town (Town OPA and Town ZBA) and MPC:

1. The Town OPA requires a re-zoning for outdoor cannabis-related uses and industrial hemp-related uses in the Good General Agricultural and Specialty Agricultural designations. The MPC OPA requires both an Official Plan Amendment and re-zoning for outdoor cannabis-related uses in the Specialty Agricultural designation and a re-zoning only in the Good General Agricultural and Industrial designations.
2. The Town OPA and ZBA effectively permit cannabis greenhouses in the Good General Agricultural and Specialty Agricultural designations, subject to meeting a 150-metre setback from sensitive uses (or greater - setback discussed below). The MPC OPA requires both an Official Plan Amendment and re-zoning for indoor cannabis-related uses and industrial hemp-related uses in the Specialty Agricultural designation and a re-zoning only in the Good General Agricultural and Industrial designations.
3. The Town ZBA includes a 150-metre setback for a cannabis greenhouse from a sensitive land use, with that setback potentially being greater based on the recommendations of an odour impact analysis. The MPC ZBA does not include such a setback because a setback for this type of use cannot be established in advance, since the context of every application

is different. Instead, it is proposed in the MPC OPA to establish setback guidelines based on the recommendations made by the CCC and require a re-zoning, through which an appropriate setback would be determined. In this regard, the recommended minimum setback guideline for sensitive uses is 300 to 500 metres, which can be higher or lower depending on future study.

4. While the Town OPA does list the studies that would be required to support a future application, the MPC OPA spells out the requirements in much more detail. In addition, the MPC OPA adds an agricultural impact assessment and a traffic impact study to the requirements and clearly indicates that the known impacts from existing cannabis-related uses be factored into the odour analysis component.
5. The Town ZBA includes a 500-metre separation distance between cannabis greenhouses. The MPC OPA establishes a number of different separation distances based on the nature of the use that range from 500 metres to 4,000 metres for larger operations. In addition, the MPC OPA provides additional direction on how

the setback is to be measured.

6. The Town ZBA also proposed to reduce the permitted lot coverage for all greenhouses to 30% instead of 60% and to 40% instead of 70% for greenhouses that were developed in conjunction with a permitted use. The MPC ZBA reduces the lot coverage for cannabis greenhouses only to 30% since it would not be appropriate as part of a process that reviews the impacts of cannabis to make a substantial change to a standard affecting uses that are not related to cannabis in any way.
7. The MPC OPA also includes policies that require consideration of whether any cannabis-related use or industrial-hemp related use other than cultivation is an agriculture-related use as per the Provincial Policy Statement using guidelines prepared by the Province. The Town OPA does not contain such a policy requirement.

As a general comment, the inclusion of a setback in the zoning by-law as suggested in the Staff Cannabis Land Use Report is not supported since it is very likely that the setback would be too low, based on the experience of the CCC and local residents. In addition, the Town ZBA indicates that

the setback could be higher based on the submission of an odour study. In this regard, it is the opinion of MPC that a zoning by-law cannot include a standard that is subjective and open to interpretation.

## 4.0 POLICY REVIEW

The purpose of this section of the report is to provide an overview of the legislation and land use policies that were considered by MPC to support the MPC OPA and MPC ZBA.

### 4.1 THE FEDERAL CANNABIS ACT AND REGULATIONS

On April 13, 2017, the Government of Canada introduced Bill C-45 (the Cannabis Act) in the House of Commons. Based in large part on the advice provided by the Task Force on Cannabis Legalization and Regulation, the Cannabis Act created the foundation for a comprehensive national framework to provide restricted access to regulated cannabis, and to control its production, distribution, sale, importation, exportation, and possession.

Following parliamentary review, the Cannabis Act received royal assent on June 21, 2018 and it became law on October 17, 2018.

