



## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	April 4, 2022
<b>From:</b>	John F Connolly, Executive Director, Planning & Development
<b>Report Number:</b>	Planning 2022-17
<b>Subject:</b>	Regulating Cannabis in the Township of Cavan Monaghan – Approval of Official Plan Amendment (OPA-02-21), Zoning By-law Amendment (ZBA-6-21) and Site Plan Control By-law Amendment

### Recommendations:

1. That Council approve By-law No. 2022-14 to adopt Official Plan Amendment OPA-02-21 to the Township of Cavan Monaghan;
2. That Council authorize the submission of the adopted Official Plan Amendment to Peterborough County for review and approval; and
3. That Council approve the associated By-law No. 2022-15 (Zoning By-law) and By-law No. 2202-16 (Site Plan Control By-law) to be signed by the Mayor and Clerk.

### Overview:

Township Staff originally initiated the proposed Official Plan Amendment (OPA), Zoning By-law Amendment and Site Plan Control By-law Amendment in response to the motion of Council outlined below:

R/06/07/20/05  
 Moved by: Graham  
 Seconded by: Moore

That Council, as per Procurement By-law No. 2020-22 Section 5.6.2 Single Source, Non-Competitive, support single sourcing of a consultant, utilizing funds from the Ontario Cannabis Legalization (OCLIF) Reserve to review the current Zoning By-law and Official Plan policies and develop the appropriate policy, planning tools and amendments; and That Council support the use of any remaining Ontario Cannabis Legalization (OCLIF) Reserve to promote and market the economic development opportunities in our municipality moving forward; and That Council provide the Clerk direction to draft a letter to the City of Peterborough in response to the correspondence received requesting that a portion of the Ontario Cannabis Legalization Implementation Fund (OCLIF) be provided to the Peterborough Police Service.

As a result, Meridian Consulting was retained to work with Township Staff to develop a comprehensive set of policy and planning tools to address regulating Cannabis in the Township. Meridian Consulting was chosen to lead this project based on its experience and particular expertise in this subject area as well as its most recent success in this regard in Selwyn Township and other jurisdictions.

After more than a year of working with the consultant, the resulting package of planning tools includes proposed amendments to the Township's Official Plan (OP), Zoning By-law 2018-58, as amended and Site Plan Control By-law. Most recently, these amendments have been refined a number of times to reflect public input and agency comments as gained through the statutory public meeting process under the Planning Act.

The proposed Official Plan Amendment (OPA), Zoning By-law Amendment (ZBA) and Site Plan Control By-law Amendments have also been revised based on comments provided by Township senior management, the broader public, public agencies and interested stakeholders (see Attachments No. 1, 2, 3 and 4). These revisions evolved through the Planning Process outlined below which included an Open House held in October of 2021, an initial statutory public meeting in December of 2021 and followed with a second statutory public meeting held in January of 2022 (see Attachments 5, 6, 7 and 8).

In addition, the technical elements of the proposed regulatory package has also been informed by specific documentation to address questions raised by the public and/or members of Council. The first of these technical briefs was provided in September of 2021 to address concerns raised about the "treatment" of cannabis operations by Municipal Property Assessment Corporation (MPAC) from property assessment perspective (see Attachment 9).

More recently, based on comments and questions raised by the public through oral and written submissions, a Technical Brief has been provided by Mr. Phil Girard, President of PG Compliance Management Inc entitled Overview of Odour Management Plan (see Attachment 10) to address concerns regarding odour and odour management. As a result, the proposed OP, ZB and Site Plan Control amendments are being revised accordingly.

The key highlighted changes in these most recent versions from the last time Council reviewed these documents include:

- Changing the original terminology requiring an "Odour Study & Management Plan" to an "Air Quality Study";
- Requirement for an Odour Mitigation Plan and Contingency Odour Mitigation Plan; as well as
- Requirement for a "Light Mitigation Plan" and a "Contingency Light Mitigation Plan".

## **Background:**

### Planning Process to Date:

The original report entitled: “Regulating Cannabis in the Township of Cavan Monaghan (dated December 14, 2020)” was brought before Township Council at its Regular meeting of December 21, 2020. At that meeting, Council directed Staff to bring back the identified additional options discussed at Council (2 in total) as well as a legal review. This work was to be done prior to being presented for public input and brought back to Council for a final decision in 2021.

Based on this direction, a legal review was conducted which was shared with the consultant who developed an Addendum Report in September 2021. This Report served as a technical memorandum that built upon the December 20, 2020 report by adding two (2) other options for consideration. The first additional option was the “status quo” or do nothing option while the second additional option was an approach that is as permissive as possible with minimal or no regulations.

This was presented to Council at its Regular meeting of September 20, 2021 whereby Council directed its preference for Option A for consideration at a public meeting to be held in October and then come back to Council for a final decision.

Option A proposed only permitting indoor cannabis production subject to a zoning by-law amendment. As a result, the Township Official Plan (OP) would be amended to permit cannabis production in the following OP designations: Urban Employment & Rural Employment (indoor cannabis production only); Agricultural Areas; Rural Areas; and applicable Oak Ridge’s Moraine designations. The Township’s Zoning By-law would be amended to permit indoor cannabis production facilities will only be permitted by amendment to the Zoning By-law. Outdoor cannabis production will be permitted as-of-right in the Agricultural and Rural Zones as well as the applicable ORM Zones subject to a minimum 300 metre separation distance from sensitive land uses.

Under Option A, the Zoning By-law amendment process offers the most comprehensive approach to ensure that all matters related to a proposed cannabis operation are considered and addressed. It affords the Township the opportunity to consider any proposed cannabis operations on a case-by-case basis and allows the municipality to specify the studies and mitigative measures required for each specific scenario. This equally provides an opportunity for the public in the surrounding area to be notified of any applications and provide comments on each proposed operation.

At its Regular Council meeting of December 20, 2021, Council received a report and held a public meeting under the Planning Act to consider all public and agency verbal and written comments received regarding these applications to date. At that time, Council was also made aware that there would be the need for a Second Public Meeting, as previous agency circulation had not met the statutory requirements under the Planning Act. As a result, Notice of the Official Plan Amendment, Zoning By-law Amendment and Site Plan Control By-law Amendment was circulated, by first class mail, to all required ministries and agencies and to all Township Department Directors. A Second Public Meeting was held on January 17, 2022 in compliance with Planning Act requirements.

Following these public meetings, Staff indicated that it will consider all comments and submissions when bringing the amendments to the Official Plan, Zoning By-law and Site Plan Control at a future date for consideration.

#### Proposed Amendments:

As noted earlier, at its Regular Council meetings of September 20, 2021, Council received a presentation and update from Meridian Consulting (the Consultant) on “Regulating Cannabis in the Township of Cavan Monaghan”. At this meeting, Council also reviewed a technical Addendum to the previous December 2020 Report “Regulating Cannabis in the Township of Cavan Monaghan”. That technical Addendum outlined four (4) Options for Council’s consideration and direction to amend the Official Plan, Zoning By-law and any other planning instruments.

As part of the presentation and discussion at that meeting, Council identified its preferred Option (Option “A”) and directed the Consultant (and Staff) to proceed to hold a public meeting and to bring back to Council for a decision later in 2021. Since that meeting, Staff have been working with the Consultant and legal counsel to develop and refine the proposed amendments to the Official Plan, Zoning By-law and Site Plan Control.

As the current Township’s Official Plan and Zoning By-law do not currently meet Council’s direction, certain amendments are required to bring the relevant planning documents into alignment.

#### Official Plan Amendment

Currently, the Township Official Plan does not contain any policies that provide regulatory guidance or even contemplate establishing cannabis facilities as a land use in the Township. The proposed Official Plan Amendment will apply to all lands in the Township of Cavan Monaghan and will, if approved, permit Cannabis Production Facilities responsibly within the Township.

Through amendments to the General Development Policies that will permit this land use, detailed development criteria will be added in order to establish cannabis production facilities. These facilities will be subject to Site Plan Control and only permitted in certain designations through a Zoning By-law Amendment with established minimum setbacks and separation distances to ensure land use compatibility with adjacent land uses. Criteria will also be added regarding the processing of cannabis as an agriculture-related use.

In addition, subject to a Zoning By-law Amendment, Cannabis Production Facilities will be a permitted use indoor in certain employment areas and outdoor in the Agricultural Areas, Oak Ridge’s Moraine (ORM) Prime Agricultural Areas, Rural Areas, ORM Rural Areas, and Rural Employment Areas designations in the Township.

The Official Plan will also be amended to provide a definition of a Cannabis Production Facility, add the requirement for additional studies under a complete application (i.e.,

Odour Study & Management Plan, Waste Management Plan) and also clarification that agricultural buildings are not exempt from Site Plan Control.

### Zoning By-law Amendment

The Township's current Zoning By-law 2018-58, as amended does provide some regulations for cannabis facilities and is only permitted in the Urban Employment Zone (Millbrook Employment Area). As noted above, if the Official Plan is amended to permit cannabis production facilities, the implementing Zoning By-law will also have to be amended to conform to the amended Official Plan.

The Zoning By-law will amend the existing regulation for Cannabis Production Facilities and provide new guidance for Outdoor Cannabis Cultivation. This means that the current provision for as-of-right in Urban Employment Zone will be deleted and only permit a Cannabis Production Facility by Zoning By-law Amendment. This amendment will add "as-of-right" permissions for Outdoor Cannabis Cultivation in the Agricultural, Rural and ORM Countryside Zones. It will also provide use-specific regulation of how such uses may be established.

