

# **Regulating Cannabis in the Town of Pelham**

Prepared for the Cannabis Control Committee

July 5, 2020 - FINAL

**This is an Addendum report to the report  
dated April 14, 2020**



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## 1.0 REPORT PURPOSE

The purpose of this report is to build upon the report prepared by Meridian Planning Consultants ('MPC') dated April 14, 2020 and:

1. Review the comments that were made on the MPC OPA and MPC ZBA dated April 7, 2020; and
2. Provide the rationale for the changes to both the MPC OPA and MPC ZBA as a consequence of those comments.

## 2.0 MPC OPA AND ZBA DATED APRIL 7

### 2.1 Draft OPA

The MPC OPA dated April 7, 2020 proposed to establish a Cannabis Overlay designation that would apply 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 dated April 7, 2020 established the requirement for a Zoning By-law amendment to develop a new cannabis-related use or industrial hemp-related use. The MPC OPA also indicated that Site Plan Approval would also be required for such uses.

The Cannabis Overlay designation was 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 would 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 have been required, in addition to a Zoning By-law amendment, to permit these uses within the Specialty Agricultural designation in the future.

The MPC OPA dated April 7, 2020 also identified the studies that would be required to support the establishment of a cannabis-related use or industrial hemp-



related use to ensure that all potential adverse effects were studied in advance. In this regard, required studies listed in the draft OPA included 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 rezoning. The results of these studies would be 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 would also establish minimum separation distances between cannabis-related uses and industrial hemp-related uses, as required.

The MPC OPA dated April 7, 2020 also set out guidelines on what setbacks would 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.

The setbacks included in the draft OPA were based on best practices and knowledge of the adverse effects that have been experienced and well documented in the Town. Given that these minimum setbacks were identified as guidelines, they could 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 indicated that the expansion of existing cannabis-related uses would also require the submission of appropriate studies before they can be considered.

## 2.2 Draft Zoning By-law Amendment

The MPC ZBA dated April 7, 2020 was prepared to implement the MPC OPA. The MPC ZBA indicated that cannabis-related uses and industrial hemp-related uses would not be permitted as-of-right in any zone in the Town. This would have ensured that a trigger existed to require the completion of the appropriate studies and the establishment of a setback that relates specifically to the use proposed.

The MPC ZBA established 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 could be supported.

The first zone proposed was the Agricultural – Cannabis (A-CAN) zone. This zone would be applied to an individual property 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.

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

However, the majority of the regulations were 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 could 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 second zone was 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.

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

These exceptions indicated that only the gross floor area that exists, respectively, on the date that the Zoning By-law amendment is passed would be permitted. This effectively meant 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 was 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.

The MPC ZBA also included 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 distinguished between indoor and outdoor activities that were authorized by the Cannabis Regulation and the Industrial Hemp Regulation, respectively, under the Cannabis Act.

The sensitive land use definition in the draft ZBA was 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.

### 3.0 PUBLIC COMMENTS

The MPC OPA and MPC ZBA were posted on the Town's website on April 17, 2020. In addition, notice was sent by email on April 16, 2020 to those who sent in comments on the previous drafts, spoke or signed a sign-in sheet at the public meeting as well as commenting agencies. The notice was also published in the Voice of Pelham on April 22, 2020. In total, notices were sent to 170 email addresses.

Following the release of the MPC OPA and MPC ZBA, forty-four (44) comments from

the public were received. Below is a list of the themes raised by members of the public (a summary is attached in **Appendix A**) to this report.

#### 3.1 Effect of the amendments on existing cannabis operations

A considerable number of responses highlighted individual negative experiences as a result of certain adverse effects from the existing cannabis operations. In many of these same responses, respondents expressed gratitude that the draft amendments would help to mitigate the effects of existing cannabis operations.

#### 3.2 Odour and the setback guidelines to a sensitive land use

There were many responses about the odour from existing cannabis operations and how these operations have impacted the enjoyment of individuals' properties – both indoor and outdoor – as well as their health (several commented on suffering headaches and nausea). In connection with the odour comments, many respondents also indicated that they felt that the proposed setback guideline from sensitive land uses was insufficient and that it should be higher. In this regard, a common suggestion was that the setback should be a minimum of 500 metres.



### 3.3 Light pollution

A number of responses referenced light pollution as it directly related to their property. Respondents, particularly those that live in closest proximity to existing operations, noted that light pollution from the existing cannabis operations is so bright that they do not need to turn on the lights in their house in the evening because the glow is so strong. There were also several comments made on how the Town can require the existing operations to address the light pollution from existing facilities as well. In addition, several responses also noted that the light pollution has ruined individuals' ability to enjoy the outdoors (e.g. stars) in the evening.

### 3.4 Land use and building classification

There were many responses that requested that cannabis operations, including the existing cannabis operations, be considered as industrial uses and not as agricultural uses. In this regard, it was suggested in numerous responses that these types of operations only be permitted where industrial uses are permitted and where residential uses are not typically located. It was also suggested in a number of comments that cannabis operations should be considered as an

industrial facility building classification under the Ontario Building Code. In addition, some respondents questioned whether the policies could address requirements for retrofitted greenhouses and only permit new cannabis operations in purpose built buildings.

### 3.5 Loss of prime agricultural land

A number of respondents felt that greenhouses should not be permitted on prime agricultural land and that such land should only be used for specialty crops. In addition, there were comments that cannabis operations in a greenhouse should locate on agricultural land or industrial land where the soils are not capable of being farmed.

### 3.6 Groundwater, water takings and stormwater runoff

A number of concerns were highlighted about the potential impacts to groundwater, water takings and stormwater runoff. Stormwater runoff comments were based on the amount of paved area for parking, loading and other areas that are associated with the existing cannabis operations.



### **3.7 Traffic study requirements should include list of considerations**

Many responses highlighted traffic concerns associated with the existing cannabis operations. Traffic concerns included: excessive speeds on rural roads, degradation of rural roads, safety on rural roads with respect to lack of sidewalks, farming equipment and children getting on and off school busses.

### **3.8 Property devaluation**

Many responses also highlighted concerns about their properties being devalued as a result of the existing cannabis operations, particularly as it relates to the impact of odour and light pollution.

### **3.9 Tax classification**

A number of responses indicated that they felt that the tax classification for cannabis operations should not be agricultural and should be industrial.

### **3.10 Enforcement of the proposed standards**

Several responses questioned how the Town’s enforcement staff would deal with complaints about odour and light pollution, as examples and how or if the Town’s enforcement staff would be monitoring existing cannabis operations to ensure

compliance.

### **3.11 Penalties and requirements for non-compliance**

A number of respondents questioned what penalties would be applied to cannabis operations for non-compliance. In addition to this, it was suggested that the requirements for non-compliance should also be clear.

### **3.12 Financial impact to taxpayers**

There were a few comments on the financial impacts to the taxpayers to pay for studies, such as the cannabis study, as well as potential hearings related to cannabis operations. Related to these concerns was a question on the Town’s legal advice on the draft amendments and a request for clarity on the financial risk to the Town.

## **4.0 AGENCY COMMENTS**

Following the release of the MPC OPA and MPC ZBA, comments from the Niagara Escarpment Commission (NEC) and Niagara Region were received. The NEC indicated that it had no objections to the OPA. The themes raised by Niagara Region are below (a summary is attached in **Appendix B** along with the letter from Niagara Region).



#### 4.1 Conformity with Provincial and Regional policies

The Region’s letter indicated that the Region considers the growth and cultivation of all crops (including cannabis), as well as on farm buildings and structures, to be an agricultural use. The Provincial Policy Statement (2020) permits such uses in the prime agricultural areas and the Niagara Region Official Plan permits agricultural uses in the Good General Agricultural and the Specialty Agricultural designations. The Region’s letter further indicated that cannabis uses have been excluded by the draft OPA from the Specialty Agricultural designation, and this is considered to be contrary to the direction of the Provincial Policy Statement (2020) and Niagara Region Official Plan policies.

On the basis of the above, the Region is of the view that cannabis cultivation should not be restricted as it is considered an agricultural use and that the draft amendments are not consistent with the Provincial Policy Statement (2020) or with the Niagara Region Official Plan.

#### 4.2 Setbacks

The Region’s letter indicated that it supports setbacks in a Zoning By-law, however it is unclear in the draft OPA

whether the intent of the minimum setback policies is to provide a minimum that can be refined through the additional studies as part of the Zoning By-law Amendment or whether the minimum setback cannot be refined which then makes the additional studies redundant.

#### 4.3 Requirement for Studies

The Region’s letter also noted that clarification should be added into the policy framework on when certain studies are required (e.g. growing and cultivation or processing). The Region’s letter also indicated that they feel that an Agricultural Impact Assessment, as an example, is not an appropriate study to require for the cultivation of cannabis as the Region considers cannabis production to be an agricultural use.

## 5.0 INDUSTRY COMMENTS

Following the release of the MPC OPA and MPC ZBA, three letters from the cannabis industry were submitted. The themes raised by the industry are below (a summary is attached in **Appendix C** along with the industry letters).



### 5.1 Conformity with Provincial policies

All of the industry comment letters indicated that they feel that the draft amendments are not consistent with and do not conform to Provincial policies.

With respect to the PPS, the industry comment letters note that the cultivation of cannabis is an agricultural use and permitted where agricultural uses are permitted. The industry letters expressed disagreement with the application of the major facilities policies in the PPS as well.

With respect to the Growth Plan, the industry comment letters indicated that they feel that the draft amendments do not conform to the agricultural policies. One of the comment letters further indicated that they felt that the amendments did not conform to the Region of Niagara Official Plan policies that apply to the agricultural area.

### 5.2 Impacts on future expansion

All of the industry comment letters expressed a concern with the amendments on future expansion plans. In this regard, it was indicated that the amendments recognize the existing building footprints but that the policies in the OPA would apply to an expansion and that a zoning by-law amendment would also be required.

### 5.3 Setbacks

All of the industry comment letters indicated that the setback guidelines in the Official Plan were too restrictive and that performance measures should be contained in the zoning by-law only.

Each of the comment letters also noted that setbacks should be measured from sensitive receptor rather than from a lot line of a lot with a sensitive receptor. In this regard, there was a question on the basis from using the lot line as the boundary to be measured from when the Town’s analysis of sensitive receptors was based on the receptor itself and not a lot line. It was also noted in one letter that they felt that there was no basis for separation distance between operations.

In addition, there were comments that other setbacks in the zoning by-law amendment, such as the front and side yard setbacks, were also overly restrictive.

### 5.4 Policy implementation

Each of the industry letters identified a number of policies and questioned how implementation of those draft policies would occur. These included:

Study requirements: Concerns that there is no ability for staff to modify the



requirements on a site-by-site basis if a study is not required.

Measuring negative impact: Concerns with how ‘negative impact’ will be measured and what type of criteria will be used to assess this as well as the lack of ability to use mitigation measures to address potential impacts as the policies are based on a strict prohibition of negative impacts.

Future substantiated complaints: Concerns expressed over how a complaint is substantiated and the potential for industry operators to be overburdened with complaints.

## 6.0 OPA CHANGES

All of the comments that have been submitted have been carefully considered and the sub-sections below summarize the changes that have been made in the final OPA dated July 5, 2020, which is attached to this report in **Appendix 4**).

### 6.1 Additional Clarity on the Purpose of the OPA has been included in the Preamble

Section 2.0 of the Preamble has been updated to provide additional clarity on the purpose of the OPA dated July 5, 2020. In this regard, the revised purpose section

states the following: *"The purpose of the Official Plan Amendment is to establish permissions for indoor cannabis and industrial hemp cultivation in the agricultural area, subject to a zoning by-law amendment, and to establish the criteria to be relied upon when considering such applications."* It has been additionally indicated that the OPA does not deal with the outdoor cultivation of cannabis or industrial hemp as this is already permitted in the agricultural area.

The above change makes it clear that permissions are being established through the OPA for indoor cannabis and industrial hemp cultivation in the Town, provided a re-zoning is applied for and approved with consideration given to the criteria in the OPA.

In accordance with the above revised purpose, references to outdoor cannabis cultivation and processing have been deleted in the OPA dated July 5, 2020 (see discussion in Section 6.5). In addition, references to cannabis processing have also been deleted so that the OPA clearly focuses on cannabis and industrial hemp cultivation in indoor facilities (see discussion Section 6.10 on value retaining versus value added).



**6.2 Reference to the Minimum Distance Separation Guidelines has been included in the preamble to the OPA**

In response to the concerns that the OPA was being overly prescriptive as it related to the establishment of agricultural uses in prime agricultural areas, it is now indicated in the Preamble to the OPA dated July 5, 2020 that there already is a precedent for the establishment of setbacks from sensitive uses for odour reasons in agricultural areas in the form of the Minimum Distance Separation (MDS) guidelines established by the Province.

The revised preamble further indicates that the MDS guidelines are intended to provide the minimum distance separation between proposed new development and any existing livestock barns, manure storages and/or anaerobic digesters (MDS1) and provide the minimum distance separation between proposed new, expanding or remodelled livestock barns, manure storages and/or anaerobic digesters and existing or approved development (MDS2). Compliance with the MDS guidelines is also required by the Provincial Policy Statement (2020) when new land uses including the creation of lots or expanding livestock facilities are proposed.

The application of the MDS2 guidelines result in the establishment of setbacks that are intended to minimize the impacts of odour from livestock barns, manure storages and/or anaerobic digesters operations and have the effect of restricting the location of these facilities. However, the MDS2 guidelines do not apply to cannabis and in the absence of Provincial guidance on this matter, it is up to local municipalities to establish a policy framework to avoid adverse effects, and if avoidance is not possible, to minimize and mitigate adverse effects through setbacks for indoor cannabis and industrial hemp cultivation from sensitive uses. If the Province does develop guidelines on the issue, it is anticipated that the policy framework established by the OPA would be re-visited.

**6.3 The OPA continues to recognize the cultivation of cannabis as an agricultural use**

While the April 7, 2020 version of the OPA recognized the cannabis cultivation as an agricultural use, the Preamble of the revised OPA dated July 5, 2020 reinforces the basic position that it is an agricultural use and is permitted in agricultural areas by the Provincial Policy Statement (2020). However, language has been included within the Preamble that indicates that the



OPA also recognizes that in the absence of Provincial standards on the adverse effects of odour from indoor cannabis and industrial hemp cultivation facilities, there is a need to control the siting of these facilities in relation to sensitive uses as a result of the known adverse effects from the cultivation of cannabis.

#### **6.4 The Cannabis Overlay has been removed**

The April 7, 2020 version of the OPA established a Cannabis Overlay designation that would have applied to the Good General Agricultural designation and the Industrial designation. The proposed Cannabis Overlay did not include lands that are designated Specialty Agricultural which are subject to the Greenbelt Plan.

This approach was taken because of the rolling topography that is unique to the Greenbelt Plan and its relationship to odour concerns and the perceived challenges that exist in terms of avoiding adverse effects as a consequence.

The implication of not applying the Cannabis Overlay to the Specialty Agricultural designation was that an Official Plan Amendment would have been required to establish such a use in the future.

Niagara Region indicated in their comments that they had some concerns about requiring a future OPA for a use that is permitted in prime agricultural areas by Provincial policy. In response to this comment, the OPA dated July 5, 2020 no longer includes the future OPA requirement in the Specialty Agricultural designation. However, references to the sensitivity of the Specialty Agricultural designation to the development of cannabis-related facilities has been retained within the OPA.

It should be noted that as a general principle Provincial policy permits a range of uses in different parts of the Province. However, that does not necessarily mean that the full range and intensity of permitted uses is and should be permitted as-of-right in all cases. For example a range of residential uses and a variety of housing options are strongly encouraged in the Province's settlement areas. However, it is very common practice for Official Plans and zoning by-laws to set out exactly where various housing types are permitted.