As set out in section 7 of the Cannabis Act, the purpose of the Cannabis Act is to protect public health and public safety and in particular to:

- *Protect the health of young persons by restricting their access to cannabis;*
- *Protect young persons and others from inducements to use cannabis;*
- *Provide for the legal production of cannabis to reduce illegal activities in relation to cannabis;*
- *Deter illegal activities in relation to cannabis through appropriate sanctions and enforcement measures;*
- *Reduce the burden on the criminal justice system in relation to cannabis;*
- *Provide access to a quality-controlled supply of cannabis; and,*
- *Enhance public awareness of the health risks associated with cannabis use.*

In order to achieve the above, the Cannabis Act:

- *Creates a general control framework for cannabis by establishing a series of criminal prohibitions, while providing for exceptions or authorizations to permit persons to engage in otherwise prohibited activities;*
- *Provides for the oversight and licensing of a legal cannabis supply chain;*

- *Provides for licences and that will set parameters for the operation of a legal cannabis industry;*
- *Indicates that Federal and Provincial/territorial governments will share responsibility for the oversight and licensing of the cannabis supply chain and that the federal Minister of Health will be responsible for licensing, among other activities, the production of cannabis (cultivation and processing), while Provincial and territorial governments can authorize the distribution and retail sale of cannabis in their respective jurisdictions; and,*
- *Establishes national standards to protect public health and safety through the creation of a number of legal requirements that are intended to protect against the public health and public safety risks associated with cannabis.*

The Federal Cannabis Act and Regulation SOR-2018-144 ('the Cannabis Regulation') came into effect in 2018 to legalize recreational cannabis production. There are six classes of licenses related to the production of cannabis and related activities.

In addition to the above, the Industrial Hemp Regulation SOR-2018-145 ('the Industrial Hemp Regulation') also came

into effect in October 2018. The Industrial Hemp Regulation applies to low-THC cannabis for industrial use that is grown under controlled circumstances. There is one type of license related to the production of industrial hemp and related activities.

It does not appear as if there is any requirement for local municipal support before a licence is issued. In this regard, the Regulation only appears to require an applicant to provide written notice to municipalities and others as per Section 7(1) of the Regulation reproduced below:

*Before submitting an application to the Minister for a licence for cultivation, a licence for processing or a licence for sale that authorizes the possession of cannabis, the person that intends to submit the application must provide a written notice to the following authorities in the area in which the site referred to in the application is located:*

- The local government;*
- The local fire authority; and*
- The local police force or the Royal Canadian Mounted Police detachment that is responsible for providing policing services to that area.*

In addition to the above, licence holders

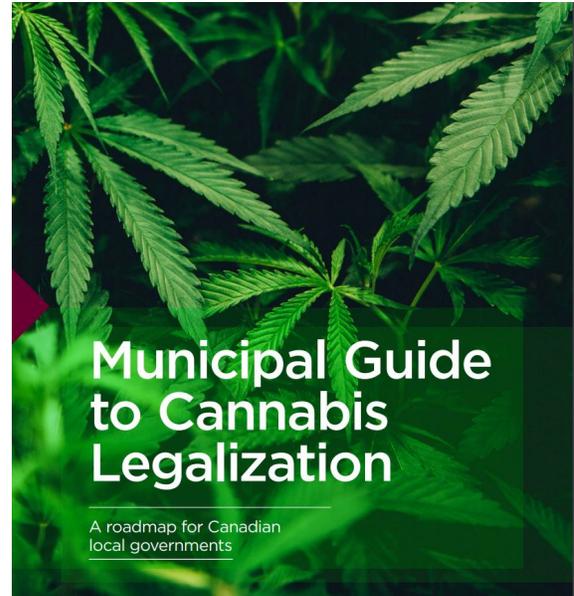
are also required to notify the local government when a new licence has been issued as per Section 35(1) of the Regulation as set out below:

*A holder of a licence for cultivation, a licence for processing or a licence for sale that authorizes the possession of cannabis must, within 30 days after the issuance, amendment, suspension, reinstatement or revocation of the licence, provide a written notice to the local authorities referred to in paragraphs 7(1)(a) to (c) in the area in which the site set out in the licence is located and provide a copy of the notice to the Minister.*

In the spring of 2018, the Federation of Canadian Municipalities (FCM) released the 'Municipal Guide to Cannabis Regulation' ('FCM Guide'). In this regard, the Guide indicates the following:

*If a business obtains a federal licence under the Cannabis Act, it will not mean that the company will not be subject to provincial/territorial or local government regulations dealing with land use management. Locally, this constitutional arrangement can provide municipalities with the authority to prohibit particular land uses. We recommend that municipalities consult their individual provincial/territorial enabling land use laws for specific direction. But generally, there is*