Section 11.7 Cannabis Production Facilities will be deleted and replaced with a new set of regulations that address criteria such as:

- licence holder permission;
- other cannabis uses only occur in a wholly enclosed building;
- only permitting new, purpose built buildings;
- lot and setback requirements;
- no outdoor storage;
- parking and loading requirements;
- not permitted with bed and breakfast, agri-tourism, home business, home industry;
- no accessory sale or related products; and
- subject to Site Plan Control.

As a result, through the proposed amendment, indoor Cannabis Production Facilities will only be permitted by amendment to the Zoning By-law and only in the Urban Employment and Rural Employment land use designations in the Official Plan. Outdoor cannabis cultivation will be permitted as-of-right in the Agricultural & Rural Zones as well as the applicable ORM Zones subject to a 300 metre separation distance from sensitive land uses.

Requiring a Zoning By-law Amendment offers the most comprehensive approach to consider and address any issues related to this subject. This will allow the Township to deal with these proposals on a case-by-case basis through the studies and mitigation measures provided. This will also allow the public in the surrounding area to be aware of any applications, provide comment and allow Council to make a final decision on the merits of the proposal.

### Site Plan Control

As noted above, implementing the direction of Council through this option means that no Official Plan Amendment is required to permit a Cannabis Production Facility in the

above noted Official Plan designations. The only planning applications that would be required will be a Zoning By-law Amendment and Site Plan Control. This would allow for an appropriate assessment of proposals on their individual merit.

The Site Plan Control By-law applies to all lands in the Township of Cavan Monaghan and will have to be amended to ensure consistency with the proposed changes to the zoning. The proposed amendment would provide a definition of a Cannabis Production Facility with a new clause added that would not exempt a cannabis operation from Site Plan Control.

### **Discussion:**

At the October 2021 Open House, subsequent public meetings and email correspondence, Staff have received a number of verbal and written comments about these three applications. A summary of the comments received is provided below:

#### **1. Concern of minimum setbacks between Cannabis Operations and Sensitive Land Uses**

A number of submissions or comments identified the concern for distances between cannabis operations/production facilities and sensitive land uses. In fact, some comments asked for changes to the definition being proposed in this suite of planning tools. The definition being used in this package of amendments is the same as the definition contained in the Provincial Policy Statement (PPS) and the Growth Plan for the Greater Golden Horseshoe. As such, the definition will not be changed for the sake of these amendments.

The Township received a number of comments concerning setbacks between cannabis production operations and sensitive land uses. The general public and public agencies (e.g., County of Peterborough, Kawartha Pine Ride District School Board) identified concerns about possible negative impacts if an appropriate setback is not established.

The proposed OPA provides an alternate minimum separation distance that relies on science, technology, building/architecture and local geography to determine what distance should be applied for individual circumstances. While the approach differs from that being employed by the County and in the draft County OP but the consultant feels that based on their experience at the Ontario Land Tribunal (OLT), that the approach being recommended will be defensible – should there be a subsequent challenge. The ZBA will be the implementing planning mechanism for the separation distance.

Similarly, the School Board also identified concerns with respect to separation distances and sensitive land uses – like schools. The current proposed amendments include a number of policies requiring a minimum of 300 metre setback. There are opportunities for an alternate minimum distance based on the findings of a Land Use Compatibility Assessment. Any minimum distance separation will be addressed through the ZBA process and the merits of the proposal will be reviewed on an application by application basis using the 300

metre as a benchmark to be increased or decreased (as appropriate) as provided for in the new Official Plan.

## 2. Odour Management & Light Impact

Members of the public and members of Council identified concerns of odour, and odour management and possible impacts from lighting associated with establishing cannabis operations within the Township in both written and oral submissions. Most recently, at the second statutory Public Meeting in January 2021 a number of members of the public identified comments in support and in opposition to the potential impacts of odour regarding cannabis operations.

This is such a key consideration that the Township along with the consultant commissioned an air quality expert to provide a Technical Brief with an Overview of Odour Management in the Township (see Attachment No. 10). This technical brief provides the legislative and regulatory requirements federally and provincially for controlling odour, contaminants and air quality. As a result, modifications to the OPA were made to change the terminology from Odour Study and Management Plan to an Air Quality Study (AQS). This is more accurate terminology to reflect the science and technology to measure and mitigate impacts from odours. The policies were also modified to simplify the previously proposed policies in the OPA. The proposed OPA will now require an Odour Mitigation Plan and a Contingency Odour Mitigation Plan. Along these same lines, applications will also require a Light Mitigation Plan and a Contingency Light Mitigation Plan.

## 3. Loss of Water Resources, Climate Change & Loss of Farmland

Some members of the public are concerned that the permitting of cannabis operations will have an impact on the safety and security of water resources. In particular, any changes to water supply has been cited as a concern that will negatively contribute to climate change along with increased residential growth in the Township. To that end, water should be put to a better use than the production of cannabis. This includes the loss of agricultural land for farming because of a possible competing crop for cannabis rather than productive farmland for food which should be a priority over cannabis production.

The consultant and Township are satisfied that the proper safeguards are in place that will weigh each application on its individual merits and local situation as the will be subject to submitting all the relevant information and studies required through a Zoning By-law Amendment and Site Plan Approval.

## 4. Safety, Security (Policing) and Other Adverse Impacts

Some members expressed concern that the growing of cannabis could lead to encouraging the growing of a crop that could attract “unwanted visitors” which could then lead to the need for more security and a greater police presence.

Staff are of the opinion that cannabis and cannabis production has been legalized in Canada for over three years (October 17, 2018) and that federal and provincial legislation and regulations provide the necessary layers of protection to govern and

implement the lawful growth and cultivation/production of cannabis. This is a legitimate and legal use that at this point requires the implementation of the proper land use planning and policies to be put in place to regulate where this is appropriate in the local context. This package of regulatory policies and provisions is that implementation tool.

As a result, all federal, provincial and local regulations and controls will ensure that this recognized legal use can be established properly in the local context knowing that proper licensing provides for the safety and security provisions of such an operation. This is addressed through the licensing enforcement as well as land use planning.

Some members of the public have also expressed concern about nuisance impacts including the health and safety for people who work in these facilities or live near them. These groups are asking Council to keep the door closed on this issue as there is no compelling reason to cause land use conflict potential health impacts and nuisance to the Township.

The Township of Cavan Monaghan Zoning By-law 2018-58, as amended defines and already permits cannabis production facility in Urban Employment Zones subject to certain regulations. The regulations contained in the current zoning by-law that govern the permitted uses do not reflect the current legislative and regulatory framework which is why they are in need of being updated. In addition, the definitions in the zoning by-law are not up to date as it does not include cannabis as an Agricultural use and does not allow cannabis production facilities on farms. These need to be updated to be consistent with current law and the direction of Council.

Currently, the official plan does not contain any policies to provide regulatory guidance for establishing cannabis facilities in the Township. The proposed amendments to the OP, ZB and Site Plan Control By-law provide that guidance and will bring these planning documents into alignment.

Specific comments are provided in Attachment No 11 of this Report.

### **Analysis:**

The Township Official Plan provides detailed policies to govern development in the Township. The Township Zoning By-law provides the detailed criteria and permitted uses consistent with the OP. The Site Plan Control By-law applies to all of the lands within the Township. It is important that all three land use planning regulations are consistent and aligned with respect to policies, permitted uses and the control of buildings and structures associated with any specific land use. In this case, cannabis operations.

In this case, the definition of Cannabis Production will be updated defining indoor and outdoor permitted uses. The proposed OPA will permit outdoor Cannabis Cultivation as-of-right in Agricultural Area, Oak Ridges Moraine Prime Agricultural Areas, Rural Areas and Oak Ridges Moraine Rural Area designations subject to a 300 metre minimum separation distance from surrounding sensitive land uses.



In addition, the OPA will permit an indoor Cannabis Production Facility in Urban Employment Areas (in Millbrook), Rural Employment Areas and the above-noted other designations subject to a Zoning By-law Amendment and a 300 metre minimum separation distance from surrounding sensitive land uses.

The OP policies will require mitigation of any adverse effects including noise, odour, dust and light. In addition no outdoor storage for cannabis will be permitted – only in new, purpose built buildings. All such applications will be subject to Site Plan Control which will identify criteria for consideration prior to approval such as environmental impacts, servicing waste management, parking and traffic. A number of studies will also be identified as part of the Zoning By-law Amendment or site plan application(s). These studies include an Air Quality Study which includes a Contingency Odour Mitigation Plan and a Light Mitigation Plan.

The proposed zoning by-law amendment would require that a Cannabis Production Facility only be permitted subject to a zoning by-law amendment. Outdoor Cannabis Cultivation will be added as an as-of-right permitted use in the Agricultural (A), Rural (R) and Oak Ridges Moraine Countryside (ORMCO) Zones. As noted earlier, a new set of regulations will be introduced which addresses licencing, buildings, use in these buildings, lot and setback requirements, storage, parking among other provisions and also be subject to Site Plan Control.

The proposed Site Plan Control By-law Amendment is required to ensure consistency with the suite of changes introduced through the ZBA and OPA. This amendment specifically identifies that the buildings associated with a cannabis operation are not exempt from Site Plan Control.

Staff is of the opinion that the proposed OP, ZB and Site Plan Control By-law Amendments are aligned and when approved will implement the direction provided by Township Council.

Staff note that the first two (2) recommendations are for Council to adopt the OPA and submit to the County for review and approval. The third recommendation has been informed by legal counsel advising that should Township Council approve the OPA, the associated zoning by-law amendment and site plan control by-law would also be signed and would be “in effect” retroactively the day it was passed once there has been a decision to approve the OPA by County Council. Of course, these would not be in effect if the County were to refuse the OPA.