Similarly, Provincial policy also permits the extraction of mineral aggregate resources in rural and prime agricultural areas of the Province. However, it is very common for such a proposal to go through a fulsome



review before being established. In addition, a number of municipalities include policies and mapping in their Official Plans that recognize the land use compatibility concerns that exist when new mineral aggregate operations are proposed adjacent to settlement areas and bodies of water.

Many Official Plans also include policies in their Official Plans respecting the siting of certain uses that would be considered to be major facilities by the Provincial Policy Statement (industrial uses and railway yards for example) in relation to sensitive uses. In addition, the Province also has a series of guidelines that deal with sensitive land uses.

Lastly, and as already noted, the Province also has guidelines that restrict the location of livestock-related activities depending on the location of non-farm uses in the vicinity, even though such uses are permitted by Provincial policy in rural and prime agricultural areas.

In addition to the above, the Province's own guidelines on permitted uses in prime agricultural areas supports the establishment of a planning process not involving an OPA in the following extract from the Frequently Asked Questions section of the 2016 publication:

*"1. Would agricultural, agriculture-related and on-farm diversified uses in prime agricultural areas trigger any Planning Act applications, such as official plan amendments, zoning amendments, minor variances or site plan control?"*

*An official plan amendment would not be required if the uses permitted by the PPS and explained in these guidelines are permitted in the prime agricultural area policies of the municipal official plan. Landowners have the right to establish these uses, provided other requirements are met (e.g., applicable performance standards in zoning by-laws, building permits, site alteration or tree by-laws, site plan control, conservation authority permits, Endangered Species Act, 1973, requirements). Zoning and site plan control may address issues such as setbacks, outdoor storage, lighting and parking.*

*If existing zoning by-law requirements are not met by the proposed development, an application for a minor variance or zoning by-law amendment may be required. Landowners must consult with the appropriate municipality or planning authority to identify local requirements."*

In the case of indoor cannabis cultivation and processing in the Town of Pelham, it is not possible to establish setbacks in



advance and include them in a zoning by-law because of the many variables that have to be considered. These include:

- i) Whether the facility is a greenhouse or an industrial-type building and if a greenhouse is proposed, whether the proposed greenhouse is purpose built for cannabis or industrial hemp or already exists;
- ii) The size and scale of the proposed use;
- ii) The proximity and number of sensitive uses in the area including the potential for additional sensitive uses on vacant lots that are zoned to permit a sensitive use;
- iii) The location of the proposed use in relation to prevailing winds;
- iv) The nature of the adverse effects that exist at the time in relation to existing indoor cannabis and industrial hemp cultivation facilities; and,
- v) The impact of topography on the dispersion of odour.

**6.5 Requirement for zoning by-law amendment for future outdoor cultivation operations has been removed**

The requirement for a zoning by-law amendment for future outdoor cultivation operations has been removed. The April

7th version of the OPA treated outdoor cultivation and indoor cultivation in the same manner. This meant that an OPA would have been required for outdoor cultivation in the Specialty Agricultural designation and would require a re-zoning in the Good General Agricultural designation.

In recognition of the differences between indoor cultivation and outdoor cultivation, the requirement for an OPA or a ZBA for outdoor cultivation has been removed. Instead, it is proposed to include setbacks for outdoor cultivation from sensitive uses within the zoning by-law, with these setbacks being based on best practices.

**6.6 Avoiding adverse effects has been established as a first principle**

Avoiding adverse effects has been established as a first principle in the revised OPA dated July 5, 2020. While the avoidance of adverse effects very much provided the basis for the April 7th version of the OPA, this first principle has been clarified in the updated OPA to make this principle clear.

The avoidance of adverse effects as a first principle is also included within the Provincial Policy Statement (2020), which indicates in Section 1.2.6.1 that "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."*

It is indicated in the Regional letter and in the letters from the industry that the above policy does not apply to agricultural uses because all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards, according to Section 2.3.3.2 of the Provincial Policy Statement (2020).

In response, it is noted that the policy referred to requires that all types, sizes and intensities of agricultural uses shall be promoted, which is different than shall be permitted, which implies that there may be limitations on where certain types, sizes and intensities of agricultural uses can be located. In this regard, and as has already been noted, the Provincial MDS Guidelines acts as a form of control in terms of where certain types, sizes and intensities of livestock related facilities can be located, notwithstanding the Provincial direction to

promote these uses. This OPA is intending to achieve the same objective.

It is recognized that there is a difference of opinion on whether Section 1.2.6.1 applies to agricultural uses. In my opinion, it can be applied to this circumstance and in the absence of Provincial standards or guidelines similar to the MDS Guidelines, because the definition of major facility in the Provincial Policy Statement (2020) does not provide any limitations on the range of uses and activities that could be considered a major facility with the inclusion of the under-lined words in the definition below:

*"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."*

In my opinion, cannabis cultivation may require separation from sensitive uses, because of the known adverse effects experienced currently in the Town. If the Province had well-developed guidelines



that were similar to the MDS Guidelines for cannabis, there would most likely be no need for the Town of Pelham to establish a planning process through this OPA to ensure that adverse effects can be avoided.

Notwithstanding the above, the OPA does not rely upon Section 1.2.6.1 of the Provincial Policy Statement (2020). Instead, the updated OPA incorporates as a principle of good planning that the avoidance of adverse effects is the first principle and that if avoidance is not possible, adverse effects are to be minimized and mitigated. As a consequence, references to Section 1.2.6.1 in the Preamble to the OPA have been deleted and references to this basic planning principle have been incorporated in the OPA dated July 5, 2020.

**6.7 The words 'negative impact' have been removed from the OPA**

Concerns were expressed by the industry on how negative impact would be determined with respect to the impacts of a proposed use on the enjoyment and privacy of residential properties in the area. In response to this concern, this requirement has not being carried forward in the revised OPA dated July 5, 2020.

Instead, the policy now reads that Council shall be satisfied that 'the adverse effects of the noise, dust, odour and light from the proposed facility on sensitive land uses in the area can be avoided and if avoidance is not possible, minimized and appropriately mitigated, as demonstrated by the required studies identified in Section B2.1.5.2 of this Plan.'

**6.8 The requirement for an agricultural impact assessment has been deleted**

Both the Region and the industry expressed concerns on the requirement for a new cannabis-related use to prepare an agricultural impact assessment as per the April 7th version of the OPA.

While this concern may have more to do with the name of the study itself, it is acknowledged that such an agricultural impact assessment is typically carried out to determine whether a proposed non-farm use will have an impact on agricultural uses. In a follow up letter from Niagara Region dated July 3, 2020, it was again requested that the requirement be deleted (it is noted that the required Emission Summary and Dispersion Modelling (ESDM) report will continue to require that co-existence adverse effects associated with drift of cannabis emissions



on existing farming operations in the area be reviewed).

**6.9 Clarity on the intent of the servicing study requirement has been added**

The April 7th version of the OPA required a proponent to demonstrate that there will be no negative impact on the quality and quantity of groundwater and surface water as a result of the taking of water and the generation of effluent. In addition to removing the words 'negative impact' from this policy as mentioned previously, Provincial Policy Statement terminology in Section 2.2.2 has been incorporated in the OPA.

In this regard, this section has been reworded such that it now indicates sensitive surface water features and sensitive ground water features in the area will be protected improved or restored with consideration given to the taking of water and the generation of effluent. This revision would be consistent with the language used in Section 2.2.2 of the PPS 2020.

**6.10 Value-retaining versus value-added and agriculture-related uses**

The Region expressed concerns about the

lack of clarity in the previous iteration of the OPA on what component of a cannabis-related use could be an agriculture-related use. This comment was made in response to a policy in the April 7, 2020 draft that required an additional assessment if a component of a proposed use was determined to be an agriculture-related use.

In this regard, the Provincial Policy Statement (2020) defines an agriculture-related use as meaning 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.

In response, it is recognized that the definition of agricultural use in the Provincial Policy Statement (2020) includes value-retaining facilities, which according to Provincial guidelines could include controlled-atmosphere storage, cleaning, grading, drying, sorting, evaporating maple sap into syrup, honey extraction and simple (bulk) packaging. In this regard, it is recognized that some component of a cannabis or industrial hemp cultivation facility could include these or other similar examples as a component.



However, it is also recognized that the potential exists for components of a cannabis or industrial hemp cultivation facility to include value-added facilities. According to Provincial guidelines, examples of value-added facilities include pressing apples and bottling cider, wine-making, grain milling, cherry pitting and preserving, chopping and canning carrots, grain roasting for livestock feed and retail-oriented packaging.

As a consequence of the above, the OPA dated July 5, 2020 has been updated to indicate that where a proposal involves value-added components, that aspect of the proposal should be assessed in accordance with Provincial guidelines for agricultural-related uses.

While the Provincial Policy Statement (2020) promotes these uses in prime agricultural areas, there are a number of tests that need to be satisfied if an agricultural-related use is proposed. With this in mind, the policy dealing with agriculture-related uses has been clarified. The determination of whether a component of a future cannabis or industrial hemp cultivation facility has as a component, an agricultural-related use, will be determined on a case-by-case basis.

### **6.11 Minor technical changes to the study requirements have been made**

The April 7th version of the OPA referenced the need for an Emission and Dispersion Modelling report. This has been corrected to indicate that an Emission Summary and Dispersion Modelling (ESDM) report is required. This change in terminology is consistent with best practices and is subject to guidance established by the Province on the preparation of these types of studies. In this regard and with reference to Provincial requirements, the OPA now indicates that such a report is expected to deal with contaminants including odour, chemicals and particulate matter constituents.

With reference to the component of the policy that dealt with the known impacts from other cannabis related uses in the area, the language has been refined to provide additional clarity.

### **6.12 Determining when a complaint is a substantiated complaint has been clarified**

The industry had some concerns about how a complaint would be determined to be a 'substantiated complaint' after the use has been established.



In this regard the policy has been modified to indicate that agreement on the appropriate triggers for additional mitigation would be made in advance before the use is established. This is commonplace in a number of different contexts, most notably when a pit or quarry is established and agreement on mitigation triggers is agreed to when the approval is given.

**6.13 Additional clarity on the scope of required studies has been added**

While the April 7th version of the OPA did include policies that recognized that varying types and scales of cannabis-related uses would have an impact on the scoping of required studies, additional clarity in this regard has been added to the OPA. It is expected, as is the case with all applications that the determination of what exactly is required to support each application will be made at the pre-consultation stage.

**6.14 Additional clarity on how setbacks are to be measured has been added**

The industry indicated that setbacks from sensitive uses should be measured from the edge of the component of the use that has the potential to cause adverse effects and the sensitive use itself. This has been

incorporated in the revised OPA.

**6.15 Additional guidance on the factors that have an impact on setbacks has been added**

Additional factors that may have an impact on the extent of the setback have been added, recognizing that there are many context-specific factors to consider in determining what the setback should be. Because of these factors, it is not possible to determine an appropriate setback in advance and hence the need for a rezoning process to establish these setbacks on a case-by-case basis. These factors were referenced in Section 6.4 of this report.

**6.16 Policies on the two large indoor cannabis related uses have being removed**

The policies in the April 7, 2020 version of the OPA indicated that the expansion of both of these uses would require a Zoning By-law amendment and would have been subject to the study requirements set out in the OPA.

Essentially the intent of the April 7th version of the OPA was to recognize these uses as existing uses and establish a planning process to follow when an expansion is proposed.



It has been determined that recognizing these uses as existing uses and requiring a re-zoning does not allow for another Planning Act process to be followed when an expansion is being considered. In this regard the other approach to follow when considering an expansion is through an application with the Committee of Adjustment in accordance with Section 45(2)(a)(i) of the Planning Act.

In order to implement the above, the proposed ZBA will not recognize these two uses, meaning that they become legal non-conforming uses. In this regard, it is noted that Section E2 of the Pelham Official Plan provides some direction on non-conforming uses. In particular Section E2.2 indicates that the Committee of Adjustment may allow for extensions to a non-conforming use with consideration given to:

- The size of the extension in relation to the existing operation;
- Whether the proposed extension is compatible with the character of the surrounding area;
- The characteristics of the existing use in relation to noise, vibration, fumes, dust, smoke, odours, lighting and traffic generation and the degree to which any of these factors may be

increased or decreased by the extension; and,

- The possibilities of reducing the nuisances through buffering, building setbacks, site plan control and other means to improve the existing situation, as well as minimizing the problems from extension.

## 7.0 ZBA CHANGES

A number of minor changes have been made to the ZBA dated April 7th in response to comments and a further reconsideration of the proposed standards. In this regard, the July 5, 2020 version of the ZBA is attached as **Appendix 5**. The changes to the ZBA are listed below:

1. Permitted uses in the A-CAN and M2-CAN Zones are now limited to cannabis-related uses - indoor and industrial hemp-related uses - indoor. The establishment of these two new zones along with the inclusion of specific definitions for these uses in the zoning by-law means that such uses would only be permitted if the lands were in the A-CAN or M2-CAN Zones. Given that the two existing uses that are subject to zoning in the Town will not be placed in either of these zones, both uses then become legal non-conforming uses. This change also



means that outdoor cultivation is an as-of-right permitted use in the A Zone, provided such outdoor cultivation is set back a minimum of 300 metres from sensitive land uses.

2. The minimum front yard for micro-processing and micro-cultivation has been reduced from 100 metres to 20 metres, which is the same front yard required for other types of greenhouses. This setback is appropriate given the scale of these uses.
3. The minimum front yard for standard processing, standard cultivation and industrial hemp-related uses has been reduced from 100 metres to 80 metres and along with the changes below to the required exterior, interior and rear yards, is intended to ensure that a large enough building envelope is available on a lot for this use.
4. The minimum side yard or rear yard for micro-processing and micro cultivation uses has been reduced from 30 metres to 15 metres and from 50 metres to 25 metres where ventilating fans in the wall exhaust into the respective side of rear yard. This requirement is the same as for greenhouses currently in the zoning by-law and is appropriate for these types of uses.
5. The minimum side yard or rear yard for

standard processing and standard cultivation uses and industrial hemp-related uses has been reduced from 60 metres to 40 metres and from 80 metres to 60 metres where ventilating fans in the wall exhaust into the respective side of rear yard. This change, along with the change above to the required front yard is intended to ensure that a large enough building envelope is available on a lot for this use.

6. The minimum side yard or rear yard for micro-processing and micro cultivation uses has been reduced from 100 metres to 20.5 metres. This requirement is the same as for greenhouses currently in the zoning by-law and is appropriate for these types of uses.
7. The minimum exterior side yard for standard processing and standard cultivation uses and industrial hemp-related uses has been reduced from 100 metres to 80 metres to ensure that a large enough building envelope is available on a lot for this use.
8. The requirement for all greenhouses to be located a minimum distance of 45 metres from any lot line with a residential use has been removed from the ZBA.
9. The two exceptions that would have



applied to the existing cannabis uses are no longer in the ZBA, meaning that the uses become legal non-conforming uses as discussed above.