*no obligation for municipalities to permit cannabis cultivation in specific areas.*



Notwithstanding the above need to consult 'provincial land use laws', the FCM Guide indicates the following:

*Local governments are entitled to interpret enabling legislation broadly enough to address emerging issues and respond effectively to community objectives. However, they cannot extend its scope beyond what the wording of the legislation can reasonably bear. Some enabling legislation across Canada may allow local governments to deal with particular uses on a "conditional use" or "direct control" basis, which might be particularly appropriate in the case of new land use activities (such as those associated with cannabis) whose impacts are not well-*

*understood at the outset.*

It should be noted that 'conditional use' and 'direct control' are not components of Ontario's land use planning regime. In any event, the FCM Guide concludes the following:

*None of the land use activities that are expected to result from the legalization of cannabis are likely to diverge from the existing enabling legislation and interpretations noted above. The land use activities contemplated relative to the Cannabis Act are similar to activities associated with other consumable commodities such as food, beverages and tobacco.*

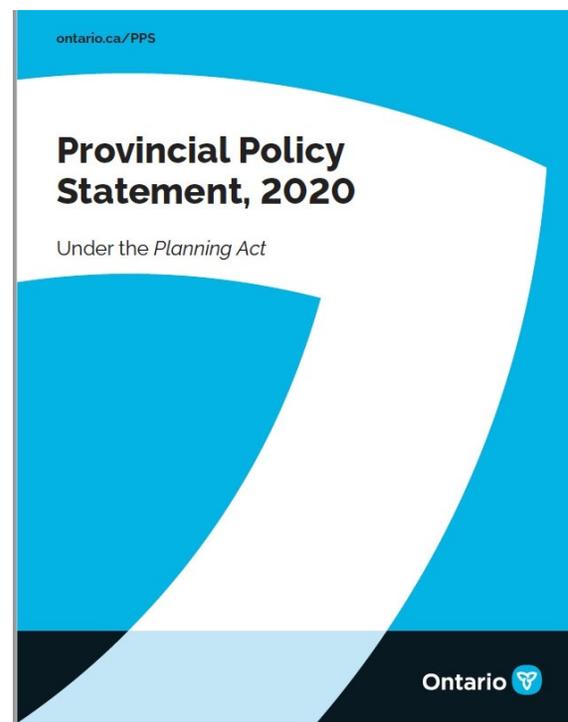
As a consequence of the above, and in the absence of other countervailing views on the matter, it is the opinion of MPC that a local municipality can regulate cannabis-related land uses much like any other land use.

This means that while there is no municipal role in the licensing process, there would still be a requirement for licence holders to comply with local zoning controls. Since local zoning controls should be based on a policy framework in an Official Plan, this means that Official Plan policies can also be enacted to control the location of the use.

## **4.2 PROVINCIAL POLICY STATEMENT 2020**

The purpose of this section is to review the relevant policies in the Provincial Policy Statement that were considered in preparing the MPC OPA and MPC ZBA.

It is noted that a new Provincial Policy Statement (PPS 2020) comes into effect on May 1, 2020. In this regard, the policies contained in the PPS 2020 are reflected within this section.



### **4.2.1 Cannabis Cultivation**

The MPC OPA and MPC ZBA recognize cannabis cultivation as an agricultural use. It is recognized that the Town OPA and ZBA

also do the same.

The PPS 2020 includes the following definition of 'agricultural use':

*Agricultural Use: means the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.*

The PPS 2020 does not make any distinctions between the types of crops that are grown, as long as whatever is produced is harvestable, which means that the cultivation of cannabis would be an agricultural use, whether that cultivation occurs indoors or outdoors.

#### **4.2.2 Classification of Agricultural Lands in Pelham**

The PPS 2020 divides the Province into two general land use categories with one being urban 'settlement areas' and the second being 'rural area', with rural areas including rural settlement areas, rural lands, prime agricultural areas, natural

heritage features and areas and resource areas. Rural lands and prime agricultural areas are considered to be mutually exclusive, with rural lands not encompassing prime agricultural areas. Within the prime agricultural area, there exists another category - specialty crop area, where specialty crops are predominantly grown, such as tender fruits, grapes, other fruit crops, vegetable crops, greenhouse crops and crops from agriculturally developed organic soil are grown.