### **Financial Impact:**

No further update at this time, Staff will provide a detailed cost breakdown of the project at a later date as part of the report to Council which will outline costs for the consultant, costs for public notice and any other expenses.

**Attachments:**

- Attachment No. 1: Presentation: Statutory Public Meeting Proposed Official Plan Amendment and Zoning By-law Amendment Regulating Cannabis in the Township of Cavan Monaghan (dated January 17, 2022 – Meridian Consulting)
- Attachment No. 2: Draft Official Plan Amendment
- Attachment No. 3: Draft Zoning By-law Amendment
- Attachment No. 4: Draft Site Plan Control By-law Amendment
- Attachment No. 5: Report Planning 2022-03 dated January 17 2022
- Attachment No. 6: Report Planning 2021-67 dated December 20, 2021
- Attachment No. 7: Report: Regulating Cannabis in the Township of Cavan Monaghan
- Attachment No. 8: Technical Memorandum: Addendum to December 20, 2020 Report (dated September 13, 2021)
- Attachment No. 9: Technical Memorandum: Assessment of Cannabis Operations (dated September 21 2021)
- Attachment No. 10: Report: Overview of Odour Management Plan for Town Council (dated March 7, 2022)
- Attachment No. 11: Appendix: Public and Agency Comments.

Respectfully Submitted by,

Reviewed by,

John F. Connolly  
Executive Director, Planning & Development

Yvette Hurley  
Chief Administrative Officer

# **Proposed Official Plan Amendment and Zoning By-law Amendment Regulating Cannabis in the Township of Cavan Monaghan**

**March 21 2022**



# Planning Process To Date

- Report: “Regulating Cannabis in the Township of Cavan Monaghan” dated December 14, 2020 as presented to Council on December 21, 2020
- Subsequent addendum (September 2021) to the December 2020 Report to consider additional options and provide additional details to the original options considered
- Public Open House on October 18, 2021 to present the findings of the Addendum and to provide a final set of recommendations
- Statutory Public Meetings on December 20, 2021 and January 17, 2022 to present the draft planning documents and to obtain public feedback on those documents



# Official Plan - Permissions

Official Plan Land Use Designation	Cannabis Production Facility (1)(2)	Outdoor Cannabis Cultivation (2)
Urban Employment Area (Millbrook)	•	
Rural Employment Area	•	
Agricultural Areas	•	•
Oak Ridges Moraine Prime Agricultural Area	•	•
Rural Areas	•	•
Oak Ridges Moraine Rural Area	•	•

(1) Only permitted subject to a Zoning By-law Amendment

(2) Only permitted subject to a 300 metre minimum separation distance from surrounding sensitive land uses.



# Official Plan - Policies

- Mitigation of adverse effects including noise, odour, dust, and light
- No outdoor storage permitted
- Only permitted in new, purpose-built buildings
- Subject to site plan control
- Identify a number of criteria to be considered prior to municipal approval including environmental impacts, servicing, waste management, parking, and traffic
- Identified set of minimum required studies which must accompany a Zoning By-law Amendment application or Site Plan application



# Official Plan - Policies

## Air Quality Study

- Required to assess potential airborne and odour impacts including the additional requirement for a 'Contingency Odour Mitigation Plan'

"... the proponent of the proposed *Cannabis Production Facility* shall also submit a Contingency Odour Mitigation Plan, prepared by a Licensed Professional Engineer, that considers additional air filtration systems and provides for additional mitigation measures in the event of substantiated future complaints after the use has been established. Conditions that would trigger the additional mitigation measures will be established as part of the Site Plan Control process."



# Official Plan - Policies

## Light Mitigation Plan

- Required as part of the Land Use Compatibility Assessment for a proposed Cannabis Production Facility

“...A Light Mitigation Plan, as prepared by a Licenced Professional Engineer, shall fully describe the proposed light mitigation measures and demonstrate that the proposed *Cannabis Production Facility* will not cause light pollution, including sky glow or light trespass, onto neighbouring properties. In addition, the proponent will also submit a Contingency Light Pollution Mitigation Plan, prepared by a Licensed Engineer, that provides for additional mitigation measures in the event of substantiated future complaints after the use has been established. Conditions that would trigger the additional mitigation measures will be established as part of the Site Plan Control process.”





# Zoning By-law Amendment

## Permitted Uses

- A Cannabis Production Facility is only permitted subject to a Zoning By-law Amendment. Current as-of-right permission for a Cannabis Production Facility will be deleted from the Zoning By-law. Any existing uses will be recognized as a legal non-conforming use.
- Outdoor Cannabis Cultivation will be added as an as-of-right permitted use in the following zones:
  - Agricultural (A) Zone;
  - Rural (RU) Zone; and,
  - Oak Ridges Moraine Countryside (ORMCO) Zone.



# Zoning By-law Amendment Use Specific Regulations

Section 11.7 will be deleted in its entirety and replaced with a new set of regulations including:

- Only the uses of a single licence holder permitted on any single lot
- Other than cultivation, all other cannabis uses may only occur in a wholly enclosed building
- Only permitted in new, purpose-built buildings
- Lot and setback requirements
- No outdoor storage
- Minimum parking and loading requirements
- Not permitted on a lot with a bed and breakfast establishment, agri-tourism use, home business or home industry
- No accessory sale of cannabis or related products
- Subject to Site Plan Control



# Site Plan Control By-law

- Site Plan Control By-law applies to all lands in the Township
- Required to amend the Site Plan Control By-law to ensure consistency with the zoning
- Amended Site Plan Control By-law specifies that any buildings or structures associated with a cannabis operation are not exempt from Site Plan Control



# Recommendation

Recommending Council approval of:

- Official Plan Amendment
- Zoning By-law Amendment
- Site Plan Control By-law



**Amendment No. 9  
to the  
Official Plan of the  
Township of Cavan Monaghan**

**Cannabis Production Facilities**

**Prepared For:**

The Corporation of the Township of Cavan Monaghan

**Prepared By:**

Meridian Planning Consultants

Final Draft

April 4, 2022

**Adoption of Official Plan No. 9  
to the  
Township of Cavan Monaghan**

**By-law No. 2022-14**

**Being a By-law passed pursuant to the provisions of Sections 17, 21 and 22 of the Planning Act, R.S.O. 1990, as amended.**

The Council of the Corporation of the Township of Cavan Monaghan, in accordance with the provisions of Sections 17, 21 and 22 of the Planning Act, R.S.O. 1990, as amended, hereby enacts as follows:

1. Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan, consisting of the attached explanatory text is hereby adopted.
2. That the Clerk is hereby authorized and directed to make application to the County of Peterborough for approval of Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan.
3. That the Clerk is hereby authorized and directed to proceed with the giving of notice under Section 17(23) of the Planning Act.
4. This By-law shall come into force and take effect on the day of final passing thereof.

Enacted and passed this \_\_\_\_ day of \_\_\_\_\_, 2022.

Signed: \_\_\_\_\_  
Scott McFadden, Mayor

CORPORATE SEAL OF  
MUNICIPALITY

Signed: \_\_\_\_\_  
Cindy Page, Clerk

Certified that the above is a true copy of By-law No. 2022-14, as enacted and passed by the Council of the Township of Cavan Monaghan on the \_\_\_\_ day of \_\_\_\_\_, 2022.

Signed: \_\_\_\_\_  
Cindy Page, Clerk

**Certificate  
Amendment No. 9  
Official Plan of the  
Township of Cavan Monaghan**

The attached explanatory text constituting Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan, was prepared by the Council of the Township of Cavan Monaghan and was adopted by the Council of the Township of Cavan Monaghan by By-law No. 2021-XX in accordance with the provisions of Sections 17, 21 and 22 of the Planning Act, R.S.O. 1990, on the \_\_\_\_ day of \_\_\_\_\_, 2022.

Signed: \_\_\_\_\_  
Scott McFadden, Mayor

CORPORATE SEAL OF  
MUNICIPALITY

Signed: \_\_\_\_\_  
Cindy Page, Clerk

This amendment to the Official Plan of the Township of Cavan Monaghan, which has been adopted by the Council of the Township of Cavan Monaghan, is hereby approved in accordance with the provisions of Sections 17, 21 and 22 of the Planning Act, R.S.O. 1990 as Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Bryan Weir, Director Planning & Public Works

**AMENDMENT NO.9  
TO THE  
OFFICIAL PLAN OF  
THE TOWNSHIP OF CAVAN MONAGHAN**

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**Amendment No. 9  
to the  
Official Plan of  
The Township of Cavan Monaghan**

**Introduction**

**Statement of Components**

PART "A" THE PREAMBLE does not constitute part of this Amendment.

PART "B" THE AMENDMENT, consisting of the following text constitutes Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan.

PART "C" THE APPENDICES do not constitute part of Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan, and contain background information and public and agency comments pertaining to the Amendment as well as the draft implementing Zoning By-law Amendment.