# APPENDIX A - SUMMARY OF PUBLIC COMMENTS

## Regulating Cannabis in the Town of Pelham

Prepared for the Cannabis Control Committee

Addendum Report - July 5, 2020



## Summary of Public Comments

**Comment Period:** April 16, 2020 to May 5, 2020

**Number of Public Comments Received:** 44

<b>Summary of Public Comments on Draft Cannabis Amendments</b>				
	<b>Date</b>	<b>Recipient</b>	<b>Question/Summarized Comments</b>	<b>Theme</b>
<b>1</b>	April 16, 2020	Barb Irek	<ul style="list-style-type: none"> <li>Do the amendments also apply within the NEC?</li> </ul>	<ul style="list-style-type: none"> <li>Administration</li> </ul>
<b>2</b>	April 17, 2020	Craig Edwards	<ul style="list-style-type: none"> <li>How do you plan on dealing with this situation when it involves multiple municipalities?</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> </ul>
<b>3</b>	April 17, 2020	Bernie Law	<ul style="list-style-type: none"> <li>Is it also possible to change the Zoning of these cannabis manufacturing plants to Industrial sites rather than agriculture?</li> </ul>	<ul style="list-style-type: none"> <li>Use</li> <li>Existing operations</li> </ul>
<b>4</b>	April 17, 2020	Hank and Terri Steingart	<ul style="list-style-type: none"> <li>Find light pollution and smell disturbing</li> <li>Request to be notified in future</li> </ul>	<ul style="list-style-type: none"> <li>Light</li> <li>Odour</li> <li>Existing operations</li> </ul>
<b>5</b>	April 18, 2020	Jeff Zylstra	<ul style="list-style-type: none"> <li>Questioned whether existing facilities were considered in preparing the new zoning provisions.</li> <li>Comment that the existing operations would not satisfy the zoning provisions being proposed and questioned whether they would be grandfathered.</li> </ul>	<ul style="list-style-type: none"> <li>Existing operations</li> </ul>
<b>6</b>	April 21, 2020	Henry Steingart	<ul style="list-style-type: none"> <li>The increase in car traffic is considerable and the cars are still speeding at a high rate during commuter times.</li> <li>I am concerned about how much a bylaw officer will be able to help control the smell.</li> <li>What happens when the lights are left on again all night?</li> <li>Who will pay?</li> <li>Who will be responsible?</li> <li>Is it enforceable?</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Traffic</li> <li>Enforcement</li> <li>Existing operations</li> <li>Financial impact to taxpayers</li> <li>Penalties for non-compliance</li> </ul>
<b>7</b>	April 21, 2020	Mike Hall	<ul style="list-style-type: none"> <li>Concern that setback guidelines are insufficient and that a minimum 500 metre setback be required.</li> <li>Request that policies address retrofitted greenhouses and require purpose built buildings instead.</li> <li>Existing cannabis operations should be considered an industrial facility and not an agricultural use.</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Building classification</li> <li>Existing operations</li> </ul>
<b>8</b>	April 23, 2020	Fred and Debbie Rohrmoser	<ul style="list-style-type: none"> <li>Cannabis Stink</li> <li>Perfume Stink to camouflage the Cannabis Stink causes us tremendous</li> <li>Agitation in addition to Violent Headaches.</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Light</li> <li>Dust</li> <li>Traffic</li> </ul>

<b>Summary of Public Comments on Draft Cannabis Amendments</b>				
	<b>Date</b>	<b>Recipient</b>	<b>Question/Summarized Comments</b>	<b>Theme</b>
			<ul style="list-style-type: none"> <li>• Grow Light pollution.</li> <li>• Massive Dust pollution. It looks like we are in the middle of a dust storm at times.</li> <li>• Increased traffic and traffic noise from cars and big trucks coming and going.</li> <li>• Property Devaluation, which can impact the re-sale value of our property. As we are Senior Citizens, this is a huge concern of ours. It is extremely important for us to ensure that our Property does not lose its value in the event that we have to sell in the future. Our property is our retirement.</li> <li>• Farmland Loss which has resulted in a loss of aesthetic 'farmland appeal'.</li> <li>• Loss of our Privacy.</li> </ul>	<ul style="list-style-type: none"> <li>• Property devaluation</li> <li>• Farmland</li> <li>• Financial impact to taxpayers</li> </ul>
<b>9</b>	April 23, 2020	Marc Gaudet	<ul style="list-style-type: none"> <li>• Why is there a Schedule A attached to the Draft By-Law Amendment that is not otherwise referenced within the body of the Draft By-Law Amendment?</li> <li>• Is there an opportunity to more forcefully impose light, noise and odour pollution abatement requirements on existing Cantrust greenhouse operations now that they are in receivership?</li> <li>• Does that opportunity come with change of ownership? Does that opportunity come if they change from Cannabis Production to traditional greenhouse operations?</li> </ul>	<ul style="list-style-type: none"> <li>• Administration</li> <li>• Light pollution</li> <li>• Noise</li> <li>• Odour</li> <li>• Existing operations</li> </ul>
<b>10</b>	April 24, 2020	Nancy Keagan	<ul style="list-style-type: none"> <li>• Opposed to the existing and future operations</li> </ul>	<ul style="list-style-type: none"> <li>• Existing operations</li> </ul>
<b>11</b>	April 26, 2020	Valerie and Patrick Handscombe	<ul style="list-style-type: none"> <li>• Unpleasant odour and light pollution</li> <li>• Question whether there is an impact of cannabis terpenes on human health.</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Light</li> </ul>
<b>12</b>	April 27, 2020	Lawrence & Sharon Overbeeke	<ul style="list-style-type: none"> <li>• Concern that the setback guideline of 300-500 metres from a sensitive land use is insufficient</li> <li>• Impacts to quality of life (enjoyment of outdoors and headaches) as a result of odour</li> <li>• Light trespass also a concern</li> <li>• Noise and vibration from boilers, transport trucks, delivery vehicles</li> <li>• Impact to farmland</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Light</li> <li>• Noise</li> <li>• Farmland</li> </ul>
<b>13</b>	April 27, 2020	Barry	<ul style="list-style-type: none"> <li>• Commented on the job losses (200 jobs) from the CannTrust operation.</li> <li>• Not supportive of amendments that would make</li> </ul>	<ul style="list-style-type: none"> <li>• Job losses</li> <li>• Existing operations</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			remove or prevent the establishment of a new facility.	
14	April 28, 2020	Lin Zavitz	<ul style="list-style-type: none"> <li>Numbering inconsistency with exception in meridian report and the draft amendment</li> </ul>	<ul style="list-style-type: none"> <li>Administration</li> </ul>
15	April 29, 2020	Judy and Curt Smith	<ul style="list-style-type: none"> <li>Concerns about how cannabis operations impact the value of property/home.</li> <li>Concerns with the smell that is currently emitted from the CannTrust operation and specifically with the proximity to the existing neighbourhood and school.</li> <li>Question why CannTrust has not applied technology to control odour emissions.</li> <li>Concern about the impacts to overall enjoyment of property owners and their property as well as the impacts to property values in the area.</li> <li>Does not agree that the use should be classified as agriculture and should be taxed at a higher rate such as industrial operations.</li> </ul>	<ul style="list-style-type: none"> <li>Property devaluation</li> <li>Existing operations</li> <li>Odour</li> <li>Land use classification</li> <li>Tax classification</li> </ul>
16	April 29, 2020	Cathy and Jason Thompson	<ul style="list-style-type: none"> <li>Would prefer a setback of 750 m to 1 km, but 500 m is okay</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> </ul>
17	April 29, 2020	Deb Foster	<ul style="list-style-type: none"> <li>Concern about the environment and co2 emissions</li> <li>Concern about prime farmland being used for greenhouses</li> <li>Concern about odour</li> <li>Concern about tax classification</li> </ul>	<ul style="list-style-type: none"> <li>Farmland</li> <li>Odour</li> <li>Tax classification</li> </ul>
18	April 30, 2020	Diane Cooper	<ul style="list-style-type: none"> <li>Happy with the amendments</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
19	April 30, 2020	Doug Symington	<ul style="list-style-type: none"> <li><b>Grandfathered.</b> Are the cannabis producers currently operating, having been authorized and permitted by Pelham under the Official Plan and By-laws at the time of their applications, grandfathered to that set of regulations? And not be required to fall under the revisions proposed? If not grandfathered, are those businesses that have been approved under prior regulation, able to challenge either of the proposed Draft Amendments to the Local Planning Appeals Tribunal? If they are able to so challenge, what is the financial exposure and risk to Pelham to defend that action? What legal advice does Pelham currently have in this regard?</li> <li><b>Local Planning Appeals Tribunal Challenge.</b> Do the proposed Draft Amendments conform to the</li> </ul>	<ul style="list-style-type: none"> <li>Existing operations</li> <li>Financial impact to taxpayers</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			Provincial legislation and regulations that are required of municipalities? If so, does that presume that there could be no successful application to the Local Planning Appeals Tribunal to challenge these proposed Draft Amendments? If not, what is the financial exposure and risk to Pelham to defend that action? What legal advice does Pelham currently have in this regard?	
20	April 30, 2020	Sandy Jeffs	<ul style="list-style-type: none"> <li>• Prefer that a setback of 2 km be implemented to control for odour</li> <li>• Will residents have to complain to have odours managed or will our bylaw officers keep an eye on problems and enforce the by-laws?</li> <li>• Schedules A and B - Do not give the public enough information to make comments about. Does this show their existing size? I would like to see a limit on how big an individual company can get in our town. They could keep buying more land around themselves and expand and expand.</li> <li>• Parking- 1 parking space per 100m square of gross floor space. That is using a lot of valuable agriculture land. Could we not consider underground parking in agriculture zones?</li> <li>• Did the town get any feedback from the NEC?</li> <li>• Concern with increased traffic and think that traffic study should be completed by independent traffic expert and not someone hired by cannabis operation.</li> <li>• Would like to see a policy on waste management of plants.</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Enforcement</li> <li>• Administration</li> <li>• Traffic</li> <li>• Waste management of plants</li> </ul>
21	April 30, 2020	Donna Boksa	<ul style="list-style-type: none"> <li>• Concerned about the environment issues - water table, contamination into soil and water, effects on animals, plants because of light, water, odour, noise. Pollution with chemicals/ fertilizer contaminating soil and water table, run off needs to be addressed.</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Light</li> <li>• Noise</li> <li>• Waste management of plants</li> <li>• Water</li> </ul>
22	April 30, 2020	David Ireland	<ul style="list-style-type: none"> <li>• Provided an overview of involvement within the community to organize a meeting with the public to raise awareness on the issue of odour in the community.</li> <li>• Concern that the proposed setbacks from sensitive uses are 'grossly inadequate'.</li> <li>• Concern that continued complaints about existing operations have not been dealt with.</li> </ul>	<ul style="list-style-type: none"> <li>• Existing operations</li> <li>• Odour</li> <li>• Waste management of plants</li> <li>• Water</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<ul style="list-style-type: none"> <li>• Also expressed concern about illegal dumping of organic material and water usage</li> <li>• Does not feel that odour from livestock should be treated the same as odour from cannabis.</li> <li>• Question why existing operations are being grandfathered.</li> <li>• Suggest that the wording in Section B.2.7.9 'where possible' be removed.</li> </ul>	<ul style="list-style-type: none"> <li>• Land use classification</li> </ul>
23	April 30, 2020	Al and Sheila Langohr	<ul style="list-style-type: none"> <li>• Supportive of the amendments, but would prefer that the changes also require new purpose built greenhouses and not retrofitted old greenhouses.</li> <li>• Retrofitted greenhouses do not eliminate problems with odour and light.</li> <li>• Also would like to see health issues mentioned that are a result of odour and light impacts and that keep people confined to their homes/making them ill (e.g. asthma, COPD, inhalant allergies)</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Light</li> </ul>
24	May 2, 2020	Tillie and Earl Clapp	<ul style="list-style-type: none"> <li>• Agree with many parts of the amendments (not listed here)</li> <li>• Natural characteristic of cannabis plant emitting higher VOCs than other crops means that there should be different rules applied</li> <li>• Cannabis operations should be situated where soil is not adequate for farming.</li> <li>• Odour setbacks should be higher.</li> <li>• Concern about groundwater and potential impacts</li> <li>• Would strongly support the Town in applying policies in draft opa to existing operations seeking an expansion</li> </ul>	<ul style="list-style-type: none"> <li>• Land use classification of cannabis</li> <li>• Existing operations</li> <li>• Farmland</li> <li>• Odour</li> <li>• Groundwater</li> </ul>
25	May 3, 2020	Rick McCombs and Valerie Eves	<ul style="list-style-type: none"> <li>• Concerned about odour and setbacks. 500 metres should be the minimum and 300 metres could be elsewhere.</li> <li>• Concern about the impacts of existing facilities on nearby schools</li> <li>• Object to outdoor growing</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Existing operations</li> <li>• Land use classification of cannabis</li> </ul>
26	May 3, 2020  And another letter May 4, 2020	Paul Bryant	<ul style="list-style-type: none"> <li>• Page 6 paragraph 2: Should say 'Township' instead of 'Town'</li> <li>• Page 9 iii): should define impact</li> <li>• Iv) and v): same as above and outline cost values to correct impact</li> <li>• Vii) and x): change the word 'can' to 'must'</li> <li>• Page 12. (d)Traffic Impact Study (i)At no cost to the municipality, the proponent of the proposed</li> </ul>	<ul style="list-style-type: none"> <li>• Administration</li> <li>• Traffic</li> <li>• Property devaluation</li> <li>• Enforcement Penalties for non-compliance</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<p>cannabis-related use or industrial hemp-related use will submit a Traffic Impact Study, to the satisfaction of the Town and/or the Region, that demonstrates that the proposed use will not cause any traffic hazards or an unacceptable level of congestion on roads in the area. ...number of vehicles traveling per hour of time, number of axles and vehicle weight limits, time of year road restrictions due to winter / spring tar &amp; chip road strength and rating. Define congestion, parameters. Cost of road repairs? The rural roads were not constructed to carry high volume traffic and are narrow. The sides of Foss road are already in disrepair with lots of black patch, which is a temporary fix.</p> <ul style="list-style-type: none"> <li>• Should there be a clause for a yearly inspection or in response to a complaint for access to Cannabis Operation and the process to complete an inspection.</li> <li>• Are there any other words that should be “defined” in the by law or given a dollar value?</li> <li>• I have been told that Medical Cannabis Growers are not covered by Municipal By laws. Is there a way to close the NEC loophole for 425 Kilman road or any other related Medical Cannabis Growers? Is there any other legislation or acts written all the way back to confederation that will cover that loophole?</li> <li>• Don't agree that the facilities have not had an impact on the municipal property assessment.</li> </ul>	
27	May 4, 2020	Melissa Nichol	<ul style="list-style-type: none"> <li>• Concern about the potent smell that is often found within the neighbourhood, which impacts the feel of the community and the enjoyment of outdoor spaces.</li> <li>• Concern with the number of individuals that smoke cannabis on trails and near parks.</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> </ul>
28	May 4, 2020	Barry and Patricia Shannon	<ul style="list-style-type: none"> <li>• Provided a number of concerns with the existing CannTrust operation, including: <ul style="list-style-type: none"> <li>○ Odour: strong skunk-like smell that has not been mitigated despite assertions that infiltration and other treatment controls have been put in place.</li> <li>○ Visual: barbwire fencing and other aspects of the operations.</li> <li>○ Traffic: increasing frequency of traffic on</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Existing operations</li> <li>• Traffic</li> <li>• Property devaluation</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<p>country roads and a backlog of traffic at shift changes.</p> <ul style="list-style-type: none"> <li>○ Unknown health risks associated with emissions.</li> <li>○ Impacts to housing value.</li> </ul>	
29	May 4, 2020	Bryan Kuypers	<ul style="list-style-type: none"> <li>• Odor emissions should not be allowed, either the actual odor produced by the crop or any masking agent. All emissions should be safe to humans and not pollute the atmosphere.</li> <li>• Light emissions should be mitigated.</li> <li>• There should be minimum set backs for both greenhouse and outdoor production.</li> <li>• All future facilities should require a site plan and be approved by the Planning Dept.</li> <li>• Effects on traffic, water and sewer should be addressed for all developments</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Light</li> <li>• Traffic</li> <li>• Water</li> </ul>
30	May 4, 2020	Paul McDowell	<ul style="list-style-type: none"> <li>• Odour pollution from the plants, light pollution at night, traffic noise on the nearby streets from workers, and the unsightly presence of large scale industrial facilities in our formerly pleasant countryside count amongst the many concerns felt by us and our neighbors.</li> <li>• The amendments do not go far enough in expressing meaningful enforcement, penalties and requirements. Nor do they eliminate ambiguity around unforeseen consequences (e.g. effluent potentially leaching into the water table, soil contamination, etc).</li> </ul>	<ul style="list-style-type: none"> <li>• Odour</li> <li>• Light</li> <li>• Traffic</li> <li>• Land use classification</li> <li>• Enforcement</li> <li>• Penalties for non-compliance</li> </ul>
31	May 4, 2020	Dave Macfarlane	<ul style="list-style-type: none"> <li>• In light of the massive greenhouse fire in the peninsula in 2019, I feel the article should be specific concerning the submission of Fire Protection – Sprinkler specifications and drawings. Normally the construction industry considers these a separate entity from the general term “Mechanical”.</li> <li>• Tammy Jarbeau, Senior Media Relations Advisor for Health Canada states, “All buildings or part of buildings where cannabis is produced, packaged, labelled, and stored need to be equipped with a system that filters air to PREVENT the escape of odours.” The definition of “prevent” is to STOP odours, NO ODOUR at any time. For this reason Article B2.7.5 a) iii) does not meet Health Canada requirements and should be amended further to meet same.</li> <li>• The existing cannabis operations should be</li> </ul>	<ul style="list-style-type: none"> <li>• Existing operations</li> <li>• Building classification</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			classified as Industrial Occupancy.	
32	May 4, 2020	Gail Smith	<ul style="list-style-type: none"> <li>Any odor from indoor or outdoor crops should not be permitted. There has to be a system in place to prevent this and not just try to mask it.</li> <li>No new facilities should be permitted in close proximity to housing or neighbourhoods where odor and lighting from the facility impacts neighbours. Lighting has to be less severe. Strict enforcement laws and manpower to enforce laws must be in place.</li> <li>Site plans must be submitted and approved prior to receiving a permit to build. Detailed information regarding the prevention of odor and lighting must be included and reviewed to ensure it satisfies the requirements of the Town.</li> <li>Minimum setbacks from road for indoor and outdoor must be set and adhered to.</li> <li>Traffic and road impact studies to be conducted and approved.</li> <li>Environmental impact studies regarding sewage and water to be completed and approved prior to permit being granted.</li> <li>Limited the number of facilities in Pelham with no option to add additional ones.</li> </ul>	<ul style="list-style-type: none"> <li>Existing operations</li> <li>Odour</li> <li>Light</li> <li>Enforcement</li> <li>Traffic</li> <li>Water</li> <li>Waste management of plants</li> </ul>
33	May 4, 2020	Carla and Len Bianco	<ul style="list-style-type: none"> <li>Concerned with light pollution and the agricultural tax base</li> <li>Comment of support with the creation of new policies to deal with the above</li> </ul>	<ul style="list-style-type: none"> <li>Light pollution</li> <li>Tax classification</li> </ul>
34	May 4, 2020	John Richard Reuter	<ul style="list-style-type: none"> <li>Concern with traffic and safety as roads do not have sidewalks</li> <li>Concern with odour and light pollution from existing operations</li> <li>Concern with water takings and stormwater runoff in areas that are not designed to accommodate it</li> <li>Concern about dust pollution</li> <li>Concern about tax classification</li> </ul>	<ul style="list-style-type: none"> <li>Traffic</li> <li>Odour</li> <li>Light</li> <li>Water</li> <li>Dust</li> <li>Tax classification</li> </ul>
35	May 4, 2020	Mandi Dama	<ul style="list-style-type: none"> <li>Supports the amendments</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
36	May 5, 2020	Richard Secord	<ul style="list-style-type: none"> <li>Concerns with odour and light pollution and potential impacts to property assessment</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Light</li> <li>Tax classification</li> </ul>
37	May 5, 2020	Brian and Sarah	<ul style="list-style-type: none"> <li>Concern with noise from generators, traffic, privacy and odour</li> </ul>	<ul style="list-style-type: none"> <li>Noise</li> <li>Traffic</li> </ul>