In the Town of Pelham, lands not within rural settlement areas and which are not subject to the Niagara Escarpment Plan are designated by the Pelham Official Plan as Specialty Agricultural (which are considered to be specialty crop areas and identified as the Niagara Peninsula Tender Fruit and Grape Area by the Greenbelt Plan) and Good General Agricultural (which is considered to be a prime agricultural area). Other lands are designated for environmental protection purposes.

Section 2.3.1 of the PPS 2020 states the following with respect to the use of land in prime agricultural areas:

*Prime agricultural areas shall be protected for long-term use for agriculture.*

The above means that prime agricultural areas shall be protected for long term use for all forms of agriculture, including the cultivation of cannabis. Section 2.3.3.2 of the PPS 2020 then states the following, which recognizes the primacy of agriculture in prime agricultural areas:

*In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.*

The above means that all types, sizes and intensities of agricultural uses are permitted, and there is no distinction made in this policy on whether the crop is grown indoors or outdoors.

The MPC OPA also recognizes that the cultivation of cannabis or industrial hemp, indoors or outdoors, is an agricultural use. However, the MPC OPA requires that cannabis or industrial hemp cultivation be subject to review through a Planning Act process to ensure that the known adverse effects of cannabis or industrial hemp cultivation are assessed before the use is established.

#### **4.2.1 Land Use Compatibility**

Section 1.2.6.1 of the PPS 2020 addresses major facilities and sensitive land uses and it reads as follows:

*Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.*

The three definitions in Section 1.2.6.1 are below:

**Major facilities:** *means facilities which may require separation from sensitive land uses, including but not limited to airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.*

**Sensitive land uses:** *means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care*

*centres, and educational and health facilities.*

**Adverse effects:** *as defined in the Environmental Protection Act, means one or more of:*

- a) Impairment of the quality of the natural environment for any use that can be made of it;*
- b) Injury or damage to property or plant or animal life;*
- c) Harm or material discomfort to any person;*
- d) An adverse effect on the health of any person;*
- e) Impairment of the safety of any person;*
- f) Rendering any property or plant or animal life unfit for human use;*
- g) Loss of enjoyment of normal use of property; and*
- h) Interference with normal conduct of business.*

Based on the definitions above, a cannabis-related use would be considered a 'major facility'; since any 'facility' that may require separation from sensitive land uses would be considered a 'major facility' according to the definition of such.

While it is recognized that cannabis and industrial hemp cultivation is an

agricultural use, this does not mean that it cannot also be a major facility, particularly if there are known and well-documented adverse effects, as is the case in the Town of Pelham. In addition, the definition of a major facility in the PPS 2020 does not limit what a major facility is to the examples provided in the definition. Lastly, the definition does contemplate the inclusion of land uses and activities that are not carried out in a building, by including such examples as marine facilities and resource extraction activities.

The range of uses that would be considered sensitive as per the definition of 'sensitive use' in the PPS 2020 is extensive since any building, amenity area or outdoor space is sensitive if routine or normal activities occurring at reasonably expected times would experience adverse effects.

The focus of Section 1.2.6.1 of the PPS 2020 is on the adverse effects that may be experienced by a sensitive land use. Based on the definition of 'sensitive' in the PPS 2020, any use where people reside or gather, such as residential uses, schools, day care centres, educational and health facilities and other similar uses would be sensitive uses.

In addition to the above, the Ministry of Environment's (MOE) D-series guidelines

were also reviewed in detail. The D-Series guidelines assist decision makers when dealing with sensitive land uses and were designed to inform the preparation of Official Plan policies and the making of Planning Act decisions in cases where a proposed use is potentially incompatible with an existing use.

Section 3.1 of Guideline D-1 of the D-series guidelines establishes the preferred approach to dealing with adverse effects and indicates that various buffers may be used to prevent or minimize adverse effects. However, the following is clearly indicated:

*Distance is often the only effective buffer, however, and therefore adequate separation distance, based on a facility's influence area, is the preferred method of mitigating adverse effects.*

In our opinion, this means that the only effective way of 'preventing' adverse effects between a major facility and a sensitive use, in accordance with Section 1.2.6.1 of the PPS 2020, is through separation.