## **PART “A” -- THE PREAMBLE**

### **1.0 PURPOSE OF THE AMENDMENT**

The Township of Cavan Monaghan Official Plan currently does not contemplate Cannabis Production Facilities as a land use. As such, an amendment to the Official Plan is necessary to permit Cannabis Production Facilities responsibly in the Township, as well as to ensure that the implementing Zoning By-law conforms to the Township of Cavan Monaghan Official Plan and the County of Peterborough Official Plan. Therefore, the purpose of Amendment No. 9 to the Township of Cavan Monaghan Official Plan is to:

1. Amend Section 3 ‘General Development Policies’ by adding a new Section ‘3.28 Cannabis Production Facilities’ to provide more detailed development criteria for a ‘Cannabis Production Facility’ including the requirement that Cannabis Production Facilities be subject to Site Plan Control, that Cannabis Production Facilities only be permitted by Zoning By-law Amendment, providing minimum setbacks and separation distances to facilitate compatibility between land uses, and adding criteria for the processing of cannabis as an agriculture-related use;
2. Amend Section 4.6.2(a) ‘Urban Employment Areas Permitted Uses’ to permit Cannabis Production Facilities subject to a Zoning By-law Amendment and provided that such use satisfies the Official Plan criteria and zoning requirements of the Township Zoning By-law to permit such a use;
3. Amend Section 5.1.2 Agricultural Areas Permitted Uses to permit outdoor cannabis cultivation and to further permit Cannabis Production Facilities subject to a Zoning By-law Amendment and provided that such use satisfies the Official Plan criteria and zoning requirements of the Township Zoning By-law to permit such a use;
4. Amend Section 5.1.5.1 ORM Prime Agricultural Permitted Uses to permit outdoor cannabis cultivation and to further permit Cannabis Production Facilities subject to a Zoning By-law Amendment and provided that such use satisfies the Official Plan criteria and zoning requirements of the Township Zoning By-law to permit such a use;
5. Amend Section 5.2.2 Rural Areas Permitted Uses to permit outdoor cannabis cultivation and to further permit Cannabis Production Facilities subject to a Zoning By-law Amendment and provided that such use satisfies the Official Plan criteria and zoning requirements of the Township Zoning By-law to permit such a use;
6. Amend Section 5.2.4.1 ORM Rural Areas Permitted Uses to permit outdoor cannabis cultivation and to further permit Cannabis Production Facilities subject

to a Zoning By-law Amendment and provided that such use satisfies the Official Plan criteria and zoning requirements of the Township Zoning By-law to permit such a use;

7. Amend Section 5.4.2 Rural Employment Areas Permitted Uses to permit Cannabis Production Facilities subject to a Zoning By-law Amendment and provided that such use satisfies the Official Plan criteria and zoning requirements of the Township Zoning By-law to permit such a use;
8. Amend Section 8.4 Complete Application by adding requirements for Cannabis Production Facilities to Subsections (xiii) and (xiv) and by adding two additional studies to the list of studies that may be required as part of a complete application: (xviii) an Air Quality Study; and (xix) a Waste Management Plan;
9. Amend Section 8.7 Site Plan Control to add the requirement that agricultural buildings and structures used in conjunction with a Cannabis Production Facility are not exempt from Site Plan Control; and,
10. Amend Appendix 1 of the Official Plan by providing definitions for Cannabis, Cannabis Production Facility, and Outdoor Cannabis Cultivation.

These amendments apply to the entirety of the Township of Cavan Monaghan.

## **2.0 BASIS OF THE AMENDMENT**

Currently, the Township Official Plan does not contemplate Cannabis Production Facilities as a land use. Consequently, many of the policies governing land use within various land use designations indirectly permit Cannabis Production Facilities. The Official Plan Amendment contained herein, will provide clarity to municipal planners, prospective developers and the public regarding the appropriate location and site development requirements for Cannabis Production Facilities in the Township. Such criteria would also be applicable to any application to expand an existing, legal non-conforming Cannabis Production Facility.

## **PART “B” -- THE AMENDMENT**

### **1.0 INTRODUCTORY STATEMENT**

All of this part of the document entitled PART “B” -- THE AMENDMENT, consisting of the following text, constitutes Amendment No. 9 to the Official Plan of the Township of Cavan Monaghan.

### **2.0 DETAILS OF THE AMENDMENT**

The Official Plan of the Township of Cavan Monaghan is hereby amended as follows:

1. Section 3 ‘General Development Policies’ is hereby amended by adding a new ‘Section 3.28 Cannabis Production Facilities And Outdoor Cannabis Cultivation’ which reads as follows:

#### **“Section 3.28 Cannabis Production Facilities And Outdoor Cannabis Cultivation**

Where a *Cannabis Production Facility* or *outdoor cannabis cultivation* is permitted, or where an existing legal non-conforming *Cannabis Production Facility* is expanded, such uses shall only be permitted in accordance with the requirements of this Section and any other applicable policies of this Official Plan.

##### **3.28.1 Development Criteria**

Where permitted, all *Cannabis Production Facilities*, *Outdoor Cannabis Cultivation*, and any associated agriculture-related uses shall be subject to the following:

- a) All *Cannabis Production Facilities* shall be designed and sited to mitigate any adverse effects on surrounding land uses and to blend in with the rural character of the surrounding area. This includes the mitigation of any noise, dust or odour impacts that may impede the enjoyment, privacy or function of neighbouring land uses;
- b) Buffering and screening shall be provided to mitigate any adverse effects on surrounding land uses;
- c) All *Cannabis Production Facilities* shall adhere to dark sky friendly lighting and building design;
- d) No outdoor storage is permitted in association with a *Cannabis Production Facility* or any associated agriculture-related use thereto;

- e) Notwithstanding Section 8.7(a)(iii) of this Official Plan, all *Cannabis Production Facilities* shall be subject to Site Plan Control;
- f) *Cannabis Production Facilities* shall only be permitted through express permission in a site specific Zoning By-law Amendment and may only be permitted in new, purpose-built facilities. Any retrofit or use of existing agricultural buildings or structures is prohibited;
- g) Prior to approving an application for a Zoning By-law Amendment or Site Plan Application, Council shall be satisfied that:
  - i) there will be no adverse effect on the quality and quantity of groundwater and surface water, natural heritage features, hydrologic features or that the *Cannabis Production Facility* would otherwise pose a negative impact on the ecological health of the watershed;
  - ii) the proposed *Cannabis Production Facility* can be serviced giving consideration to both the quality and quantity of water supply and effluent generated;
  - iii) stormwater management requirements can be managed on-site;
  - iv) waste management facilities can be provided on-site as demonstrated by a Waste Management Plan including but not limited to the location, storage, processing, and loading facilities for haulage of waste by-products from the site;
  - v) adequate parking and loading facilities and associated site circulation are provided on the lot; and,
  - vi) the proposed use will not cause any traffic hazards or any unacceptable impacts on surrounding roads.
- h) The requirements of Section 8.4 of this Official Plan shall apply to any Zoning By-law Amendment or Site Plan application submitted in support of a proposed *Cannabis Production Facility*. Any of the studies identified in Section 8.4(e) may be required as part of a complete application including at a minimum, the following required studies:
  - i) Land Use Compatibility Assessment;
  - ii) Hydrogeological Study where the proposed use would be on private services;
  - iii) Servicing Study where the proposed use would be on municipal services;

- iv) Stormwater Management Study and Plan;
- v) Air Quality Study; and,
- vi) Waste Management Plan.

### **3.28.2 Cannabis Production Facility and Outdoor Cannabis Cultivation Setbacks**

In achieving compatibility between land uses, the avoidance of adverse effects is the preferred first principle. However, if avoidance is not possible, adverse effects must be minimized to the greatest degree possible and appropriately mitigated. One means of achieving land use compatibility is through minimum required setbacks and minimum separation distances between land uses. In this regard, *Cannabis Production Facilities* and *outdoor cannabis cultivation* shall be sited in accordance with the following:

- a) *Cannabis Production Facilities* and/or an associated agriculture-related use shall maintain a minimum separation distance of 300 metres from any surrounding sensitive land uses or an alternate distance as determined by a Land Use Compatibility Assessment to the satisfaction of the Township;
- b) Application of the minimum separation distance established in Section 3.28.2(a) will be assessed during the review of a planning application to permit a *Cannabis Production Facility* and/or an associated agriculture-related use. Such minimum separation distance may be determined to be lower or higher in accordance with the findings of a Land Use Compatibility Assessment which in this regard, shall include the following considerations:
  - i) Whether the Cannabis Production Facility is within a greenhouse or in a wholly enclosed building;
  - ii) The size and scale of the proposed Cannabis Production 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 Cannabis Production Facility in relation to prevailing winds;
  - v) The nature of the adverse effects that exist at the time in relation to existing cannabis cultivation facilities; and
  - vi) The impact of topography on the dispersion of odour.

- c) A minimum separation distance other than that required by Section 3.28.2(a) shall be implemented through a Zoning By-law Amendment. An amendment to the Official Plan shall not be required;
- d) *Outdoor Cannabis Cultivation* shall maintain a minimum separation distance of 300 metres from any surrounding sensitive land uses and is required to be set back a minimum of 50 metres from all lot lines for the lot on which the outdoor cannabis crop is located.

### **3.28.3 Cannabis Processing as an Agriculture-Related Use**

The processing of *cannabis*, as a value-added component of a *Cannabis Production Facility* and as licenced by Health Canada, may only be permitted as an agriculture-related use subject to Site Plan Control provided:

- a) *Cannabis* processing occurs only in conjunction with a *Cannabis Production Facility* where such processing is subordinate to the primary use of the lot for the cultivation of cannabis;
  - b) *Cannabis* processing, where permitted as an agriculture-related use, is subject to the requirements of Section 3.28.1 above; and,
  - c) *Cannabis* processing to be permitted as an agriculture-related use on the same lot as the primary Cannabis Production Facility, it must be demonstrated that the proposed agriculture-related use satisfies all of the criteria below:
    - i) Is compatible with and does not hinder surrounding agricultural operations;
    - ii) Is directly related to farm operations in the area;
    - iii) Supports agriculture;
    - iv) Provides direct products and/or services to farm operations as a primary activity; and,
    - v) Benefits from being in close proximity to farm operations.
2. Section 4.6.2(a) (Urban Employment Permitted Uses) is hereby amended by adding a new subsection (v) as follows:

- “a) Permitted uses in Urban Employment Areas include the following:
  - v) A *Cannabis Production Facility* may be permitted subject to all applicable Official Plan policies and subject to a Zoning By-law Amendment to permit such use. A *Cannabis Production Facility* is only permitted within a fully enclosed building. Notwithstanding Section 4.6.2(a)(iii) and Section 4.6.3(d) of the Official Plan, no

outdoor storage shall be permitted in conjunction with a *Cannabis Production Facility*.”