<b>Summary of Public Comments on Draft Cannabis Amendments</b>				
	<b>Date</b>	<b>Recipient</b>	<b>Question/Summarized Comments</b>	<b>Theme</b>
		Kuzee	<ul style="list-style-type: none"> <li>Do not agree that the 300-500 metre setback will be sufficient</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> </ul>
<b>38</b>	May 5, 2020	Dave & Christine Klyn-Hesselink	<ul style="list-style-type: none"> <li>Concern with noise, odour and light pollution from existing operations</li> <li>Do not agree that the 300-500 metre setback is sufficient</li> <li>The existing facilities should be considered industrial and located where industrial land uses are supposed to be.</li> </ul>	<ul style="list-style-type: none"> <li>Noise</li> <li>Odour</li> <li>Light</li> <li>Existing operations</li> <li>Land use classification</li> </ul>
<b>39</b>	May 5, 2020	Tom May	<ul style="list-style-type: none"> <li>Confusion about the 300-500 metre setback in the OPA and 45 metre setback in the ZBL</li> <li>Should require the licensed professional engineer to have expertise in the area that they are preparing a report for.</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Administration</li> </ul>
<b>40</b>	May 5, 2020	Darlene McDowell	<ul style="list-style-type: none"> <li>Concern with light pollution and odour</li> <li>Requesting that the Town consider municipal licensing</li> <li>Should be in a different tax classification</li> <li>Concern about loss of prime agricultural land</li> </ul>	<ul style="list-style-type: none"> <li>Light</li> <li>Tax classification</li> <li>Farmland</li> </ul>
<b>41</b>	May 5, 2020	Brent Hume and Helene Gagnon	<ul style="list-style-type: none"> <li>Concern about odour and light pollution from CannTrust</li> <li>Concern with tax classification</li> <li>Concern with increased traffic and groundwater impacts, greenhouse gases, electricity and waste removal</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Light</li> <li>Tax classification</li> <li>Traffic</li> <li>Water</li> <li>Waste management of plants</li> </ul>
<b>42</b>	May 5, 2020	Phil Girard	<ul style="list-style-type: none"> <li>Comments were provided on the draft OPA with respect to odour only.</li> <li>A few comments were provided on the wording of text in the preamble.</li> <li>Setbacks should be dictated by the process specific to odour emission rates and the effectiveness of odour controls implemented. If odour can be controlled to a level of trivial impact, the setbacks can be minimized and may not need to be 'significant'.</li> <li>Residents have also expressed concerns about exposure to chemicals from cannabis operations. Could request Emission Summary and Dispersion Modeling Report, including odour, that demonstrates compliance with provincial limits and satisfies odour limits.</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<ul style="list-style-type: none"> <li>Impact assessment should consider development potential on a vacant lot as well.</li> <li>Some aspects of cannabis processing may fall under Ministry of Environment and Parks (MECP) jurisdiction and may require provisional approval (Section 9 EPA). Town should require statement from MECP stating whether an ECA/EASR is required or not.</li> <li>Future substantiated complaints should be defined so that the trigger is clear.</li> </ul>	
43	May 5, 2020	Julie Campbell	<ul style="list-style-type: none"> <li>Comment that greenhouses should not be located within 500-1,000 metres from a residential dwelling.</li> <li>Requesting that a cap based on percentage allotment be applied to greenhouses in the Town to manage the number of greenhouses that are being constructed.</li> <li>Question on the enforcement of greenhouses that are over the established limit.</li> <li>Outdoor cultivation should be much further than 45 metres from a property line.</li> <li>Concern with the tax classification of existing operations, should be industrial and not agricultural.</li> <li>Cannabis operations are not farms and should be considered as industrial uses.</li> <li>Question on whether studies have been done on the number of individuals that are employed at each operation.</li> <li>Concern and questions on what is happening with farmland that is intended for fruits and livestock.</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Land use classification</li> <li>Farmland</li> <li>Tax classification</li> </ul>
44	May 5, 2020	Jeremy Ross	<ul style="list-style-type: none"> <li>A number of suggestions were provided for updates to the amendments.</li> <li>The setback should be 1,000 metres to ensure that cannabis operations are not an eyesore. They are already violating Town by-laws for fence height.</li> <li>Odour is the biggest issue and there needs to be a quantifiable limit on odour permeation from these facilities.</li> <li>Outdoor growing should be completely banned as it would be impossible to mitigate odour outdoors.</li> <li>There should be a limit on the amount of light that can be emitted.</li> </ul>	<ul style="list-style-type: none"> <li>Odour</li> <li>Light</li> <li>Land use classification</li> <li>Penalties for non-compliance</li> </ul>

Summary of Public Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<ul style="list-style-type: none"> <li>There should be no harmful chemicals on site. Currently, there are large compressed gas containers on sites that are not typically with agricultural operations. These sites should be considered as industrial uses.</li> </ul>	

**APPENDIX B - SUMMARY OF AGENCY  
COMMENTS AND LETTER FROM NIAGARA  
REGION**

**Regulating Cannabis in the  
Town of Pelham**

Prepared for the Cannabis Control Committee

Addendum Report - July 5, 2020



**Summary of Agency Comments**

**Comment Period:** April 16, 2020 to May 5, 2020

**Number of Industry Comments Received:** 2

<b>Summary of Agency Comments on Draft Cannabis Amendments</b>				
	<b>Date</b>	<b>Recipient</b>	<b>Question/Summarized Comments</b>	<b>Theme</b>
<b>1</b>	May 4, 2020	Niagara Escarpment Commission	<ul style="list-style-type: none"> <li>• Staff position: confirmed that the OPA would not apply in the NEP Area and that the ZBLA would just be used as a guideline if the Town were commenting on a Development Permit application for cannabis related uses.</li> <li>• Staff does not feel that the amendments would be in conflict with the NEP 2017.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>No objection to the amendments.</i></li> </ul>
<b>2</b>	May 5, 2020	Regional Municipality of Niagara	<ul style="list-style-type: none"> <li>• Provincial and Regional policies permit the growth and cultivation of cannabis as an agricultural use.</li> <li>• In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices, including growth of cannabis, shall be promoted and protected in accordance with provincial standards.</li> <li>• Cannabis overlay should also apply in the Specialty Agricultural designation.</li> <li>• Regional staff recommend against creating policies within the agricultural area that restrict and/or prohibit the types of plants that can be planted.</li> <li>• Unclear on what is permitted by the terms cannabis-related use and industrial hemp-related use as definitions are not included in the draft OPA or draft ZBA.</li> <li>• Unclear on why outdoor cannabis is not permitted in the industrial designation of the Rural Area.</li> <li>• Development criteria should be implemented through zoning and site plan control.</li> <li>• Question on whether the setback policies can be refined through additional studies or whether setbacks cannot be refined. Setbacks should be established in the zoning by-law.</li> <li>• Question on when certain studies are required (e.g. for the type of use) and comment that AIA is not appropriate as cannabis cultivation is an agricultural use.</li> <li>• Given the Region’s position with the OPA and</li> </ul>	<ul style="list-style-type: none"> <li>• Conformity with Provincial and Regional policies</li> <li>• Setbacks</li> <li>• Requirement of Studies</li> </ul>

Summary of Agency Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<p>conformity to Provincial and Regional policies, the draft ZBA was not reviewed in detail.</p> <ul style="list-style-type: none"> <li>The draft OPA is not consistent nor does it comply with the PPS, Growth Plan or Region of Niagara Official Plan.</li> </ul>	

**Planning and Development Services**

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7  
905-980-6000 Toll-free:1-800-263-7215

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**Via Email Only**

May 5, 2020

File Nos.: D.10.06.OPA-20-0009  
D.18.06.ZA-20-0024

Ms. Shannon Larocque, MCIP, RPP  
Senior Planner  
Town of Pelham  
20 Pelham Town Square  
Fonthill, ON L0S1E0

Dear Mr./Ms. Larocque:

**Re: Regional and Provincial Comments  
Official Plan and Zoning By-law Amendment Applications  
Town Initiated Amendments for Cannabis Policies  
Town of Pelham  
Town File No.: OP-AM-01-19 and AM-07-19**

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Regional Planning and Development Services staff has reviewed the information circulated with the Town initiated Official Plan and Zoning By-law Amendments with respect to cannabis production. The Notice of Request for Comments was received on April 16, 2020, and the draft amendments were received on April 17, 2020.

The draft Official Plan Amendment (OPA) proposes to:

- Establish a cannabis overlay for lands designated Good General Agricultural where new cannabis and industrial hemp-related uses (indoor and outdoor) are permitted, subject to certain criteria being satisfied, including policy guidance for the establishment of appropriate setbacks to avoid, minimize and mitigate adverse effects;
- Establish the requirement for a zoning by-law amendment to establish a new cannabis-related use or industrial hemp-related use in the Good General Agricultural designation;
- Indicate that Site Plan Approval would also be required for such uses;
- Require an Official Plan Amendment, in addition to a zoning by-law amendment, to permit new cannabis and industrial hemp-related uses within the Specialty Agricultural designation;

- Identify the studies that are required to support the establishment of a cannabis or industrial hemp-related use to ensure that all potential adverse effects are studied in advance.
- Establish guidelines on what setbacks will be considered as a minimum if a cannabis or an industrial hemp-related use is proposed through a zoning by-law amendment which can be increased or decreased based on the merits of an individual application.

The draft Zoning By-law Amendment (ZBA) proposes to:

- Add definition for indoor and outdoor cannabis and industrial hemp-related uses as well as sensitive land uses;
- Establish Agricultural-Cannabis (A-CAN) and General Industrial-Cannabis (M2-CAN) zones with regulations for minimum setbacks, lot area, frontage and coverage requirements.
- Rezone properties containing existing cannabis-related uses site-specifically to recognize existing operations.

Regional staff provides the following comments regarding Provincial and Regional policy to assist the City in revising the amendments before they go to Council.

## **Provincial and Regional Policies**

Provincial and Regional policies permit agricultural uses, agriculture-related uses and on-farm diversified uses within the Agricultural areas. The 2020 Provincial Policy Statement (PPS), 2019 Growth Plan for the Greater Golden Horseshoe (GPGGH), 2017 Greenbelt Plan (GP), 2017 Niagara Escarpment Plan (NEP) and Niagara Region Official Plan (ROP) all consider the growth and cultivation of crops (including cannabis) as well as associated on-farm buildings and structures to be an agricultural use, including value-retaining facilities. In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices, including growth of cannabis, shall be promoted and protected in accordance with provincial standards.

Provincial and Regional policies also encourage municipalities to promote a mix of employment opportunities to provide for a competitive and diversified economic base within employment areas.

The Niagara Region Official Plan also sets out a number of objectives aimed at maintaining a sustainable agricultural industry. The Plan notes that a wide range of crops are important in maintaining the agricultural industry's diversity. Objective 5.A.7 supports uses that enable farming and farmers to:

- a) Become more competitive, sustainable and environmentally friendly;
- b) Adapt to new and changing markets;
- c) Diversify into and take advantage of new agricultural opportunities;
- d) Improve the understanding of agriculture by the general public; and

- e) Broaden operations to diversity economic activity and add value to their primary products.

## **Official Plan Amendment**

The draft OPA policies permit “cannabis-related and industrial hemp-related uses” within the Good General Agricultural and Industrial designations of the Rural Area (i.e. outside the settlement areas) through the establishment of a Cannabis Overlay designation. However, the amendment excludes permission for cannabis uses within the Specialty Agricultural designation, which is contrary to the direction of Provincial and Regional policies.

The PPS states that, in prime agricultural areas, permitted uses and activities are agricultural uses, agriculture-related uses and on-farm diversified uses. Provincial and Regional policies all consider the growth and cultivation of crops (including cannabis) as well as associated on-farm buildings and structures to be an agricultural use. Regional staff recommend against creating policies within the agricultural area that restrict and/or prohibit the types of crops that can be planted. Both Regional Council and the Region’s Agricultural Policy and Action Committee have been consistent with requests and comments to the Province that all commodity groups be treated equally. By creating policy sets that identify individual crop types, there can be implications that result in disadvantages to growers and operators within the agricultural sector.