The following is then indicated in Section 3.2 of Guideline D-1:

*The separation distance should be sufficient to permit the functioning of the*

*two incompatible land uses without an adverse effect occurring.*

Again, this supports the principle that separation is the only effective way to prevent adverse effects in accordance with Section 1.2.6.1 of the PPS 2020.

The MPC OPA recognizes the above by requiring that a zoning by-law amendment be applied for to determine the appropriate setback for a new use on a case-by-case basis. In determining the appropriateness of the use, the supporting studies identified by the MPC OPA are appropriate and reasonable in the circumstance, given the known adverse effects experienced by residents in the Town at the present time.

#### **4.2.2 Agriculture-Related Uses**

The MPC OPA also includes a policy that requires the consideration of a number of criteria to determine whether a use related to cannabis cultivation is an agriculture-related use, which is also permitted by the PPS 2020 in prime agricultural areas. However these uses must be carefully planned so that they are compatible with agricultural uses as per Section 2.3.3.1 of the PPS 2020:

*Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding*

*agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.*

The definition of agricultural-related use in the PPS 2020 is below:

***Agriculture-Related Uses:*** means those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

The processing of cannabis (along with testing and research) could be considered an agriculture-related use under the PPS 2020 in prime agricultural areas, including specialty crop areas. For a use to be considered as agriculture-related, it must be a farm related commercial use and/or a farm related industrial use that satisfies all of the criteria below:

- Is directly related to farm operations in the area;
- Supports agriculture;
- Benefits from being in close proximity to farm operations; and,

- Provides direct products and/or services to farm operations as a primary activity.

In 2016, the Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA) published the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas (OMAFRA Guidelines). The intent of the OMAFRA guidelines is described as follows:

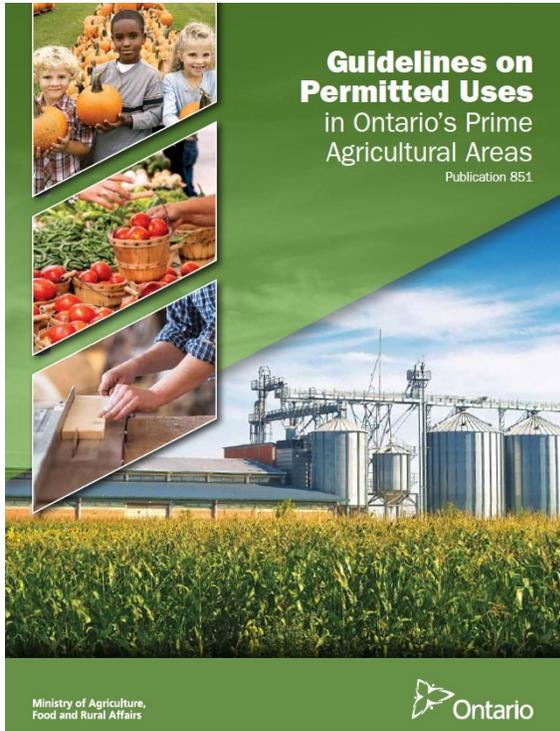
*The Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas will help municipalities; decision-makers, farmers and others interpret the policies in the Provincial Policy Statement, 2014 (PPS) on the uses that are permitted in prime agricultural areas. It comprises the provincial guidelines referred to in Policy 2.3.3.1 of the PPS.*

Section 1.1 of the OMAFRA Guidelines also states that:

*These guidelines are meant to complement, be consistent with and explain the intent of the PPS policies and definitions. Where specific parameters are proposed, they represent best practices rather than specific standards that must be met in every case.*

Section 2.2 of the OMAFRA Guidelines indicates that agriculture-related uses may

be located on farms or on separate agriculture-related commercial or industrial properties.



With respect to farm-related commercial uses, Section 2.2.1.1 of the OMAFRA Guidelines specify the following:

*Farm-related commercial uses may include uses such as retailing of agriculture-related products (e.g. farm supply co-ops, farmers' markets and retailers of value-added products like wine or cider made from produce grown in the area), livestock assembly yards and farm equipment repair shops if they meet all the criteria for the category of agriculture-related use.*

It is noted that the 'criteria' referenced above is from Table 1 of the OMAFRA Guidelines and are similar to the four parts of the definition of agriculture-related use in the PPS.