3. Section 5.1.2 (Agricultural Areas Permitted Uses) is hereby amended by adding new subsections (n) and (o) as follows:

“The primary use of land in the Agricultural designation shall be agricultural uses as defined by the Provincial Policy Statement. Additional permitted uses are limited to:

- n) *Outdoor Cannabis Cultivation* subject to a minimum separation distance of 300 metres from surrounding sensitive land uses. Notwithstanding Section 5.1.2(d) or Section 5.1.4(b) of the Official Plan, *Outdoor Cannabis Cultivation* shall not be permitted as or on a lot containing a home-based industry. Notwithstanding Section 5.1.4(c) or Section 5.1.2(e) of the Official Plan, *Outdoor Cannabis Cultivation* shall not be permitted on a lot containing a farm-related commercial tourism establishment.”
  - o) A *Cannabis Production Facility* subject to a Zoning By-law Amendment provided a minimum separation distance of 300 metres from surrounding sensitive land uses or a distance as determined by a Land Use Compatibility Assessment is maintained as required by Section 3.12 and 3.28.1 of this Official Plan. Notwithstanding Section 5.1.2(d) or Section 5.1.4(b) of the Official Plan, a *Cannabis Production Facility* shall not be permitted as, or on a lot containing a home-based industry. Notwithstanding Section 5.1.4(c) or Section 5.1.2(e) of the Official Plan, a *Cannabis Production Facility* shall not be permitted on a lot containing a farm-related commercial tourism establishment.”
4. Section 5.1.5.1 (ORM Prime Agricultural Permitted Uses) is hereby amended by adding new subsections (b) and (c) and subsequently renumbering the remaining subsections. The new subsection (b) and (c) shall read as follows:

“Notwithstanding the uses permitted in the Agricultural designation, the following uses are permitted in the ORM – Prime Agricultural designation.

- b) *Outdoor Cannabis Cultivation* subject to a minimum separation distance of 300 metres from surrounding sensitive land uses. Notwithstanding Section 5.1.5.1(h) and Section 5.1.5.1(i) of the Official Plan, *Outdoor Cannabis Cultivation* shall not be permitted as, or on a lot containing, a home-based business or a home-based industry. Notwithstanding Section 5.1.5.1(j) and Section 5.1.5.1(k) of the Official Plan, *Outdoor Cannabis Cultivation* shall not be permitted on a lot containing a *bed and breakfast establishment* nor a *farm vacation home*.”



- c) *A Cannabis Production Facility* subject to a Zoning By-law Amendment provided a minimum separation distance of 300 metres from surrounding sensitive land uses or a distance as determined by a Land Use Compatibility Assessment is maintained as required by Section 3.12 and 3.28.1 of this Official Plan. Notwithstanding Section 5.1.5.1(h) and Section 5.1.5.1(i) of the Official Plan, *a cannabis production facility* shall not be permitted as, or on a lot containing, a *home-based business* or a *home-based industry*. Notwithstanding Section 5.1.5.1(j) and Section 5.1.5.1(k) of the Official Plan, *outdoor cannabis cultivation* shall not be permitted on a lot containing a *bed and breakfast establishment* nor a *farm vacation home*.”

- 5. Section 5.2.2 (Rural Areas Permitted Uses) is hereby amended by adding new subsections (g) and (h) as follows:

“The predominant use of land within the Rural designation shall include all agricultural uses outlined in Section 5.1.2 of this Plan. Limited residential uses, recreational uses and small-scale commercial or industrial uses such as the following are also permitted:

- g) *Outdoor Cannabis Cultivation* subject to a minimum separation distance of 300 metres from surrounding sensitive land uses. Notwithstanding Section 5.2.2 (b) of the Official Plan *Outdoor Cannabis Cultivation* shall not be permitted as, or on a lot containing, a home-based business. Notwithstanding Section 5.2.2 (e) of the Official Plan, *Outdoor Cannabis Cultivation* shall not be permitted on a lot containing a bed and breakfast establishment nor any accommodation use catering to tourists and travellers.”

- h) *A Cannabis Production Facility* subject to a Zoning By-law Amendment provided a minimum separation distance of 300 metres from surrounding sensitive land uses or a distance as determined by a Land Use Compatibility Assessment is maintained as required by Section 3.12 and 3.28.1 of this Official Plan. Notwithstanding Section 5.2.2 (b) of the Official Plan a *Cannabis Production Facility* shall not be permitted as, or on a lot containing, a home-based business. Notwithstanding Section 5.2.2 (e) of the Official Plan, a *Cannabis Production Facility* shall not be permitted on a lot containing a bed and breakfast establishment nor any accommodation use catering to tourists and travellers.”

- 6. Section 5.2.4.1 (ORM Rural Areas Permitted Uses) is hereby amended by adding a new subsection (g) and (h) as follows:

“In addition to the uses permitted in the ORM – Prime Agricultural designation, the following uses are permitted in ORM – Rural designation subject to Part III and IV of the Oak Ridges Moraine Conservation Plan.

- g) *Outdoor Cannabis Cultivation* subject to a minimum separation distance of 300 metres from surrounding sensitive land uses. Notwithstanding Section 5.2.5.1(a) of the Official Plan, *Outdoor Cannabis Cultivation* shall not be permitted on a lot containing an agriculturally-related commercial use offering accommodations or catering to tourists and travellers.”
  - h) *A Cannabis Production Facility* subject to a Zoning By-law Amendment provided a minimum separation distance of 300 metres from surrounding sensitive land uses or a distance as determined by a Land Use Compatibility Assessment is maintained as required by Section 3.12 and 3.28.1 of this Official Plan. Notwithstanding Section 5.2.5.1(a) of the Official Plan, a *Cannabis Production Facility* shall not be permitted on a lot containing an agriculturally-related commercial use offering accommodations or catering to tourists and travellers.”
7. Section 5.4.2 (Rural Employment Areas Permitted Uses) is hereby amended by adding a new paragraph and inserting this paragraph as a the second paragraph as follows:

“A *Cannabis Production Facility* may be permitted subject to all applicable Official Plan policies and subject to a Zoning By-law Amendment to permit such use. A *Cannabis Production Facility* is only permitted within a fully enclosed building. Notwithstanding any other policy of the Official Plan, no outdoor storage shall be permitted in conjunction with a *Cannabis Production Facility*.”

8. Section 8.4(e) (Complete Application) is hereby amended by adding the following additional second paragraph to Subsection (xiii):
- “e) The supplementary information requirements may include, but shall not be limited, to the following reports or studies. The description of such study or report is intended to be general and not exhaustive:
    - xiii) The requirements for a Land Use Compatibility Assessment shall also apply to the siting of a new or expanding *Cannabis Production Facility* and/or the establishment of sensitive land uses in proximity of any existing *Cannabis Production Facility*.

Where a Land Use Compatibility Assessment is required for a new or expanding *Cannabis Production Facility*, such study

shall also include a Light Mitigation Plan. A Light Mitigation Plan, as prepared by a Licenced Professional Engineer, shall fully describe the proposed light mitigation measures and demonstrate that the proposed *Cannabis Production Facility* will not cause light pollution, including sky glow or light trespass, onto neighbouring properties. In addition, the proponent will also submit a Contingency Light Pollution Mitigation Plan, prepared by a Licensed Engineer that provides for additional mitigation measures in the event of substantiated future complaints after the use has been established. Conditions that would trigger the additional mitigation measures will be established as part of the Site Plan Control process.”

9. Section 8.4(e) (Complete Application) is hereby amended by amending Subsection (xiv) by including a *Cannabis Production Facility* in the final line as follows:

“xiv) Noise Impact and Vibration Study - The intent of this study is to identify noise and vibration impacts and mitigation requirements proposed for development involving sensitive land uses that are adjacent to or in proximity to an airport, highway, arterial road, industrial use, *Cannabis Production Facility*, or railway;

10. Section 8.4 (Complete Application), is hereby amended by adding the following additional studies to Subsection (e):

“e) The supplementary information requirements may include, but shall not be limited to the following reports or studies. The description of such study or report is intended to be general and not exhaustive:

xviii) Air Quality Study – The purpose of an Air Quality Study is to address the potential airborne contaminants of a proposed *Cannabis Production Facility* and establish a minimum separation distance between the proposed cannabis use and surrounding sensitive land uses. Potential airborne contaminants to be addressed include but are not limited to odour, chemicals and particulate matter constituents generated by a proposed *Cannabis Production Facility*, any associated agriculture-related use, or any expansion thereto.