The PPS states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards. The Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) “Guidelines for Permitted Uses in Ontario’s Prime Agricultural Areas” (OMAFRA Guidelines) can be used by municipalities to assist in evaluating compatibility and appropriateness of agricultural uses.

The draft OPA is unclear in terms of what is intended to be permitted by the terms “cannabis-related use and industrial hemp-related use”. The policy references Federal Cannabis Regulation SOR-2018-144 and Industrial Hemp Regulation SOR-2018-145; however, no specific definition is included in the OPA. The reliance on these regulations and lack of a clear definition may be problematic from an implementation perspective. Regional staff would appreciate receiving clarification from the Town as to the intent of the amendment, in terms of whether it is meant to regulate only growth and cultivation of cannabis or processing as well. Cannabis processing may be considered an agriculture-related use, subject to meeting certain criteria. These criteria have been identified in the draft OPA, but it is unclear in the draft policy in which circumstances these criteria would apply.

The draft OPA seems to indicate that cannabis-related uses may be considered Agricultural, Agricultural-related or Industrial-uses, but does not specify which policies apply to which use. Policy B2.7.4(b) makes reference to the criteria for agricultural related uses. The basis of the amendment suggests cannabis-related uses meet the definition for “Major Facility” in the PPS. In Prime Agricultural Areas, the growth, cultivation and processing of cannabis is considered an agricultural use and in this regard the use of this PPS policy is incorrect. As previously noted, the PPS allows agricultural uses of all types, sizes and intensities in Prime Agricultural Areas, and the amendment is unclear on whether the intent is to regulate processing of cannabis, which may be considered an agriculture-related use.

It is unclear why the proposed amendment proposes to limit outdoor cannabis cultivation in the Industrial designation of the Rural Area. Regional staff discourage the prohibition of outdoor cultivation, specifically in Rural Area designations, which should permit all types and methods of agricultural uses and production to be consistent with Provincial and Regional policy.

Although Regional staff support the municipality’s ability to identify specific development criteria (such as odour and light mitigation systems, monitoring plans, setbacks from sensitive uses), these are more appropriately implemented through Zoning and Site Plan Control. It is unclear whether the intent of the minimum setback policies is to provide a minimum that can be further refined through the additional studies as part of the Zoning By-law Amendment, or whether the minimum setback cannot be refined which then make the additional studies redundant. Regional staff support the municipality’s ability to identify minimum setbacks in a zoning by-law where they can be justified and/or the requirement for additional studies at the time of application; however, the policies should be clear that the minimum setbacks identified in the OPA can be further refined by the additional studies without the requirement for additional amendment to the official plan. The Region would appreciate an opportunity to review the justification undertaken by the Town in support of the minimum setbacks identified in the draft OPA, as these setbacks exceed recommended setbacks for other uses that require separation from sensitive land uses (i.e. Class III industrial uses).

With regard to the requirement for additional studies, clarification on when these studies are required (i.e. growing and cultivation or processing) should be provided. Some of the studies (i.e. Agricultural Impact Assessment) are not appropriate for growth and cultivation given cannabis production is an agricultural use.

### **Zoning By-law Amendment**

Given the number of conformity issues with the draft OPA, Regional staff has not reviewed the draft Zoning By-law Amendment (ZBA) in great detail. Staff notes that some of the detailed policies included in the draft OPA (i.e. specific numbers or references to specific crops) would be more appropriately included in a ZBA. It is noted that the minimum setback to sensitive land uses (i.e. residential) is significantly different

between the draft OPA and the draft ZBA. A previous draft ZBA was circulated by the Town, and Regional staff provided comments by letter dated August 29, 2019. Regional staff would be supportive of regulations similar to what was previously circulated.

## **Regional Approval**

These comments are provided as guidance on matters required to address compliance with Provincial and Regional policy and the possibility of an exemption from Regional approval. In accordance with the *Planning Act* and Memorandum of Understanding, site-specific local Official Plan Amendments are generally subject to approval by Regional Council. The proposal may be exempt from Regional approval if Policy 14.E.7 and 14.E.8 of the ROP can be met. The applicable policies are as follows:

*14.E.7 Policy amendments to local Official Plans that are in conformity with the Regional Official Plan may be exempt from Regional approval where they are of local significance and no Regional interest is adversely affected. Applications for a policy amendment to local Official Plans with Regional interests, where a collaborative process has been undertaken between the Region and the Local Municipality, including policies (i) and (ii) below, have been addressed through pre-consultation and review of the draft Local Amendment may also be exempt. Amendments impacting any one of the following areas are not eligible for exemption:*

- i. Applications directly and substantially affecting Regional servicing infrastructure: i.e. streets, water, and wastewater;*
- ii. Applications that substantially change Regional capital forecasts;*
- iii. Urban boundary expansions;*
- iv. Applications to convert employment areas and lands that have the potential for adversely affecting the viability of an employment area;*
- v. Major applications that will adversely affect Regional traffic flows;*
- vi. Major secondary plans;*
- vii. Retail applications of Regional scale which have a market area extending two or more municipalities;*
- viii. Applications that are not consistent with the Provincial Policy Statement or the Growth Plan for the Greater Golden Horseshoe;*
- ix. Applications with cross-boundary impacts.*

*14.E.8 Site specific amendments to local Official Plans shall be subject to the following policy. The Region as the approval authority for local Official Plans may exempt some local Official Plan amendments involving land use designation changes from Regional approval. Local Official Plan amendments to be considered for exemption will be of local interest only, not extensive or comprehensive in nature and not involving a change to the municipality's urban area boundaries. Only those amendments which satisfy the following criteria are eligible for exemption:*

- i. The amendment must be site specific and/or minor in size and nature,*

- ii. *The amendment conforms to the Regional Official Plan and is consistent with the Provincial Policy Statement,*
- iii. *The amendment does not impact on any adjacent municipality or conflict with the Niagara Escarpment Plan, and does not require new Regional financing or servicing,*
- iv. *The amendment complies with the Region's financial and servicing strategy,*
- v. *The amendment incorporates any concerns or modifications recommended by the Region to address Regional or Provincial concerns, and*
- vi. *Any subsequent changes made to the local Official Plan amendment by the local Council in adopting the amendment do not conflict with the Regional Official Plan or previous requirements by the Region.*

Should the amendment be revised to address the above noted comments, the OPA may be exempt from Regional approval.

## **Conclusion**

The Region appreciates the opportunity to review and comment on the previous and current draft amendments.

Provincial and Regional policies permit the growth and cultivation of cannabis as an agricultural use and the draft OPA is not consistent nor does it comply with these policies without modifications. Regional staff would be happy to have further discussions with Town staff and their consultant regarding our comments and the necessary changes required to ensure the draft policies and regulations align with Provincial and Regional policies.

If a revised OPA addresses our comments, Regional staff will review to determine whether the amendment can be exempt from Regional Council approval in accordance with Policy 14.E.7/14.E.8 of the Regional Official Plan and the Memorandum of Understanding. Confirmation on exemption will be provided upon receipt and review of the revised OPA.

Kind regards,



Britney Fricke, MCIP, RPP  
Development Planner

cc: Barb Wiens, MCIP, RPP, Director of Community Planning and Development,  
Town of Pelham  
Tim Nohara, Chair of Cannabis Control Committee, Town of Pelham  
Nick McDonald, RPP, Meridian Planning Consultants  
Diana Morreale, MCIP, RPP, Director of Development Approvals, Niagara  
Region  
Pat Busnello, MCIP, RPP, Manager of Development Planning, Niagara Region  
Lola Emberson, MCIP, RPP, Senior Development Planner, Niagara Region

# APPENDIX C - SUMMARY OF INDUSTRY COMMENTS AND LETTERS FROM THE INDUSTRY

## Regulating Cannabis in the Town of Pelham

Prepared for the Cannabis Control Committee

Addendum Report - July 5, 2020



**Summary of Industry Comments**

**Comment Period:** April 16, 2020 to May 5, 2020

**Number of Industry Comments Received:** 3

<b>Summary of Industry Comments on Draft Cannabis Amendments</b>				
	<b>Date</b>	<b>Recipient</b>	<b>Question/Summarized Comments</b>	<b>Theme</b>
<b>1</b>	May 5, 2020	Sullivan and Mahoney, on behalf of CannTrust Inc.	<p><b>Official Plan Amendment</b></p> <ul style="list-style-type: none"> <li>• Policies are unduly restrictive</li> <li>• The OPA does not recognize the CannTrust lands as an agricultural use.</li> <li>• OPA does not conform to the PPS: Agricultural uses are permitted in the prime agricultural area and the cultivation of cannabis is an agricultural use under the PPS.</li> <li>• OPA does not conform to the Growth Plan (no justification is included).</li> <li>• A number of concerns were raised that impact an expansion to the CannTrust operation. These include:               <ul style="list-style-type: none"> <li>○ B.2.7.8 would require CannTrust to apply for a zoning by-law amendment to expand CannTrust operation should be recognized as an existing use</li> <li>○ B.2.7.4 – question on how would these criteria be measured.</li> <li>○ B.2.7.5 – concern that there is no flexibility for staff to modify study requirements, particularly as it relates to an expansion of the existing CannTrust operation</li> <li>○ Setbacks are overly restrictive and should be measured from a sensitive receptor and not a lot line.</li> <li>○ Do not agree that signage requirements can be in an Official Plan.</li> <li>○ Do not agree that future substantiated complaints should be the basis for triggering the completion of studies.</li> </ul> </li> </ul> <p><b>Zoning By-law Amendment</b></p> <ul style="list-style-type: none"> <li>• Site-specific zoning should grandfather the existing CannTrust operation</li> <li>• Parking requirement is excessive.</li> <li>• Front and side yard requirements are excessive.</li> </ul>	<ul style="list-style-type: none"> <li>• Conformity with Provincial policies</li> <li>• Impacts on future expansion</li> <li>• Excessive setbacks</li> <li>• Policy implementation (study requirements, measuring criteria, future substantiated complaints)</li> </ul>
<b>2</b>	May 5, 2020	Friedmans Law Firm, on	<ul style="list-style-type: none"> <li>• Amendments are not consistent with the PPS, cannabis cultivation is an agricultural use and is</li> </ul>	<ul style="list-style-type: none"> <li>• Conformity with Provincial</li> </ul>

Summary of Industry Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
		behalf of Leviathan Cannabis Group Inc.	<p>not considered a major facility.</p> <ul style="list-style-type: none"> <li>• Amendments do not conform to the agricultural policies in the Growth Plan.</li> <li>• Amendments do not conform to the Regional Official Plan policies that apply to agricultural areas.</li> <li>• Do not agree that the only way of preventing adverse effects is through separation and indicated that there are ways to mitigate odour and light through better design of greenhouses (e.g. sealed greenhouses).</li> <li>• Section B.2.7.4 of OPA do not allow for mitigation of adverse effects but rather read as a strict prohibition of negative impacts, which is not defined.</li> <li>• Section B.2.7.5(a)(iii) – it is unclear about how compliance could be demonstrated.</li> <li>• Unclear how setback guidelines can be reduced.</li> <li>• OPA setback guidelines and ZBA setbacks in 7A.2 (i) to (l) are excessive and the setback distance should be measured from the sensitive receptor and not the lot line.</li> <li>• Parking requirements are ‘unreasonably’ connected to gross floor area instead of employment.</li> </ul>	<p>policies</p> <ul style="list-style-type: none"> <li>• Impacts on future expansion</li> <li>• Excessive setbacks</li> <li>• Policy implementation (study requirements, measuring criteria, future substantiated complaints)</li> </ul>
3	May 5, 2020	Inch Hammond Barristers and Solicitors, on behalf of RedeCan	<ul style="list-style-type: none"> <li>• Amendments are not consistent with the PPS and do not conform with the Growth Plan.</li> <li>• With respect to the PPS section 1.2.6.1, it is opined that this policy provides for the ability to mitigate potential impacts of major facilities through planning process and does not require that they be eliminated entirely.</li> <li>• In addition to the above, cannabis cultivation is considered as an agricultural use in the PPS. The same opinion is provided with respect to the Growth Plan policies for agricultural uses.</li> <li>• The amendments would require a planning process for an expansion to the existing operations, which is not supported.</li> <li>• The policies do not allow for staff to modify study requirements on a site specific basis.</li> <li>• B.2.7.4 a) iii) requires an AIA which evaluates the impacts of non-agricultural development, however it is opined that cannabis cultivation is</li> </ul>	<ul style="list-style-type: none"> <li>• Conformity with Provincial policies</li> <li>• Impacts on future expansion</li> <li>• Excessive setbacks</li> <li>• Policy implementation (study requirements, measuring criteria, future substantiated complaints)</li> </ul>

Summary of Industry Comments on Draft Cannabis Amendments				
	Date	Recipient	Question/Summarized Comments	Theme
			<p>an agricultural use.</p> <ul style="list-style-type: none"> <li>• B2.7.7 setback guidelines are overly restrictive and there is no basis for measuring the setback from the lot line rather than the sensitive receptor.</li> <li>• In addition to the above, there is no basis for requirements for separation distance between cannabis related uses, as demonstrated by previous application of separation distance for group homes.</li> <li>• Other comments on the draft OPA <ul style="list-style-type: none"> <li>○ B2.7.4 a) ix) is redundant to the Sign By-law</li> <li>○ B2.7.4 a) x) is more appropriately assessed at site plan stage</li> <li>○ B2.7.5 a) iii) is overly prescriptive and performance measures should not be within an OP</li> <li>○ B2.7.5 a) vi) and B2.7.5 b) ii) require studies based on substantiated complaints, which are not defined and could be overly burdensome</li> <li>○ B.2.7.4 studies require peer review and the Town/Region should consider internalizing expertise rather than passing the burden to applicants</li> </ul> </li> <li>• Comments on draft ZBA</li> <li>• Required minimum parking is excessive</li> <li>• Required minimum front yard and side yard requirements are excessive</li> <li>• Greenhouse setback of 45 metres from a lot line with residential use conflicts with the draft OPA policies that set out guidelines of 300-500 metres from lot lines with sensitive receptors</li> </ul>	

May 5, 2020

**Via Email**

Please reply to St. Catharines office  
**Sara J. Premi**  
905-688-8039 (Direct Line)  
[sjpremi@sullivanmahoney.com](mailto:sjpremi@sullivanmahoney.com)

Ms. Shannon Larocque, Senior Planner  
Mr. Tim Nohara, Chair of Cannabis Control Committee  
Mr. Nick McDonald, Planning Consultant  
c/o Town of Pelham  
20 Pelham Town Square, P.O. Box 400  
Fonthill, ON L0S 1E0

Dear Sir/Madam:

**Re: Proposed Cannabis Policies and Regulations – Draft Official Plan and Draft Zoning By-law**

We act as solicitors to CannTrust Inc.

Please accept this correspondence as our comments in respect of the Town's draft Official Plan and Zoning By-law amendments – Draft Cannabis Policies.

**Proposed Official Plan Amendment**

Our client's fundamental concern with the proposed amendment to the Town's Official Plan is with respect to future development. It is our position that the policies in this regard are unduly restrictive and that they do not constitute good land use planning. Further, the policies are not consistent with the Provincial Policy Statement (the "PPS") and fail to conform with the Growth Plan for the Greater Golden Horseshoe ("Growth Plan").

The proposed OPA fails to recognize our client's land use as an agricultural use. Agricultural uses are permitted in the prime agricultural area, and the cultivation of cannabis is an agricultural use under the PPS. The PPS promotes and protects agricultural uses of all types, sizes and intensities. The proposed policies of the Town's amendment may operate to frustrate growth and expansion, and therefore are not consistent with the PPS.

Our client's use of its property conforms to the Growth Plan. Any proposed expansion of the use also conforms with the Growth Plan. Restrictions on future development of agricultural uses in the agricultural area raises conformity issues with the Growth Plan, and points out the dangers of discrimination between agricultural uses.