In addition to the above, the OMAFRA Guidelines provide other examples of agriculture-related uses as well and they are:

- *Apple storage and distribution centre serving apple farm operations in the area;*
- *Agricultural research centre;*
- *Farmers' market primarily selling products grown in the area;*
- *Winery using grapes grown in the area;*
- *Livestock assembly yard or stock yard serving farm operating in the area;*
- *Processing of produce grown in the area (e.g., cider-making, cherry pitting, canning, quick-freezing, packing);*
- *Abattoir processing and selling meat from animals raised in the area;*
- *Grain dryer farm operations in the area;*
- *Flour mill for grain grown in the area;*
- *Farm equipment repair shop;*
- *Auction for produce grown in the area; and,*
- *Farm input supplier (e.g., feed, seeds,*

*fertilizer (serving farm operations in the area).*

Based on the examples above, cannabis processing could be considered an agriculture-related use subject to the other criteria being satisfied. On this basis, the MPC OPA refers to these criteria and the Provincial guidelines and requires that they be satisfied when a cannabis-related use or industrial hemp-related use not involving cultivation is proposed.

Below is a brief discussion of these criteria.

In this regard, the **first criterion** to consider is whether the farm-related commercial and/or farm-related industrial use is directly related to farm operations in the area.

Section 2.2.1.3 of the OMAFRA Guidelines provide some guidance on what this means:

*Agriculture-related uses must be directly related to farms in the area, primarily providing products or services that are associated with required by or that enhance agricultural operations in the area. Directly related to means that the use should reflect the type of agricultural production in the area.*

Again there are three parts to the above,

which means that for a use to be an agriculture-related use in this context and to satisfy this criterion, it must be directly related to farms in the area and primarily provide products or services that are:

- *Associated with agricultural operations in the area; or*
- *Required by agricultural operations in the area; or*
- *Enhance agricultural operations in the area.*

It is then further indicated that the agriculture-related use should reflect the type of agricultural production in the area. The PPS 2020 and the OMAFRA Guidelines use the words 'in the area'.

Given the expectation that cannabis cultivation and cannabis processing would typically occur on one property, it is not clear how 'in the area' would be interpreted in this case.

However, it is noted that a winery is provided as an example and it is possible in some circumstances for all of the grapes to be sourced from the same property. As a consequence, there is no express prohibition in the OMAFRA Guidelines on the processing of cannabis on the same property as the cultivation of cannabis.

Notwithstanding the above, the OMAFRA Guidelines do support agriculture-related uses on separate properties in any event.

The **second criterion** to consider is whether the farm related commercial use and/or a farm related industrial use supports agriculture. This criterion does not seem to have any qualification according to the OMAFRA Guidelines and since the processing of cannabis would support the growing of cannabis, it could be argued that it supports agriculture.

The **third criterion** to consider is whether the farm related commercial use and/or a farm related industrial use benefits from being in close proximity to farm operations.

Section 2.2.1.6 of the OMAFRA Guidelines state the following:

*To meet this criterion, agriculture-related uses must benefit from or need to be located near the farm operations they serve.*

Processing at the cultivation site is a more sustainable practice as going from crop to finished product on the same site limits transportation needs and reduces waste. This practice would also be economically beneficial for the cultivator, who would then sell directly to the dispenser.

The **fourth criterion** to consider is whether the farm related commercial use and/or a farm related industrial use provides direct products and/or services to farm operations as a primary activity.

Section 2.2.1.5 of the OMAFRA Guidelines indicate the following:

*Direct products and/or services refers to uses that serve an agricultural need or create an opportunity for agriculture at any stage of the supply chain (e.g., value-added food and beverage processing and distribution or retail of agricultural commodities grown in the area).*

Cannabis processing would add value to the product grown on the same site and would therefore satisfy this criterion.

The PPS 2020 also permits on-farm diversified uses in the Prime Agricultural Area and defines such uses as follows:

*Means uses that are secondary to the principal agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.*

In order for a use to be considered an on-farm diversified use, it would have to be

both secondary to the principal use of the property and be limited in area.