The Air Quality Study shall be prepared by a Licenced Professional Engineer in accordance with the following requirements:

- 1) The Air Quality Study shall provide a detailed odour inventory and mitigation plan that fully describes the proposed air filtration and odour control systems as well as other mitigation measures that will be used to control odour.
  - 2) The Air Quality Study shall include atmospheric dispersion modelling predictions that show odour and contaminant concentration predictions along the property line and shall extend outward 5 kilometres from the facility into the surrounding community.
  - 3) The Air Quality Study shall include a review of the impacts of other nearby *Cannabis Production Facilities* within the area and comment on the potential cumulative adverse effects.
  - 4) In addition to sub-sections (1)(2) and (3) above, and to minimize the likelihood of adverse effects, the Air Quality Study should target a sensitive receptor impact of two odour units, however the Township may also consider other odour impact predictions. An electronic copy of the atmospheric dispersion model files used in the Air Quality Study shall be included with the submission.
  - 5) In addition to the above, the proponent of the proposed *Cannabis Production Facility* shall also submit a Contingency Odour Mitigation Plan, prepared by a Licensed Professional Engineer that considers additional air filtration systems and provides for additional mitigation measures in the event of substantiated future complaints after the use has been established. Conditions that would trigger the additional mitigation measures will be established as part of the Site Plan Control process.
- xix) Waste Management Plan – A Waste Management Plan shall provide information on the waste by-products and effluent generated as a result of a *Cannabis Production Facility* along with a management plan for how such waste will be treated and stored on the lot before being disposed and/or hauled away.”

11. Section 8.7 (Site Plan Control), is hereby amended by revising subsection (a)(iii) and adding a new sentence at the end of the paragraph as follows:

- “a) Pursuant to the Planning Act, the Township designates all of the land within the Township boundary as outlined on Schedule A as a Site Plan Control Area. All development shall be subject to Site Plan Control, with the following exceptions:
  - iii) Any permitted agricultural buildings or structures that are used for farming operations and which by their nature do not directly serve the public and/or do not charge public fees, except a building used only for agricultural uses. Agricultural buildings or structures associated with a *Cannabis Production Facility* shall not be exempt from site plan control;”

12. Section 8.7 (Site Plan Control), is hereby amended by revising subsection (b) by adding a new sentence at the end of the paragraph as follows:

- “b) Notwithstanding the above agricultural buildings or structures and residential buildings containing less than three dwelling units may be subject to site plan control for the purposes of implementing requirements from an Environmental Impact Study, a cultural heritage evaluation, a natural heritage evaluation or a hydrological evaluation. Agricultural buildings and structures used in association with a *Cannabis Production Facility* shall be subject to site plan control;

13. Appendix 1 is hereby amended by adding the following definitions:

“***Cannabis***: a genus of flowering plants in the family Cannabaceae. Synonyms include but are not limited to marijuana, and marihuana. This definition does not include the industrial or agricultural production of hemp (a source of foodstuffs (hemp milk, hemp seed, hemp oil), fiber and biofuels).”

“***Cannabis Production Facility***: any building or structure used for cultivation, producing, packaging, testing, processing, destroying, storing or distribution of *cannabis* authorized by a licence issued by Health Canada pursuant to the *Cannabis* Regulations SOR/2018-144, to the *Cannabis* Act, SC 2018, c 16, the Controlled Drugs and Substances Act, SC 1996, c 19 and the Food and Drugs Act, RSC 1985, c F-27, as amended from time to time, or any successors thereto. *Cannabis* processing is permitted only as an agriculture-related use to the primary cultivation function of a *Cannabis Production Facility*. ”

“***Outdoor Cannabis Cultivation***: the growing of *cannabis* as an outdoor crop as authorized by a licence issued by Health Canada pursuant to the *Cannabis* Regulations SOR/2018-144, to the *Cannabis* Act, SC 2018, c 16, the Controlled Drugs and Substances Act, SC 1996, c 19 and the Food and

Drugs Act, RSC 1985, c F-27, as amended from time to time, or any successors thereto.”

### **3.0 IMPLEMENTATION AND INTERPRETATION**

The implementation and interpretation of Official Plan Amendment No. 9 shall be in accordance with the respective policies of the Official Plan of the Township of Cavan Monaghan.

#### **PART “C” -- THE APPENDICES**

The following appendices do not constitute part of Official Plan Amendment No. 9, but are included as information supporting the Amendment.

- **Appendix No. 1 - Zoning By-law Amendment**
- **Appendix No. 2 – Public and Agency Comments**

**The Corporation of the  
Township of Cavan Monaghan**

**By-law No. 2022-15**

**Being a By-law passed pursuant to the provisions of Section 34 of  
The Planning Act, R.S.O. 1990, as amended to amend the Township  
of Cavan Monaghan Comprehensive Zoning By-law No. 2018-58, as  
amended**

Whereas the Council of the Corporation of the Township of Cavan Monaghan has initiated an application to amend By-Law No. 2018-58, otherwise known as the Comprehensive Zoning By-Law, insofar as is necessary to establish provisions that apply to Cannabis production facilities within the Township.

And Whereas the Council of the Corporation of the Township of Cavan Monaghan conducted a public hearing in regard to this application, as required by Section 34(12) of the Planning Act, R.S. O. 1990, Chap. P. 13, as amended.

And Whereas the Council of the Corporation of the Township of Cavan Monaghan deems it advisable to amend Zoning By-law 2018-58, as amended, with respect to cannabis production facilities and under the provisions of the Planning Act has the authority to do so.

Now therefore the Council of the Corporation of the Township of Cavan Monaghan enacts as follows:

1. That Section 6.2, 'Table 6A – Industrial Zones - Permitted Uses' be amended by deleting '*Cannabis production facility*' as a permitted use in the Urban Employment (M1) Zone.
2. That Section 7.2, 'Table 7A – Agricultural and Rural Zones - Permitted Uses' be amended by adding '*Outdoor cannabis cultivation*' as a permitted use in the Agricultural (A) Zone and the Rural (RU) Zone.
3. That Section 7.2, 'Table 7A – Agricultural and Rural Zones - Permitted Uses' be further amended by adding a new Additional Regulation (2) and applying this additional regulation to a 'Farm produce sales outlet' as follows:

“(2) Shall not be permitted in conjunction with a *cannabis production facility* or *outdoor cannabis cultivation*.”

4. That Section 9.2, 'Table 9A – Oak Ridges Moraine Zones Permitted Uses' be amended by adding '*Outdoor cannabis cultivation*' as a permitted use in the ORM Countryside (ORMCO) Zone.
5. That Section 11.6 – Bed and Breakfast Establishments be amended by adding a new subsection (f) as follows:

“A *bed and breakfast establishment* shall not be permitted on a lot with a *Cannabis Production Facility* or *Outdoor Cannabis Cultivation*.”

6. **That** Section 11.7 of By-law No. 2018-58 as amended, be deleted and replaced with the following:

**“11.7 Cannabis Production Facilities**

The following provisions apply to all *cannabis production facilities* and *outdoor cannabis cultivation* uses where permitted by this Zoning By-law:

- a) Only a *cannabis production facility* or *outdoor cannabis cultivation* of a singular cannabis licence holder may occur on a single lot.
- b) Other than cultivation, all other cannabis-related uses are only permitted within a wholly enclosed building.
- c) The sale of cannabis or cannabis products is not permitted as an accessory use to any *cannabis production facility* or *outdoor cannabis cultivation*.
- d) Where a minimum separation distance is required between a *cannabis production facility* or *outdoor cannabis cultivation* use and a *sensitive land use*, such minimum separation distance shall be measured from the nearest lot line of the lot containing the *cannabis production facility* or *outdoor cannabis cultivation* to:
  - i) Any residential use in the Agricultural Zone or Rural Zone – to the nearest exterior wall of the dwelling;
  - ii) Any residential use in a Residential Zone – to the nearest lot line of the residential use;
  - iii) Uses permitted in the Institutional (I) Zone – to the nearest lot line;
  - iv) Uses permitted in the Open Space (OS) Zone - to the nearest lot line; or,
  - v) Notwithstanding the requirements of Section 11.7(d)(i)(ii)(iii) and (iv), where a lot containing the *Cannabis Production Facility* or *Outdoor Cannabis Cultivation* is immediately adjacent to a lot containing a *sensitive land use*, the minimum separation distance shall be measured from the nearest exterior wall of the *Cannabis Production Facility* or the nearest crop line of the *Outdoor Cannabis Cultivation* to the nearest exterior wall of the building on the lot containing the *sensitive land use*.
- e) Notwithstanding any other provision of this By-law to the contrary, a *Cannabis Production Facility* and *Outdoor Cannabis Cultivation* shall not be permitted on a lot with a *bed and breakfast establishment, agri-tourism use, home business* or *home industry*.

**11.7.1 Regulations Applying to Cannabis Production Facilities**

Notwithstanding any other provisions of this By-law to the contrary, the following additional requirements shall apply to *cannabis production facilities* where permitted:



- a) *Cannabis production facilities* shall only be permitted by site specific amendment to this Zoning By-law. Any site specific permissions for such uses must include a minimum distance separation from *sensitive land uses* in accordance with Section 11.7 (d) of this Zoning By-law.
- b) A *cannabis production facility* shall only be permitted in new, purpose-built buildings equipped with an *air treatment control* system. Existing buildings or structures may not be converted or retrofitted for cannabis cultivation, production, processing, research or testing uses.
- b) Notwithstanding Section 11.21.1 of this Zoning By-law, any expansion of an existing *cannabis production facility* or an addition to any buildings or structures thereto must comply with the requirements of this Zoning By-law.
- c) The establishment of or expansion to a *cannabis production facility* shall be subject to Site Plan Control.
- d) Where a cannabis production facility is an expressly permitted use, the following provisions apply:

	Micro-Cultivation and Micro-Processing as defined by Federal Regulation SOR-2018-144	Standard-Cultivation and Standard-Processing as defined by Federal Regulation SOR-2018-144
Min Lot Area	3 ha	10 ha
Min Lot Frontage	100 m	200 m
Min Front Yard	20 m	80 m
Min Interior Side Yard	15 m (*1)	40 m (*2)
Min Exterior Side Yard	20 m	80 m
Min Rear Yard	15 m (*1)	40 m (*2)
Max Lot Coverage	30%	30%

(\*1) Except where ventilating fans in a wall exhaust into the respective side or rear yard, in which case the minimum side or rear yard setback shall be 25 metres.