**Client Committed. Community Minded.**

40 Queen Street, P.O. Box 1360, St. Catharines, ON L2R 6Z2 t: 905.688.6655 f: 905.688.5814

4781 Portage Road, Niagara Falls, ON L2E 6B1 t: 905.357-3334 f: 905.357.3336

[sullivanmahoney.com](http://sullivanmahoney.com)

Our concerns with the language of the amendment include:

- B2.7.8 recognizes our client's existing land use but requires an amendment to the zoning by-law in accordance with section B2.7 for any floor area beyond what existed on the effective date.
- While we disagree with the planning basis for this policy as it applies to an expansion for the reasons described above, namely that our client's use is agricultural and provincial policy promotes and protects it, we submit, on a without prejudice basis that any recognition of existing use must include approved expansions.
- There are proposed policies in B2.7.4 that cannot be qualified – for example (a)(i) – how does the Town propose to measure and determine this criteria?
- The language of Policy B2.7.5 is inappropriately prescriptive. It allows no flexibility to allow staff to modify study requirements on a site specific basis – particularly in terms of any proposed expansion of an existing facility.
- The proposed policies in respect of setback apply to expansions. This policy is overly restrictive – the Town is without justification to base the setback to a property line as opposed to a sensitive receptor. The baseless imposition of restrictions in relation to setbacks can lead to frustrating a federally permitted use. We are aware that the Town's own analysis of sensitive receptors demonstrated a 300m radius from receptor not property line.
- There is no planning justification to impose setbacks between cannabis related uses.
- It is inappropriate to regulate signage requirements in an Official Plan.
- We have serious concerns about the policy basis to trigger action and the submission of studies based on “future substantiated complaints”.

### **Zoning By-law**

Our client's facility is appropriately zoned for its use and is recognized by the Town. The proposed Zoning By-law rezones our client's facility to site specific zone A-300.

Like the proposed Official Plan, the proposed ZBL requires an amendment for any expansion. First, we ask that the language in section 7 of the proposed by-law be amended to add the words “or was approved” to the text of the site specific description. Further, we reiterate our comments above – the requirement for a site specific amendment to expand the agricultural use is not in keeping with provincial policy.

We offer the following comments on the proposed zoning regulations:

- The proposal with respect to required parking is excessive. There is no planning justification for this requirement.
- The front yard and side yard requirements are excessive. There is no planning justification for these requirements.

As set out above, there are issues with respect to consistency and conformity of the proposed Official Plan and Zoning By-law amendments with the PPS and Growth Plan.

Our client would welcome a meeting with planning staff to discuss proposed revisions.

Yours very truly

**Sullivan Mahoney LLP**

Per:

A handwritten signature in black ink, appearing to read 'Sara J. Premi', with a stylized flourish at the end.

Sara J. Premi

SJP:bj

cc—Ms. Nancy Bozzato, Clerk (for Mayor Marvin Junkin and Members of Council)  
cc—client  
cc – Mr. Callum Shedden, Town Solicitor

# FRIEDMANS

LAW FIRM

William Friedman  
B.A., B.C.L., LL.B  
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BFA., J.D  
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May 5, 2020

*Via email [slarocque@pelham.ca](mailto:slarocque@pelham.ca), [timnohara@gmail.com](mailto:timnohara@gmail.com) and  
[nick@meridian-vaughan.ca](mailto:nick@meridian-vaughan.ca)*

Attn: Shannon Larocque, Tim Nohara and Nick McDonald  
Cannabis Control Committee  
Town of Pelham  
20 Pelham Town Square, P.O. Box 400  
Fonthill, ON L0S 1E0

*Via email Nancy Bozzato, Town Clerk ([njbozzato@pelham.ca](mailto:njbozzato@pelham.ca)) and facsimile*

Ms. Nancy Bozzato, Town Clerk  
Town of Pelham  
20 Pelham Town Square, P.O. Box 400  
Fonthill, ON L0S 1E0

Dear Ms. Bozzato, Ms. Larocque, Mr. Nohara and Mr. McDonald:

**RE: Proposed draft amendments to the Official Plan and Zoning By-law**

We represent Woodstock Biomed Inc. (“**Woodstock Biomed**”), the owner of lands municipally known as 770 Foss Road in Fonthill (the “**Foss Road Site**”), and Leviathan Cannabis Group Inc. (“**Leviathan**”), which plans to build a sealed greenhouse cannabis production facility on the Foss Road Site.

We have reviewed the proposed draft amendments dated April 7, 2020 as published by the Town of Pelham (the “**Town**”) on its website April 17, 2020 as “Draft Cannabis Zoning By-law Amendment” to amend Zoning By-law No. 1136 (1987) (the “**draft ZBA**”) and “Draft Cannabis Official Plan Amendment” to amend the Town’s Official Plan (2014) (the “**draft OPA**”).

The draft ZBA and OPA will collectively be referred to herein as the “**Draft Amendments**”.

This letter constitutes Woodstock Biomed and Leviathan’s objection to the Draft Amendments, which amendments are targeted at cannabis cultivation and processing.

## **Background**

Leviathan's development proposal for the Foss Road Site was subject to a comprehensive review by the Town of Pelham (the "**Town**"), Department of Community Planning & Development ("**Planning Department**").

The Planning Department recommended in its report dated April 15, 2019 that Town Council approve Leviathan's development proposal on the conditions set out in the report, which is entitled "Recommendation Report Regarding Amendment to Interim Control By Law 4046 (2018), 770 Foss Road (File No. AM-01-2019)" (the "**Foss Road Report**"). The conditions in the Foss Road Report included site plan agreement and passage of a by-law dealing with nuisances to address odour and light concerns.

### **Draft ZBA setbacks are excessive**

The setback distances set out in Section 7A.2 (i) to (l) of the Draft ZBA are excessive.

This is compounded, moreover, by the failure of the draft ZBA to define proper terminus points for the setback measurements. On the one end, the draft ZBA fails to distinguish setbacks from cultivation areas from other parts of a cannabis production facility. This inflates already excessive setbacks. In the Foss Road Report, the Planning Department considered setbacks from the cultivation area noting most impacts are associated with the cannabis cultivation processes rather than other areas of a cannabis production facility such as the office, headhouse or processing area.

At the other end, the draft ZBA fails to properly define the terminus of the setback measurement. As an example, and without limiting the generality of the foregoing, 7A.2 (m) of the Draft ZBA states that "[a]ll greenhouses" shall be located a minimum distance of 45 meters from any "lot line of a lot with a residential use." The sensitive use, however, is the residence dwelling on the adjacent lot. Accordingly, and in line with current version of the Zoning By-law 1136 (1987), any such supplementary setback is properly measured from the residence on the adjacent lot and not the lot line. 7A.2(n) of the Draft ZBA similarly references a 30-meter setback from the lot line of an adjacent lot with a residential use as opposed to 30 meters from the residence. The effect of the foregoing is to further inflate the already excessive setback distances.

The proposed parking requirements described at section 3 of the Draft ZBA are also unreasonably connected to gross floor area instead of employment.

### **Draft Amendments are contrary to Provincial Policy Statement 2020**

The *Planning Act*, R.S.O. 1990 stipulates that decisions of Council regarding planning matters shall be consistent with provincial policy statements and conform with provincial plans. Planning, in this respect, is a top-down policy led system.

The Foss Road Site falls under the Good General Agricultural category of the current Official Plan and is further delineated as a “prime agricultural area”.

Section 2.3.3.2 of the Provincial Policy Statement 2020 (“**PPS 2020**”) states:

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.

As held by the Town’s Planning Department in the Foss Road Report and by the Ontario Ministry of Agriculture, Food and Rural Affairs, cannabis cultivation is an agricultural use.

The Draft Amendments do not support all types, sizes and intensities of agricultural use. Instead, they overly restrict cannabis-related uses including with excessive setback requirements which restriction in many cases amounts to a prohibition.

Meridian Planning in its report for the Cannabis Control Committee (“**CCC**”) dated April 14, 2020 justifies the Draft Amendments on the unfounded opinion that “the only effective way of ‘preventing’ adverse effects between a major facility [which Meridian opines includes a cannabis production facility] and a sensitive use...is through separation.”

Meridian Planning’s statement is in error. First, agricultural cannabis-related uses do not reasonably fall under the definition of “major facilities” found at section 1.2.6.1 of PPS 2020. Section 1.2.6.1 speaks to industrial and manufacturing uses such as airports, rail facilities, marine facilities, oil and gas pipelines and resource extraction activities. Moreover, and in any event, the purpose of Sections 1.2.6.1 and 1.2.6.2 of PPS 2020 are to ensure long-term viability of ‘major facilities’ - not to preclude their operation. Section 1.2.6.1 of the PPS 2020 does not justify the more stringent restrictions found in the Draft Amendments than those previously proposed by the Town’s Planning Department.

Second, Meridian Planning’s contention that only separation is effective in mitigating potential adverse effects is unfounded and wrong. As set out in the Foss Road Report, the Town’s Planning Department found that Leviathan’s proposed development for a sealed greenhouse design and other odour mitigation techniques - including charcoal filters, bi-polar ionization and high pressure fog - are “proven technology in mitigating odours in various settings.”

The Meridian Planning report notes that the Draft Amendments were significantly driven to address odour concerns raised by the CCC and noting setbacks are based on adverse effects currently experienced by residents. In the Foss Road Report, the Town’s Planning Department received and reviewed better design (e.g. a sealed greenhouse) and mitigation measures and concluded that the technology exists to mitigate concerns such as odour and light. The Draft Amendments – including the excessive setback requirements found therein - demonstrate an overbroad attempt to use distance without fair consideration of technology and design. The Draft Amendments are accordingly overly restrictive. The proper planning mechanism for dealing with issues such as those relating to odour, light and activity levels should though site plan control - not the Draft Amendments.

The Draft Amendments overly stringent restrictions lack planning merit and are not consistent with PPS 2020 and other applicable policies, including:

- PPS 2020 Section 1.1.4.1 f): Healthy, integrated and viable *rural areas* should be supported by: promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources.
- PPS 2020 Section 1.1.4.1 i): Healthy, integrated and viable *rural areas* should be supported by: providing opportunities for economic activities in *prime agricultural areas*, in accordance with policy 2.3.
- PPS 2020 Section 2.3.1 *Prime agricultural areas* shall be protected for long-term use for agriculture.
- PPS 2020 Section 2.3.3.1 In *prime agricultural areas*, permitted uses and activities are: *agricultural uses, agriculture-related uses and on-farm diversified uses*.
- PPS 2020 Section 2.3.3.2 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.
- Growth Plan for the Greater Golden Horseshow Section 4.2.6.2: *Prime agricultural areas*, including *specialty crop areas*, will be designated in accordance with mapping identified by the Province and these areas will be protected for long-term use for agriculture.
- Growth Plan for the Greater Golden Horseshow Section 4.2.6.3: Where *agricultural uses* and non-agricultural uses interface outside of *settlement areas*, land use compatibility will be achieved by avoiding or where avoidance is not possible, minimizing and mitigating adverse impacts on the *Agricultural System*. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed. Where appropriate, this should be based on an *agricultural impact assessment*.
- Regional Official Plan, consolidated 2014 Policy 5.B.6: In the Unique and Good General *Agricultural Areas*, the predominant use of land will be for agriculture of all types, including livestock operations as well as associated value retention uses.

The Draft OPA further contains ambiguous and overbroad language, including proposing general polices in section B2.7.4 that do not allow for mitigation of adverse effects but rather read as a strict a prohibition by employing an undefined and broad term “negative impact”, including as at:

- Section B2.7.4a) i): the proposed use will not have any negative impact on the enjoyment and privacy of residential properties in the area.
- Section B2.7.4a) iii): The proposed use will not have a negative impact on agricultural uses in the general area and will not have an impact on normal farm practices as demonstrated by the required studies.
- Section B2.7.4a) v): There will be no negative impact on the quality and quantity of groundwater surface water as a result of the taking of water and generation of effluent.

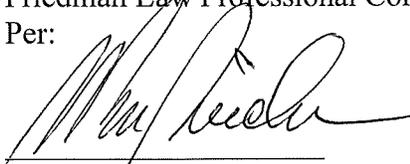
In addition, the requirement for demonstrating a standard of compliance as proposed at Section B2.7.5(a)(iii) of the Draft OPA is unclear and ambiguous.

The Draft OPA also includes minimum setback guidelines set out in section B2.7.7 that are excessive and fail to utilize appropriate setback terminus points in the same manner as described above in relation to the Draft ZBA. The Draft OPA setback guidelines also appear to be inconsistent with the Draft ZBA.

Furthermore, section B.2.7.7 of the Draft OPA is unclear in what the considerations are for lowering the proposed setback guidelines. Although the section speaks to considering mitigation measures proposed as part of the Section B 2.7.5 studies, it does not clearly stipulate that the setback guidelines can be lowered based on the mitigation measures proposed whether by the 2.7.5 studies or by otherwise. The factors considered to lower the setback guidelines enumerated at Section B2.7.7. (b)(i) to (v) should be expanded to expressly contain consideration of the mitigation measures proposed.

The Town must ensure that any amending by-law and official plan amendment comply with the PPS and other applicable policy statements. For the foregoing reasons, the Draft Amendments are not in compliance and are not valid.

Yours truly,  
Friedman Law Professional Corporation  
Per:



William Friedman

# Inch Hammond

Barristers & Solicitors

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May 5, 2020

## VIA EMAIL

Shannon Larocque, Senior Planner  
Tim Nohara, Chair of Cannabis Control Committee  
Nick Macdonald, Planning Consultant  
c/o Town of Pelham  
20 Pelham Square, P.O. Box 400  
Fonthill, ON L0S 1E0

Dear Sirs / Mesdames:

**Re: Land Use Planning Comments  
Proposed Cannabis Policies and Regulations for the Town of  
Pelham**

---

As counsel for 9037136 Canada Inc. o/a RedeCan and RedeCan Pharm (“RedeCan”), we submit this letter for your consideration regarding the Proposed Cannabis policies and Regulations.

As indicated in greater detail below, we submit that the proposed Official Plan policies and Zoning regulations are not consistent with the Provincial Policy Statement nor do they conform with the Growth Plan for the Greater Golden Horseshoe. Furthermore, they do not represent good land use planning. We respectfully ask that you take our concerns detailed below into consideration.

### Official Plan Policies

The proposed Official Plan policies describe “Cannabis Related Use” as “any use that is authorized in accordance with Federal Cannabis Regulation SOR-2018-144.” The existing use at 182 Foss Road meets this definition. The proposed Official Plan policy generally recognizes the existence of the RedeCan facility through Policy B2.7.8. However, the policy requires a Zoning By-law Amendment in accordance with Section B2.7 for any additional floor area beyond what exists at the time the policies are passed. The proposed policies impose additional requirements and are restrictive to development.

Even where a Cannabis Related Use would not be a use generally associated with light or odour, such uses are classified the same as cultivation in accordance with the Proposed Official Plan Policy B.2.7.4. Policy B.2.7.4 would require an Odour Emission and Dispersion Modelling Report, Contingency Odour Mitigation Plan, Light Mitigation Plan and Contingency Light Pollution Mitigation Plan even if a proposed use is not associated with light or odour impacts. Language contained in Policy B2.7.5 is prescriptive in its requirement for these studies and does not provide Staff the ability to modify study requirements based on individual circumstances. In our view, this places an undue burden on the proponent of an expansion project that does not involve cultivation or other uses associated with light or odour impacts.

### **Provincial Policy Statement (PPS)**

The proposed Official Plan policies consider Cannabis Related Uses to be major facilities in accordance with the definition contained in the Provincial Policy Statement. In the “Basis of the Amendment”, the document indicates that the PPS states that adverse impacts of major facilities shall be avoided. In our opinion, this is an incorrect interpretation of PPS 1.2.6.1. PPS 1.2.6.1 also states that “if avoidance is not possible, (major facilities shall be planned to) minimize and mitigate any potential adverse effects...” The policy also requires planning to ensure the “long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.” In this regard, it is our opinion that PPS Policy 1.2.6.1 provides for the ability to mitigate potential impacts of major facilities through the planning process and does not require that they be eliminated entirely.