Section 2.3.1 of the OMAFRA Guidelines indicate that on-farm diversified uses must be located on a farm property that is actively used.

In the case of a cannabis processing use that is located on a property where the cannabis is cultivated, such a use would be on the same property and it would clearly be secondary, because of its limited scale in relation to the cultivated area.

This would also apply to the other types of licences and activities, particularly those that deal with testing and research, again provided cannabis was being cultivated on the same property.

### 4.3 NIAGARA REGION OFFICIAL PLAN

The Region of Niagara Official Plan (Niagara OP) applies to all lands within the Town of Pelham.

In terms of the importance of agriculture in Niagara Region, the introductory section of Section 5 of the Niagara OP states the following:

*With a unique combination of deep sandy soils and favourable microclimates,*

*Niagara's tender fruitlands are Provincially and Nationally significant. The Region also has large areas of good general agricultural lands which are suitable for the production of field crops and for livestock operations.*

*The agri-food industry in Niagara is diversified. Farmers produce a variety of crops including greenhouse flowers, fruit, vegetables, livestock and field crops. Wineries, distilleries, fruit and vegetable processors, dairies and meat packing firms process these crops adding value to their production.*

*The policies in this Plan give the unique agricultural lands (Good Grape and Good Tender Fruit Areas) the highest priority for preservation. The good general agricultural lands have the next priority for preservation. While not unique, these lands are suitable for the production of a wide range of crops and therefore are important in maintaining the agricultural industry's diversity.*

The Niagara OP includes a number of objectives in Section 5.A for agricultural and rural areas in the Region. These objectives support the preservation of agricultural land, support uses that enable farming and encourage a wide range of farm diversification. One of these objectives deals with land use conflicts as

per below:

*Objective 5.A.5 - To provide an efficient and orderly pattern of land uses in the Agricultural and Rural Areas, which lessens land use conflicts, which requires a minimum of municipal services and conserves natural resources.*

The MPC OPA is designed to achieve the above objective by requiring new cannabis-related uses and industrial-hemp related uses to carry out a number of supporting studies that consider the potential adverse effects of the use, before the use is established. Given the nature of the adverse effects currently experienced in the Town, this is much more preferable than attempting to address adverse effects after the fact.

Another objective deals with farm diversification as per below:

*Objective 5.A.8 - To encourage a wide range of farm diversification uses in appropriate locations and at a scale suitable to the farm and the agricultural area where they contribute to profitable and economically sustainable agriculture.*

The Niagara OP defines farm diversification as follows:

*Farm Diversification means a range of uses*

*that are designed to expand the range of economic opportunities available to farmers and is a generic reference to value added, agriculturally related and secondary agricultural uses that may not be directly related to the agricultural activity conducted on the farm property.*

On the basis of the above definition, farm diversification uses could be considered agriculture-related uses or on-farm diversified uses as per the PPS 2020. The MPC OPA also permits farm diversification in the form of cannabis-related uses that occur in conjunction with or accessory to cannabis cultivation, provided the use is appropriate for the area, as per the Niagara OP objective above.

In terms of what is permitted in prime agricultural areas, Section 5.B.6 of the Niagara OP indicates that the predominant use of land will be for *agriculture of all types, including livestock operations as well as associated value retention uses.*

The above policy is consistent with the PPS 2020.

Section 5.B.20 of the Niagara OP also indicates that local municipalities should define and categorize farm diversification uses and provide performance criteria and that uses that have potential to generate off site impacts will be evaluated and

assessed for compatibility with the principal agricultural operation and surrounding agricultural lands through a rezoning process that will also impose controls to mitigate the impacts.

Section 5.B.21 lists the following criteria to be considered when identifying whether or not diversification activities should be permitted in the Zoning By-law:

- a) Whether the proposed activity is more appropriately located in a nearby settlement area or in the Rural Area;*
- b) Whether the use is required on or in close proximity to the agricultural operation for it to support and complement the agricultural activity;*
- c) The extent to which the use is compatible with the existing farming operation and surrounding farming operations;*
- d) Whether the scale of the activity is appropriate to the site and the farming operation;*
- e) Whether the use is consistent with and maintains the character of the agricultural area;*
- f) The use does not generate potentially conflicting off-site impacts;*
- g) The use is limited to low water and low effluent producing uses, and the site is capable of accommodating the use on private water and private sewage*

*treatment systems;*

- h) The use does not require significant improvements to utilities or infrastructure such as roads or hydro services;*
- i) The use complies with all other applicable provisions of the Regional Official Plan.*

The policies in the MPC OPA on agriculture-related uses are consistent with the above requirements and refer to a Provincial guidance document on the issue.