(\*2) Except where ventilating fans in a wall exhaust into the respective side or rear yard, in which case the minimum side or rear yard setback shall be 60 metres.

- e) A *cannabis production facility* shall not be permitted on a lot containing a dwelling unit.
- f) Where private lighting facilities, whether internal or external to any building or structure associated with a *cannabis production facility* are provided, such lighting facilities shall be designed in accordance with the requirements of Section 11.20 of this Zoning By-law.

- g) Notwithstanding Section 11.19.2 of this Zoning By-law, where a building, or structure is used for a *cannabis production facility* and such use is located adjacent to a Residential Zone, Institutional Zone, or Open Space Zone, a 3 metre wide planting strip shall be provided along the lot line adjacent to the Residential Zone, Institutional Zone, or Open Space Zone.
- h) Outdoor storage on a lot containing a *cannabis production facility* is prohibited.
- i) Notwithstanding Section 11.4.2 of this Zoning By-law, an accessory structure on a lot containing a *cannabis production facility* shall be located in accordance with the minimum yard setbacks and lot coverage requirements of Section 11.7.1(d) of this Zoning By-law.
- j) Notwithstanding Section 11.7.1 (i) of this Zoning By-law, an accessory building or structure located on the same lot as a *cannabis production facility* that is used exclusively for security purposes, may be located in any required yard and does not have to comply with the minimum front, side or rear yard setbacks of this Zoning By-law.
- k) Notwithstanding Section 12.1.4 and 12.1.5 of this Zoning By-law, loading areas for a *cannabis production facility* shall be located within a wholly enclosed building in accordance with the minimum yard setbacks of Section 11.7.1(d) of this Zoning By-law and shall be screened by building placement or landscaping screening.
- l) Notwithstanding Section 11.34 of this Zoning By-law, no outdoor signage or advertising for the *cannabis production facility* shall be permitted.

### **11.7.3 Regulations Applying to Outdoor Cannabis Cultivation**

Notwithstanding any other provisions of this Zoning By-law to the contrary, the following additional requirements shall apply to *outdoor cannabis cultivation* where permitted:

- a) Outdoor cannabis cultivation shall be setback a minimum distance separation of 300 metres from a *sensitive land use* in accordance with the requirements of Section 11.7(d) of this Zoning By-law; and,
- b) *Outdoor cannabis cultivation* shall be setback a minimum of 50 metres from the lot lines of the lot on which the cannabis operation is located.

- 7. **That** Section 11.14 – Home Businesses be amended by adding a new subsection (i) as follows:

“A home business shall not be permitted on a lot with a *Cannabis Production Facility* or *Outdoor Cannabis Cultivation*.”

8. That Section 11.15 – Home Industries be amended by adding a new subsection (i) as follows:  
 “A home industry shall not be permitted on a lot with a *Cannabis Production Facility* or *Outdoor Cannabis Cultivation*.”
9. That Section 12.2.2, ‘Table 12C Non-Residential Parking Space Requirements’ of Zoning By-law 2018-58 is further amended by adding a minimum parking standard for a *cannabis production facility* as follows:

<i>Cannabis production facility</i>	1 space per 100 sq. m of net floor area
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10. That Section 13 of By-law No. 2018-58 as amended, is further amended by deleting the definition for ‘*Adverse Effect*’ and replacing the definition with the following:

“*Adverse Effect*” means as defined in the *Environmental Protection Act*, shall mean one or more of:

- a) impairment of the quality of the natural environment for any use that can be made of it;
- b) injury or damage to property or plant or animal life;
- c) harm or material discomfort to any person;
- d) an adverse effect on the health of any person;
- e) impairment of the safety of any person;
- f) rendering any property or plant or animal life unfit for human use;
- g) loss of enjoyment of normal use of property; and
- h) interference with normal conduct of business.”

11. That Section 13 of By-law No. 2018-58 as amended, is further amended by adding the following definitions:

- i) “*Air Treatment Control*” means a mechanical system designed, approved and implemented in accordance with a licence issued by Health Canada for the purposes of controlling emissions and mitigating *adverse effects*. This includes but is not limited to treatment of particulate matter, odour, and noise emissions discharged as a by-product of a cannabis cultivation, production, processing, research or testing use.”
- ii) “*Outdoor Cannabis Cultivation*” means the growing of cannabis in an open air setting, in accordance with the requirements of a cultivation licence as issued by Health Canada in accordance with the Cannabis Regulations SOR/2018-144, to the Cannabis Act, SC 2018, c 16, the Controlled Drugs and Substances Act, SC 1996, c 19 and the Food and Drugs Act, RSC 1985, c F-27, as amended from time to time, or any successors thereto.”
- iii) “*Sensitive Land Use* means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more *adverse effects* from contaminant discharges generated by a nearby major facility. *Sensitive land uses* may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.”

12. That Section 13 of By-law No. 2018-58 as amended, is further amended by deleting the definition for ‘*Cannabis Production Facility*’ and replacing it with the following:

“***Cannabis Production Facility***: any building or structure used for cultivation, producing, packaging, testing, processing, destroying, storing or distribution of *cannabis* authorized by a licence issued by Health Canada pursuant to the *Cannabis* Regulations SOR/2018-144, to the *Cannabis* Act, SC 2018, c 16, the Controlled Drugs and Substances Act, SC 1996, c 19 and the Food and Drugs Act, RSC 1985, c F-27, as amended from time to time, or any successors thereto. *Cannabis* processing is permitted only as an agriculture-related use to the primary cultivation function of a *Cannabis Production Facility*.”

13. That Section 13 of By-law No. 2018-58 as amended, is further amended by amending the definitions for ‘Greenhouse, commercial’, ‘Greenhouse, farm’ and ‘Warehouse’ by adding the clause “but shall not include a *cannabis production facility*” to the end of each definition as follows:

“Greenhouse, commercial: any premises used for the growing and/or retail sale of flowers, bushes, shrubs, trees, plants and other greenhouse stock, and also includes the incidental sale of such items as fertilizers, pesticides, soil, pots and garden ornaments and may also include greenhouses but shall not include a *cannabis production facility*.”

“Greenhouse, farm: a building used for the growing of flowers, fruits, vegetables, plants, shrubs, trees and other similar agricultural products, under glass, fiberglass or plastic, and other similar materials but shall not include a *cannabis production facility*.”

Warehouse: means a building or part thereof, which is used primarily for the housing, storage, adapting for sale, packaging or wholesale distribution of goods, wares, merchandise, food stuff substances and articles, but does not include a fuel storage tank or a *cannabis production facility*.”

14. That subject to notice of the passing of this By-law in accordance with the provisions of Section 34(18) of the Planning Act, this By-law shall come into force and effect on the date of passing by the Council of the Corporation of the Township of Cavan Monaghan where no notice of appeal or objection is received pursuant to the provisions of Section 34(21) of *The Planning Act*, R.S.O.1990, as amended.

Read a first, second, and third time passed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor, Scott McFadden

\_\_\_\_\_  
Cindy Page, Clerk

Corporate Seal

**The Corporation of the Township of  
Cavan Monaghan**

**By-law No. 2022-16**

**Being a By-law to Amend the Township of Cavan Monaghan Site Plan Control By-law No. 2007-20.**

Whereas under the provisions of Section 41 of the Planning Act, R.S.O., 1990, as amended, authority is granted to Councils of Municipalities to designate a site plan control area, where an Official Plan is in effect;

And Whereas the Official Plan for the Township of Cavan Monaghan designates that site plan control shall apply to all lands within the Township of Cavan Monaghan;

And Whereas Section 41 of the Planning Act provides that no person shall undertake any development in an area designated under a by-law passed under that section without first having received approval;

Therefore the Council of the Township of Cavan Monaghan, pursuant to Section 41 of the Planning Act, enacts as follows:

1. In this By-law:
  - (a) Section 1 of the By-law shall be amended by adding the following definition of Cannabis Production Facility: any land, building or structure used for cultivation, producing, packaging, testing, processing, destroying, storing or distribution of cannabis authorized by a licence issued by Health Canada pursuant to the Cannabis Regulations SOR/2018-144, to the Cannabis Act, SC 2018, c 16, the Controlled Drugs and Substances Act, SC 1996, c 19 and the Food and Drugs Act, RSC 1985, c F-27, as amended from time to time, or any successors thereto. *Cannabis* processing is permitted only as an agriculture-related use to the primary cultivation function of a *Cannabis Production Facility*.
2. Section 2 (a) of By-law No. 2007-20 shall be amended by adding a new clause to the end of paragraph that shall read as follows:
  - “2 a) all farm buildings save and except for those buildings and structures used for intensive livestock operations, the sale of agricultural goods or agricultural related goods and services which are made available to the general public at the site, agricultural buildings located on the Oak Ridges Moraine, and buildings and structures used in association with a cannabis production facility or any associated agriculture-related use thereto;”
3. This By-law comes into force and effect on the date it is enacted by Council.