The incorrect interpretation of PPS Policy 1.2.6.1 in the Basis of the Amendment is echoed in Proposed Official Plan Policy B2.7.4 a) which requires that in consideration of a Zoning By-law amendment to permit an expanded facility, Council shall be satisfied that the proposed use “will not have a negative impact on the enjoyment and privacy of residential properties in the area.” The Official Plan policies selectively interpret a portion of one PPS policy as a means of restricting Agricultural land uses in the Prime Agricultural area in favour of non-agricultural land uses.

Part III of the Provincial Policy Statement states “The Provincial Policy Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation. When more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together.” In this regard, other policies of the PPS must be considered in the adoption of Official Plan policies which are the primary means of implementing Provincial Policy. Although there is some reference to Provincial Policies for Agricultural and Agricultural-related use policies in the report Regulating Cannabis in the Town of Pelham, the proposed Official Plan policies do not reflect that Cannabis Related Uses (as defined in the proposed Official Plan policies and zoning regulations) are Agricultural and Agricultural-related uses in accordance with the Provincial Policy Statement. In fact, there is no mention of any Provincial Policy other than PPS Policy 1.2.6.1 in the Proposed Official Plan Amendment.

PPS policies related to the Agricultural Area are of particular relevance. PPS Policy 2.3.3.1 permits agricultural uses, agriculture related uses and on-farm diversified uses in the Prime Agricultural Area. The cultivation of cannabis meets the PPS definition of Agricultural use. Policy 2.3.3.2 of the PPS states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards in Prime Agricultural Areas. These Policies clearly demonstrate that the Prime Agricultural Area is intended for the existing and any future RedeCan uses. Official Plan policies that would prohibit or frustrate the ability to operate or expand are not consistent with the Provincial Policy Statement in this regard.

Proposed Official Plan Policy B2.7.4 a) iii) requires that new Cannabis Related Uses shall not have a negative impact on agricultural uses in the area or normal farm practices. Proposed Official Plan Policy B2.7.5 c) requires that an Agricultural Impact Assessment be undertaken as part of a Zoning By-law Amendment to demonstrate no such impact. An agricultural impact assessment is defined by the Greenbelt Plan and Growth Plan for the Greater Golden Horseshoe as “a study that evaluates the potential impacts of non-agricultural development on agricultural operations and the Agricultural System and recommends ways to avoid or, if avoidance is not possible, minimize and mitigate adverse impacts.” The introduction of a “non-agricultural use” is implicit in the assessment of impacts on agriculture uses. Given that Cannabis Related Uses (as defined in the Proposed Official Plan policies) are Agricultural and Agriculturally Related Uses (as defined by the PPS), these are precisely the uses which the PPS contemplates for the Prime Agricultural Area so an evaluation of the impact of siting Agricultural and Agriculturally related use in the Agricultural area is redundant.

Overall, the proposed Official Plan policies favour non-agricultural land uses in the Prime Agricultural Area and prejudice RedeCan’s ability to use an Agricultural property for Agricultural and related purposes in favour of minimizing impacts on the non-agricultural land uses in the area. This is not consistent with the Provincial Policy Statement Policies for Agricultural Areas.

### **Growth Plan for the Greater Golden Horseshoe**

The definition of Agricultural uses and Agriculture-related uses in the Growth Plan is consistent with the Provincial Policy Statement. The existing and proposed uses at the RedeCan facility are therefore permitted uses at the subject property in accordance with the Growth Plan. Growth Plan Policy 4.2.6.3 contemplates the interface of Agricultural uses and non-agricultural uses in the Agricultural area. The policy requires “land use compatibility will be achieved by avoiding or where avoidance is not possible, minimizing and mitigating adverse impacts on the Agricultural System. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed.” In this regard, the Agricultural use is considered principal to the Agricultural area and the onus for determining the impact of the interaction is placed on the non-agricultural use in the Agricultural area. The

proposed Official Plan policies which require an Agricultural Impact Assessment for the Agricultural use, by the proponent of that use, therefore do not conform with Growth Plan policy 4.2.6.3.

## **Setbacks**

Policy B.2.7.7 Need for Setbacks provides guidelines for setbacks for new Cannabis Related Uses. Any proposed setback guidelines would apply to any expanded use. Section B.2.7.7 provides a guideline of 300 to 500 m for a minimum setback to the lot line of a sensitive land use. Sensitive land uses include institutional uses such as schools and daycares and residential uses, including those on Agricultural properties in the Agricultural Area. Policy B.2.7.7 indicates that setbacks are meant to be measured to lot lines of properties containing a sensitive land uses. There is no basis or justification for the proposed setbacks or the use of property lines (rather than the sensitive receptor) within the proposed Official Plan Policies or the report Regulating Cannabis in the Town of Pelham. While it is indicated that alternative setbacks and means of measuring setbacks can be considered on a site specific basis, the overly restrictive guideline is not justified.

The Town of Pelham undertook an analysis of sensitive receptors as part of the development of the September 2019 Official Plan policies that demonstrated a 300 m radius from the sensitive receptors proper (i.e. not the lot lines of properties containing them) which is appended to this letter. While an analysis of the setbacks from property lines containing sensitive receptors has not been undertaken, it is clear from the attachment that the application of the proposed setbacks would preclude the use of many, if not most properties within the Town for Cannabis Related Uses. Prohibiting the use of Agricultural properties for Agricultural and related uses is not consistent with Provincial Policy 2.3.3.2 or Growth Plan Policy 4.2.6.3. In addition, the application of overly restrictive setback requirements to effectively prohibit a federally regulated and licensed land use could be considered to frustrate the purpose of the federal Cannabis Regulations.

The proposed Official Plan policies contained in section B2.7.7 Need for Setbacks also include requirements for separation distance between Cannabis Related Uses. From a land use planning perspective, there is no objective basis for limiting the number of a particular land use in an area or requiring separation between land uses. This concept has been demonstrated to be problematic through previous applications such as requiring separation distances between group homes. In that instance, the practice was determined to be discriminatory. While it is recognized that cumulative impacts of a number of a particular land use in an area are possible, land uses impacts must be assessed on a case-by case basis when a new land use is proposed.

## Other General Issues

Some other more general issues with the Proposed Official Plan Policies include the following:

- Policy B2.7.4 a) ix) requires compliance with the Town's Sign By-law. This requirement as an Official Plan policy is redundant to the Sign By-law and would be difficult to evaluate as plans for signage may not be finalized at the Zoning By-law Amendment stage.
- Policy B2.7.4 a) x) requires Council to assess whether the waste generated from the site can be appropriately managed. This is more appropriately done as part of the site plan review process.
- Policy B2.7.5 a) iii) is overly prescriptive in that it includes performance measures that site specific studies must demonstrate compliance with. Official Plan policies are not the appropriate venue for performance measures associated with such things as air quality.
- Policy B2.7.5 a) vi) and Policy B2.7.5 b) ii) require Odour and Light impact contingency plans based on the receipt of "Substantiated Complaints." The concept of a substantiated complaint is not defined and this requirement could prove overly burdensome. If operators of cannabis facilities are required to react to complaints which are determined to be substantiated by a person other than someone with the appropriate qualifications to do so this could be very problematic.
- All studies required by Policy B2.7.4 are subject to peer review. Consideration should be given by the Town and/or Region to internalizing the expertise required to review these studies rather than passing the burden on to applicants.

## Zoning By-law Regulations

The Proposed Zoning regulations rezone the existing RedeCan facility at 182 Foss Road to a site specific Agricultural A-299 Zone. The site specific zoning permits the existing facility but indicates that the gross floor area shall be limited to the existing floor area. Like the proposed Official Plan policies, the proposed Zoning regulations would necessitate a Zoning By-law Amendment in order to permit any expansion. The following provides some commentary on the proposed regulations:

- Required parking – 1/100 sq m: this is an excessive requirement given the nature of the use. This regulation has proven problematic and overly restrictive in other municipalities.
- Minimum front yard – 100 m: this is an excessive requirement given the ability to screen with landscaping.
- Minimum side yard – 60 m or 80 m where ventilation is present is an excessive requirement.
- All greenhouses shall be 45 m from any lot line with a residential use: this would seem to conflict with the Proposed Official Plan Policies which provide a guideline of 300 to 500 m from lot lines of lots containing sensitive receptors.

## **Conclusion**

The proposed Official Plan policies and Proposed Zoning regulations are not consistent with the Provincial Policy Statement, do not conform with the Growth Plan for the Greater Golden Horseshoe, and do not represent good land use planning.

Our client does not agree with all of the proposed Official Plan policies and Proposed Zoning regulations. RedeCan respectfully suggests that addressing the concerns detailed in this letter will make the proposed Official Plan policies and Proposed Zoning regulations fairer and more responsive to the interests of all stakeholders.

Yours truly,

**INCH HAMMOND PROFESSIONAL CORPORATION**

**Per:**

*Andrew Pelletier*

Andrew D. Pelletier

ADP/irb

c.c. Nancy Bozzato, Town Clerk (NBozzato@pelham.ca)

# APPENDIX D - FINAL OPA DATED JULY 5, 2020

## Regulating Cannabis in the Town of Pelham

Prepared for the Cannabis Control Committee

Addendum Report - July 5, 2020



**AMENDMENT NO. XX**  
**TO THE OFFICIAL PLAN (2014)**  
**FOR THE**  
**CORPORATION FOR THE TOWN OF PELHAM**

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### **PART “A” – THE PREAMBLE**

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## **PART “A” – THE PREAMBLE**

### **SECTION 1 – TITLE AND COMPONENTS**

This document was approved in accordance with sections 17 and 21 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended and shall be known as Amendment No. \_\_\_\_\_ to the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Town of Pelham Planning Area.

Part “A”, the Preamble, does not constitute part of this Amendment.

Part “B”, the Amendment, consisting of the following text constitutes Amendment No. \_\_\_\_\_ to the Official Plan adopted by By-law 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014 for the Town of Pelham Planning Area.

### **SECTION 2 – PURPOSE OF THIS AMENDMENT**

The purpose of the Amendment is to establish permissions for indoor cannabis and industrial hemp cultivation in the agricultural area, subject to a zoning by-law amendment, and to establish the criteria to be relied upon when considering such applications. This Amendment does not deal with the outdoor cultivation of cannabis or industrial hemp as this is already permitted in the agricultural area.

### **SECTION 3 – LOCATION OF THE AMENDMENT**

This Amendment applies to the Good General Agricultural, Specialty Agricultural and Industrial designations and the Niagara Escarpment Plan Area as identified on Schedule A: Town of Pelham Land Use Plan.

### **SECTION 4 – BASIS OF THE AMENDMENT**

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, Bill C-45 proposed to create 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.

The Federal Cannabis Regulation SOR-2018-144 and the Federal Industrial Hemp Regulation SOR-2018-145 also came into effect on October 17, 2018. These two regulations implement the *Cannabis Act*.

The indoor cultivation of cannabis and industrial hemp is anticipated to occur within greenhouse or industrial type buildings that can in some cases be larger than other similar buildings used for other purposes. As a consequence of the type of product being grown in these indoor facilities and the character of the odour, the potential for adverse effects from odour is significant.

As a first principle the avoidance of adverse effects is preferred, however, if avoidance is not possible, adverse effects shall be minimized and appropriately mitigated. In order to minimize and mitigate adverse effects, it is anticipated that new indoor cannabis and industrial hemp cultivation facilities will be required to be set back an appropriate distance from sensitive uses and from each other to minimize and mitigate against potential adverse effects. In this regard, appropriate setbacks will be dictated by process specific odour emission rates and the effectiveness of the proposed odour controls.

This Amendment recognizes that the cultivation of cannabis is an agricultural use and is permitted in agricultural areas by the Provincial Policy Statement (2020), which indicates that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with Provincial standards. However, in the absence of Provincial standards on the adverse effects of odour from indoor cannabis and industrial hemp cultivation facilities, this Amendment also recognizes that there is a need to control the siting of such uses in relation to sensitive uses as a result of the known adverse effects from the cultivation of cannabis.

There is already a precedent for the establishment of setbacks from sensitive uses for odour reasons in agricultural areas in the form of the Minimum Distance Separation (MDS) guidelines established by the Province. The MDS guidelines are intended to provide the minimum distance separation between proposed new development and any existing livestock barns, manure storages and/or anaerobic digesters (MDS1) and provide the minimum distance separation between proposed new, expanding or remodelled livestock barns, manure storages and/or anaerobic digesters and existing or approved development (MDS2). Compliance with the MDS guidelines is also required by the Provincial Policy Statement (2020) when new land uses including the creation of lots or expanding livestock facilities are proposed.

The application of the MDS2 guidelines result in the establishment of setbacks that are intended to minimize the impacts of odour from livestock barns, manure storages and/or anaerobic digesters and have the effect of restricting the location of these facilities.

However, the MDS2 guidelines do not apply to cannabis and in the absence of Provincial guidance on this matter, it is up to local municipalities to establish a policy

framework to avoid adverse effects, and if avoidance is not possible, to minimize and mitigate adverse effects through setbacks for indoor cannabis and industrial hemp cultivation from sensitive uses.

In this regard, the purpose of this Amendment is to establish the study requirements to determine whether the avoidance of adverse effects is possible and if not, how adverse effects can be minimized and appropriately mitigated through the use of setbacks and other measures on a case-by-case basis. Given the known adverse effects from these facilities in the Town, this Amendment is an appropriate response to community concerns about this type of use, represents good planning and is in the public interest.

Given the above, this Amendment does the following:

1. This Amendment identifies the studies that are required to support the establishment of an indoor cannabis and industrial hemp cultivation facility to ensure that all potential adverse effects are studied in advance.

In this regard, required studies include an Emission Summary and Dispersion Modelling Report, Contingency Odour Mitigation Plan, Light Mitigation Plan, Contingency Light Mitigation Plan and Traffic Impact Study. These studies would be in addition to all 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, if necessary, in the required site-specific zoning by-law amendment and may establish a maximum size for the facility, if it has been determined that the siting of the facility can be supported. These studies may also establish minimum separation distances between a proposed facility and any existing indoor cannabis or industrial hemp cultivation facilities, as required, to mitigate adverse effects.

2. This Amendment also sets out guidelines on the range of setbacks that will be considered if indoor cannabis and/or industrial hemp cultivation is proposed through a zoning by-law amendment. These setbacks are based on best practices and knowledge of the adverse effects currently experienced by residents in the Town. Given that these setbacks are guidelines, they can be increased or decreased based on the merits of an individual application.

A supporting zoning by-law amendment has been prepared to implement this Amendment.

## **PART B – THE AMENDMENT**

All of this Part of the document entitled Part B - The Amendment consisting of the following text constitutes Amendment No. \_\_\_\_\_ to the Official Plan of the Town of Pelham.