#### **4.4 TOWN OF PELHAM OFFICIAL PLAN**

The Town of Pelham Official Plan 2014 (Pelham OP) applies to all lands within the Town of Pelham. Section A4.2 of the Pelham OP includes six rural area designations. Below is a review of the Good General Agricultural, Specialty Agricultural and Industrial designations.

The Good General Agricultural designation is generally applied to lands that are considered to be the prime agricultural area, as identified in the Niagara OP. Section B2.1.1 of the Pelham OP indicates that the purpose of this designation is to protect and maintain land suitable for agricultural production and permit uses which support and/or are compatible with agriculture.

Section B2.1.2 of the Pelham OP states that the principal permitted use within the Good General Agricultural designation shall be agriculture. There are also a number of other permitted uses that are considered to be agricultural-related and/or secondary uses on the basis that such uses assist in retaining or adding to agricultural products and commodities or promote agri-tourism.

Sections B2.1.3.12 and B2.2.8 of the Pelham OP also establish policies that apply to greenhouses and hoopouses, which are considered to be an agricultural use. However, the policy goes on to indicate that in the interest of ensuring compatibility, a Zoning By-law Amendment is required for greenhouses or hoopouses when:

- The lot area is less than 3 hectares; or
- The total lot coverage is greater than 30%; or,
- A retail component is proposed as an accessory use to the greenhouse or hoopouse
- Greater than 10,000 litres of water per day will be required.

Notwithstanding the above, the Town's Zoning By-law 1136 (1987) permits a lot coverage as of right in the Agricultural Zone of 60% for the greenhouse only and 70% if the greenhouse is constructed in

conjunction with any other permitted use. As a result, the current by-law does not appear to conform to the Official Plan.

The MPC ZBA proposes to reduce the lot coverage for greenhouses used for cannabis only to 30%, which would be in accordance with the Official Plan. However, the MPC OPA also requires a re-zoning to permit a cannabis greenhouse as well, for reasons already discussed.

## 5.0 CONCLUSIONS

As mentioned at the outset of this Report, the Town retained MPC to provide professional planning advice on the planning approach and planning instruments being proposed to regulate cannabis within the community. On this basis, MPC completed a review of the policy considerations to regulate cannabis uses, considered the current situation being experienced in the Town of Pelham, including adverse effects and reviewed the Staff Cannabis Land Use Report and the CCC Cannabis Report.

The Town of Pelham's unique topography and the presence of the Niagara escarpment influence climate in the area and this has a direct impact on the concentration of odour in the area. On this basis, Staff and the CCC have spent a

considerable effort in their respective background work and as documented in their respective Reports on articulating the impacts of adverse effects of existing cannabis operations that are being experienced throughout the Town.

On the basis of the above, MPC has prepared, in conjunction with the CCC, draft amendments to the Town's current planning framework to regulate cannabis related-uses and industrial hemp-related uses. In this regard, the MPC OPA sets out the studies required to assess potential adverse effects associated with the uses and establishes minimum setback guidelines to be considered in conjunction with the findings of the required studies. The MPC OPA also requires a site-specific zoning by-law amendment when a cannabis-related use or industrial-hemp related use is proposed. The MPC ZBA implements this approach by defining the use and then not permitting the use in any zone, therefore triggering the need for a re-zoning.

These policies are not intended to prohibit these uses, which for the most part are considered to be agricultural uses. Instead, the policies establish a path that can be followed by an applicant wishing to develop a cannabis-related or industrial hemp-related use in the Town, with this path based on the current experience in

the Town with respect to adverse effects.

**On the basis of the above, it is MPC's professional planning opinion that the MPC OPA and MPC ZBA are consistent with the PPS 2020 and conform to the Niagara Region Official Plan and represent good planning.**