### **Details of the Amendment**

The Town of Pelham Official Plan is hereby amended as follows:

1. That Section B2.1.2 (**Permitted Uses - Good General Agricultural Designation**) be amended to include a new sub-section I) as follows:
  - I) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.1.5.
2. That Section B2.1 – (Good General Agricultural Designation), be amended by including a new Section B2.1.5 and re-numbering the remaining sections accordingly:

#### **B2.1.5 Indoor Cannabis and Industrial Hemp Cultivation**

##### **B2.1.5.1 Development Criteria**

- a) Indoor cannabis and industrial hemp cultivation facilities that are authorized by the Federal Government may be permitted in the Good General Agricultural designation subject to the passage of an amendment to the implementing zoning by-law and will, if approved through such a process, be subject to Site Plan Control in accordance with Section E1.4 of this Plan. Prior to considering the approval of a zoning by-law amendment, Council shall be satisfied that:
  - i) The proposed greenhouse or other type of building will be designed and sited to blend in with surrounding land uses such that the existing agricultural and rural character of the area is maintained;
  - ii) The adverse effects of the noise, dust, odour and light from the proposed facility on sensitive land uses in the area can be avoided and if avoidance is not possible, minimized and appropriately mitigated, as demonstrated by the required studies identified in Section B2.1.5.2 of this Plan;

- iii) Sensitive surface water features and sensitive ground water features in the area will be protected, improved or restored with consideration given to the taking of water and the generation of effluent;
  - iv) Adequate parking facilities are available on the lot for the proposed facility and the traffic generated by the proposed facility can be accommodated on area roads;
  - v) The proposed facility can be serviced with an appropriate water supply and an appropriate means of sewage disposal;
  - vi) Stormwater management needs can be met on site;
  - vii) The waste generated from the facility can be appropriately managed; and
  - viii) The proposed setback, as determined by the required studies in Section B2.1.5.2 of this Plan, from sensitive land uses in the area is appropriate to avoid, and if avoidance is not possible, minimize and appropriately mitigate any adverse effects.
- b) In addition to sub-section a), and if a component(s) of the proposed facility includes value-added components that would make this component of the facility an agricultural-related use, it must be demonstrated that this component of the facility:
- i) Shall be compatible with and shall not hinder surrounding agricultural operations;
  - ii) Is directly related to farm operations in the area;
  - iii) Supports agriculture;
  - iv) Benefits from being in close proximity to farm operations; and,
  - v) Provides direct products and/or services to farm operations as a primary activity.

In order to assist with the consideration of a proposed agricultural-related use involving cannabis or industrial hemp, regard should be had to the Guidelines on Permitted Uses in Ontario's Prime Agricultural Area. An Amendment to this Plan is not required for a proposed agricultural-related use involving

cannabis or industrial hemp.

### **B2.1.5.2 Specific Required Studies**

The studies listed in this Section shall be required to satisfy the development criteria set out in Section B2.1.5.1 a) of this Plan and peer reviews of these studies may be carried out by the Town at no cost to the Town. The studies listed in this section would be in addition to any of the other studies required by Section E3 of this Plan.

- a) Emission Summary and Dispersion Modelling (ESDM) Report
  - i) At no cost to the Town, the proponent will submit an Emission Summary and Dispersion Modelling (ESDM) Report that is prepared by a Licensed Engineering Practitioner (which means that they must be licensed by Professional Engineers Ontario) in accordance with Ministry of Environment, Conservation & Parks guidance. This report will deal with contaminants including odour, chemicals and particulate matter constituents.
  - ii) The ESDM Report shall include a detailed odour inventory and mitigation plan fully describing the proposed air filtration systems and other mitigation measures as well as off-property odour impact predictions that include a review of the impacts of other cannabis and industrial hemp facilities within the area to determine the extent of the potential cumulative adverse effects. In this regard, it would be the role of the Licensed Engineering Practitioner to demonstrate that the impact of the proposed use and other cannabis and industrial hemp facilities within the area will not, or is not likely to, cause adverse effects.
  - iii) In addition to sub-section ii) above, the ESDM Report must demonstrate that the proposed facility can achieve a standard of compliance following approval and that two odour units will only be exceeded at any given sensitive use up to 0.5% of the time on an annual basis as per the MECP Technical Bulletin 'Methodology for Modeling Assessment of Contaminants with 10-Minute Standards and Guidelines, September 2016'.
  - iv) The ESDM Report must consider co-existence adverse effects associated with drift of cannabis emissions on existing farming operations in the area and provide recommendations on an

appropriate greenspace separation distance to ensure that spray drift is minimized.

- v) In addition to the above, the proponent of the proposed facility will submit a Contingency Odour Mitigation Plan, prepared by a Licensed Engineering Practitioner that considers additional air filtration systems or other mitigation measures for use in the event of substantiated future complaints after the use has been established. Agreement on the appropriate triggers for additional mitigation will be made in advance.

b) Light Mitigation Plan

- i) At no cost to the Town, the proponent will submit a Light Mitigation Plan, prepared by a Licensed Engineering Practitioner that fully describes the proposed light mitigation measures and demonstrates that the proposed facility will not cause light pollution, including sky glow or light trespass, onto neighbouring properties.
- ii) In addition to sub-section i), the proponent will also submit a Contingency Light Pollution Mitigation Plan, prepared by a Licensed Engineering Practitioner that considers additional mitigation measures and implementation timelines for use in the event of substantiated future complaints after the use has been established. Agreement on the appropriate triggers for additional mitigation will be made in advance.

c) Traffic Impact Study

- i) At no cost to the Town, the proponent will submit a Traffic Impact Study, to the satisfaction of the Town and/or the Region that demonstrates that the proposed facility will not cause any traffic hazards or an unacceptable level of congestion on roads in the area.

### **B2.1.5.3 Scope of Required Studies**

In accordance with Section E3.1 of this Plan, the Town will determine what supporting information (i.e. reports and studies) are required as part of the complete application submission and inform the proponent of these requirements, following the holding of a pre-consultation meeting.

#### **B2.1.5.4 Need for Setbacks**

- a) In recognition of the known adverse effects of odour, the avoidance of adverse effects shall be a first principle. If adverse effects cannot be avoided, the minimization and mitigation of adverse effects has to be considered. One of the ways to avoid, minimize and mitigate adverse effects is through the separation of incompatible uses through the use of setbacks. In this regard, the following setback guidelines will be considered when an application for a new indoor cannabis and/or industrial hemp cultivation facility is proposed and can be refined based on the unique characteristics of each proposal without requiring an amendment to this Plan:
- i) Minimum setback to a sensitive use - 300 to 500 metres with the setback being measured from the edge of the cultivation/processing area to the sensitive use.
  - ii) Minimum separation distance between separate indoor cannabis standard cultivation and/or standard processing facilities and/or indoor industrial hemp facilities from each other - 4,000 metres.
  - iii) Minimum separation distance between separate indoor cannabis standard cultivation and/or standard processing facilities and/or indoor industrial hemp facilities from indoor micro processing/micro cultivation facilities - 3,000 metres.
  - iv) Minimum separation distance between separate indoor cannabis micro cultivation/micro processing facilities from indoor cannabis micro/processing/micro cultivation facilities - 2,000 metres.
- b) The setback guidelines established in sub-section a) will be considered during the review of an application and can be lower or higher, depending on:
- i) Whether the facility is a greenhouse or an industrial-type building and if a greenhouse is proposed, whether the proposed greenhouse is purpose built for cannabis or industrial hemp or already exists;
  - ii) The size and scale of the proposed facility;
  - iii) The proximity and number of sensitive uses in the area including the potential for additional sensitive uses on vacant lots that are zoned to permit a sensitive use;
  - iv) The location of the proposed facility in relation to prevailing winds;
  - v) The nature of the adverse effects that exist at the time in relation to existing indoor cannabis cultivation facilities; and

- vi) The impact of topography on the dispersion of odour.

#### **B2.1.5.5 Implementing Zoning By-law**

Only lands that have satisfied the requirements of this Section of the Plan shall be placed in a zone that permits indoor cannabis and industrial hemp cultivation facilities in the implementing Zoning By-law.

3. That Section B2.2.2 (**Permitted Uses - Specialty Agricultural Designation**) be amended to include a new sub-section k) as follows:

- k) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.2.9.

4. That Section B2.2 – (**Specialty Agricultural Designation**), be amended by including a new Section B2.2.9 and re-numbering the remaining sections accordingly:

#### **B2.2.9 Indoor Cannabis and Industrial Hemp Cultivation**

Indoor cannabis and industrial hemp cultivation facilities that are authorized by the Federal Government may be permitted in the Specialty Agricultural designation subject to the passage of an amendment to the implementing zoning by-law in accordance with Section B2.1.5 of this Plan and will, if approved through such a process, be subject to Site Plan Control in accordance with Section E1.4 of this Plan.

Given the rolling topography of this area and the resultant creation of numerous microclimates, it is anticipated that it will be more difficult to avoid adverse effects in this area when compared to the Good General Agricultural designation if an indoor cannabis or industrial hemp cultivation facility was proposed.

Only lands that have satisfied the requirements of Section B2.1.5 of the Plan shall be placed in a zone that permits indoor cannabis and industrial hemp cultivation facilities in the implementing Zoning By-law.

5. That Section B2.3.2 (**Permitted Uses - Industrial Designation**) be amended to include a new sub-section k) as follows:

- k) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.1.5.

6. That Section B3.1.1 (**Conflict and Conformity - Niagara Escarpment Plan Area**) be amended to include a new fourth paragraph as follows:

Section B2.1.5 of this Plan shall apply to the consideration of a Development Permit application to establish a new indoor cannabis or industrial hemp cultivation facility.

7. That Section E1.4 (**Site Plan Control**), be amended by including a new paragraph at the end of the section as follows:

It is the intent of this Plan that Site Plan Approval will be required for all proposed indoor cannabis and industrial hemp cultivation facilities that may be permitted in accordance with Policies B2.1.5, B2.2.9 or B2.3.2 k) to the maximum extent afforded under the *Planning Act*, in order to proactively mitigate adverse effects where possible and to maximize compatibility with land uses in the area.

Any construction of a building or structure associated with a proposed indoor cannabis or industrial hemp cultivation facility is subject to the Ontario Building Code and will require the submission of Mechanical and Electrical Design Specifications and Drawings for review prior to the issuance of a building permit. Final as-built drawings will also be required. These specifications and drawings include those associated with air/odour filtration systems and equipment for light pollution mitigation.

# APPENDIX E - FINAL ZBA DATED JULY 5, 2020

## Regulating Cannabis in the Town of Pelham

Prepared for the Cannabis Control Committee

Addendum Report - July 5, 2020



**THE CORPORATION OF THE  
TOWN OF PELHAM  
By-law Number XXXX (2020)**

**Being a By-law passed pursuant to the provisions of  
Section 34 of *The Planning Act*, R.S.O. 1990, c.P.13, as amended to  
amend the Town of Pelham Zoning By-law No. 1136 (1987), as  
otherwise amended.**

**Whereas** the Council of the Corporation of the Town of Pelham has initiated an application to amend By-Law No. 1136 (1987) otherwise known as the Zoning By-Law, insofar as is necessary to establish provisions that apply to cannabis-related uses and industrial hemp-related uses in the Town of Pelham;

**And Whereas** the Council of the Corporation of the Town of Pelham conducted a public hearing in regard to this application, as required by subsection 34(12) of the Planning Act, R.S. O. 1990, c.P.13, as amended;

**And Whereas** the Council of the Corporation of the Town of Pelham deems it advisable to amend Zoning By-law 1136 (1987), as otherwise amended, with respect to the above described lands, and under the provisions of the Planning Act has the authority to do so;

**Now therefore** the Council of the Corporation of the Town of Pelham enacts as follows:

1. **That** Section 3.0 of this By-law No. 1136 (1987), as amended, is further amended to add the new zones and symbols as follows:

<b>Zone</b>	<b>Symbol</b>
Agricultural - Cannabis	A – CAN
General Industrial - Cannabis	M2 – CAN

2. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of definitions in Section 5.0, as follows:

- i) "Cannabis-related use - indoor" means those activities authorized in accordance with the Federal Cannabis Regulation SOR-2018-144 as amended that are carried out within an enclosed building or structure.
- ii) "Cannabis-related use - outdoor" means those activities authorized in accordance with the Federal Cannabis Regulation SOR-2018-144 as amended that only involve the growing and harvesting of cannabis outdoors.
- iii) "Industrial hemp-related use - indoor" means those activities authorized in accordance with the Federal Industrial Hemp Regulation SOR-2018-145 as amended that are carried out within an enclosed building or structure.
- iv) "Industrial hemp-related use - outdoor" means those activities authorized in accordance with the Federal Industrial Hemp Regulation SOR-2018-145 as amended that only involve the growing and harvesting of hemp outdoors.
- v) "Sensitive land use" means school, day care, playground, sporting venue, park, recreational area, residence, place of worship, community centre or any other place where people regularly gather or sleep.

3. **THAT** By-law 1136 (1987), as amended, is amended by the addition of parking requirements in Section 6.16 (a), as follows:

Cannabis-related uses - indoor and industrial hemp-related uses - indoor - 1 parking space per 100 m<sup>2</sup> (1076.39 ft<sup>2</sup>) of gross floor area

4. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of a new subsection 7.2 (h):

(h) Minimum setback for a cannabis-related use - outdoor and an industrial hemp-related use - outdoor from a sensitive land use - 300 metres (984 feet).

5. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of a new Section 7A - Agricultural - Cannabis A-CAN Zone:

### **SECTION 7A – AGRICULTURAL CANNABIS - A-CAN ZONE**

Subject to the general provisions of Section 6 and all other applicable requirements of this By-law, the provisions of this section shall apply throughout the Agricultural Cannabis Zone.

#### **7A.1 PERMITTED USES**

- (a) Cannabis-related Use - indoor
- (b) Industrial Hemp-related Use - indoor

#### **7A.2 REGULATIONS FOR PERMITTED USES IN SUBSECTION 7A.1**

- (a) A retail store is not permitted as an accessory use to any of the permitted uses listed in Subsection 7A.1.
- (b) Minimum Lot Frontage for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 100 metres.
- (c) Minimum Lot Frontage for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 200 metres.
- (d) Minimum Lot Frontage for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 200 metres.

- (e) Minimum Lot Area for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 3 hectares.
- (f) Minimum Lot Area for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 10 hectares.
- (g) Minimum Lot Area for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 10 hectares.
- (h) Maximum Lot Coverage - 30 percent.
- (i) Minimum Front Yard for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 20 metres.
- (j) Minimum Front Yard for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 80 metres.
- (k) Minimum Front Yard for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 80 metres.
- (l) Minimum Side Yard or Rear Yard for micro-processing and micro cultivation uses as defined by the Federal Cannabis Regulation SOR-2018-144 - 15 metres, except where ventilating fans in a wall exhaust into the respective side or rear yard, the minimum yards shall be 25 metres.
- (m) Minimum Side Yard or Rear Yard for standard processing and standard cultivation uses as defined by the Federal Cannabis Regulation SOR-2018-144 - 40 metres, except where ventilating fans in a wall exhaust into the respective side or rear yard, the minimum yards shall be 60 metres.
- (n) Minimum Side Yard or Rear Yard for industrial hemp-related uses as defined by the Federal Industrial

Hemp Regulation SOR-2018-145 - 40 metres, except where ventilating fans in a wall exhaust into the respective side or rear yard, the minimum yards shall be 60 metres.

- (o) Minimum Exterior Side Yard for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 20.5 metres.
- (p) Minimum Exterior Side Yard for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 80 metres.
- (q) Minimum Exterior Side Yard for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 80 metres.
- (r) No storage area shall be permitted within 30 metres of a street or the lot line of an adjacent lot with a residential use.

6. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of a new Section 23A - General Industrial - Cannabis M2-CAN Zone

## **SECTION 23A – GENERAL INDUSTRIAL - M2-CAN ZONE**

Subject to the general provisions of Section 6 and all other applicable requirements of this By-law, the provisions of this section shall apply throughout the General Industrial Cannabis Zone.

### **23A.1 PERMITTED USES**

- (a) Cannabis-related Use - Indoor
- (b) Industrial Hemp-related Use - Indoor

### **23A.2 REGULATIONS FOR PERMITTED USES IN SUBSECTION 23A.1**

- (a) A retail store is not permitted as an accessory use to any of the permitted uses listed in Subsection 23A.1.
- (b) The provisions of Subsection 22.2 shall apply to all permitted uses within the General Industrial Cannabis M2-CAN Zone

Read a first, second, and third time and finally passed this XX<sup>th</sup> day of XX, 2020.

\_\_\_\_\_  
Marvin Junkin, Mayor

\_\_\_\_\_  
Nancy J. Bozzato, Clerk

Corporate Seal