Read a FIRST, SECOND and THIRD TIME passed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CORPORATE SEAL OF  
MUNICIPALITY

Signed: \_\_\_\_\_  
Scott McFadden, Mayor

Signed: \_\_\_\_\_  
Cindy Page, Clerk



## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	January 17, 2021
<b>From:</b>	John F Connolly, Executive Director, Planning & Development
<b>Report Number:</b>	Planning 2022-01
<b>Subject:</b>	Regulating Cannabis in the Township of Cavan Monaghan – Second Public Meeting

### Recommendations:

1. That Council review and consider all public and agency verbal and written comments received regarding these applications to date, including this Second Public Meeting;
2. That proposed Official Plan Amendment, Zoning By-law Amendment and Site Plan Control Amendments be presented to Council at a future date for consideration.

### Overview:

At its Regular Council meeting of December 20, 2021, Council received a report and held a public meeting to consider all public and agency verbal and written comments received regarding these applications to date. At that time, Council was also made aware that there would be the need for a Second Public Meeting, as previous agency circulation had not met the statutory requirements under the Planning Act.

As a result, Notice of the Official Plan Amendment, Zoning By-law Amendment and Site Plan Control By-law Amendment was circulated, by first class mail, to all required ministries and agencies and to all Township Department Directors. The Notice of the Second Public Meeting was printed in the December 22, 2021 edition of the Peterborough Examiner as well as the January edition of the Millbrook Times.

Notice of this Second Public Meeting has been provided in compliance with Planning Act requirements.

At the time of writing this Report, Staff have received a range of comments that includes the representations made at the December 20, 2021 public meeting. Staff will consider all comments and submissions when bringing the amendments to the Official Plan, Zoning By-law and Site Plan Control at a future date for consideration.

**Financial Impact:**

No further update at this time, Staff will provide a detailed cost breakdown of the project at a later date as part of the report to Council which will outline costs for the consultant, costs for public notice and any other expenses.

**Attachments:**

- Attachment No. 1: Presentation: Statutory Public Meeting Proposed Official Plan Amendment and Zoning By-law Amendment Regulating Cannabis in the Township of Cavan Monaghan (dated January 17, 2022 – Meridian Consulting)
- Attachment No. 2: Report Planning 2021-67 dated December 20, 2021
- Attachment No. 3: Draft Official Plan Amendment
- Attachment No. 4: Draft Zoning By-law Amendment
- Attachment No. 5: Draft Site Plan Control By-law Amendment

Respectfully Submitted by,

Reviewed by,

John F. Connolly  
Executive Director, Planning & Development

Yvette Hurley  
Chief Administrative Officer





## Regular Council Meeting

<b>To:</b>	Mayor and Council
<b>Date:</b>	December 20, 2021
<b>From:</b>	John F Connolly, Executive Director, Planning & Development
<b>Report Number:</b>	Planning 2021-67
<b>Subject:</b>	Regulating Cannabis in the Township of Cavan Monaghan

### Recommendations:

1. That Council review and consider all public and agency verbal and written comments received regarding these applications;
2. That proposed Official Plan Amendment, Zoning By-law Amendment and Site Plan Control Amendments be presented to Council at a future date for consideration.

### Overview:

At its Regular Council meeting of September 20, 2021, Council received a presentation and update from Meridian Consulting (the Consultant) on “Regulating Cannabis in the Township of Cavan Monaghan”. At this meeting, Council also reviewed a technical Addendum to the previous December 2020 Report “Regulating Cannabis in the Township of Cavan Monaghan”. That technical Addendum outlined four (4) Options for Council’s consideration and direction to amend the Official Plan, Zoning By-law and any other planning instruments.

As part of the presentation and discussion at that meeting, Council identified its preferred Option (Option “A”) and directed the Consultant (and Staff) to proceed to hold a public meeting and to bring back to Council for a decision later in 2021. Since that meeting, Staff have been working with the Consultant and legal counsel to develop and refine the proposed amendments to the Official Plan, Zoning By-law and Site Plan Control.

### Background:

On July 6, 2020, Township of Cavan Monaghan Council authorized Staff to hire a consultant to review the current Zoning By-law (ZBL) and Official Plan (OP) policies and develop a set of policy, planning tools and amendments utilizing funds from the Cannabis Legalization Implementation Funds (OCLIF). Council agreed that these policies are needed to be amended to respond to private and public interest in this sector.

The municipality continues to receive inquiries of interest regarding the establishment of cannabis related businesses, the local market and the potential of future employment opportunities for consideration. As has been reported earlier, a number of businesses have already secured property and are developing business plans looking to the Township as it works with the Consultant on a package of policy, planning tools and amendments to the ZBL and OP to address cannabis in the municipality.

As the current Township's Official Plan and Zoning By-law do not currently meet Council's direction, certain amendments are required to bring the relevant planning documents into alignment.

#### Official Plan Amendment

Currently, the Township Official Plan does not contain any policies that provide regulatory guidance or even contemplate establishing cannabis facilities as a land use in the Township. The proposed Official Plan Amendment will apply to all lands in the Township of Cavan Monaghan and will, if approved, permit Cannabis Production Facilities responsibly within the Township.

Through amendments to the General Development Policies that will permit this land use, detailed development criteria will be added in order to establish cannabis production facilities. These facilities will be subject to Site Plan Control and only permitted in certain designations through a Zoning By-law Amendment with established minimum setbacks and separation distances to ensure land use compatibility with adjacent land uses. Criteria will also be added regarding the processing of cannabis as an agriculture-related use.

In addition, subject to a Zoning By-law Amendment, Cannabis Production Facilities will be a permitted use indoor in certain employment areas and outdoor in the Agricultural Areas, Oak Ridge's Moraine (ORM) Prime Agricultural Areas, Rural Areas, ORM Rural Areas, and Rural Employment Areas designations in the Township.

The Official Plan will also be amended to provide a definition of a Cannabis Production Facility, add the requirement for additional studies under a complete application (i.e., Odour Study & Management Plan, Waste Management Plan) and also clarification that agricultural buildings are not exempt from Site Plan Control.

#### Zoning By-law Amendment

The Township's current Zoning By-law 2018-58, as amended does provide some regulations for cannabis facilities and is only permitted in the Urban Employment Zone (Millbrook Employment Area). As noted above, if the Official Plan is amended to permit cannabis production facilities, the implementing Zoning By-law will also have to be amended to conform to the amended Official Plan.

The Zoning By-law will amend the existing regulation for Cannabis Production Facilities and provide new guidance for Outdoor Cannabis Cultivation. This means that the current provision for as-of-right in Urban Employment Zone will be deleted and only permit a Cannabis Production Facility by Zoning By-law Amendment. This amendment will add "as-of-right" permissions for Outdoor Cannabis Cultivation in the Agricultural,

Rural and ORM Countryside Zones. It will also provide use-specific regulation of how such uses may be established.

Section 11.7 Cannabis Production Facilities will be deleted and replaced with a new set of regulations that address criteria such as:

- licence holder permission;
- other cannabis uses only occur in a wholly enclosed building;
- only permitting new, purpose built buildings;
- lot and setback requirements;
- no outdoor storage;
- parking and loading requirements;
- not permitted with bed and breakfast, agri-tourism, home business, home industry;
- no accessory sale or related products; and
- subject to Site Plan Control.

As a result, through the proposed amendment, indoor Cannabis Production Facilities will only be permitted by amendment to the Zoning By-law and only in the Urban Employment and Rural Employment land use designations in the Official Plan. Outdoor cannabis cultivation will be permitted as-of-right in the Agricultural & Rural Zones as well as the applicable ORM Zones subject to a 300 metre separation distance from sensitive land uses.

Requiring a Zoning By-law Amendment offers the most comprehensive approach to consider and address any issues related to this subject. This will allow the Township to deal with these proposals on a case-by-case basis through the studies and mitigation measures provided. This will also allow the public in the surrounding area to be aware of any applications provide comment and allow Council to make a final decision on the merits of the proposal.

#### Site Plan Control

As noted above, implementing the direction of Council through this option means that no Official Plan Amendment is required to permit a Cannabis Production Facility in the above noted Official Plan designations. The only planning applications that would be required is a Zoning By-law Amendment and Site Plan Control. This would allow for an appropriate assessment of individual proposals.

The Site Plan Control By-law applies to all lands in the Township of Cavan Monaghan and will have to be amended to ensure consistency with the proposed changes to the zoning. The proposed amendment would provide a definition of a Cannabis Production Facility with a new clause added that would not exempt a cannabis operation from Site Plan Control.

#### **Response to Notice**

Notice of the Official Plan Amendment, Zoning By-law Amendment and Site Plan Control By-law Amendment was circulated, by first class mail, to all required ministries and agencies and to all Township Department Directors. The Notice of Public Meeting was printed in the December 1, 2021 edition of the Millbrook Times.

At the time of writing this Report, Staff has received a range of comments over the past several months from “no comment” to an expressed desire to speak to this matter at the public meeting scheduled for December 20, 2021. Based on this, and acknowledgement that the agency circulation was less than 20 days Staff will be holding a second public meeting at its Regular Council meeting of January 17, 2022.

Notice of this second Public Meeting will be provided in compliance with Planning Act requirements.

**Financial Impact:**

To date, the Township has paid Meridian Consulting an estimated \$28,500 for this project work.

**Attachments:**

- Attachment No. 1: Presentation: Statutory Public Meeting Proposed Official Plan Amendment and Zoning By-law Amendment Regulating Cannabis in the Township of Cavan Monaghan (dated December 20, 2021 – Meridian Consulting)
- Attachment No. 2: Draft Official Plan Amendment
- Attachment No. 3: Draft Zoning By-law Amendment
- Attachment No. 4: Draft Site Plan Control By-law Amendment

Respectfully Submitted by,

Reviewed by,

John F. Connolly  
Executive Director, Planning & Development

Yvette Hurley  
Chief Administrative Officer



# Regulating Cannabis in the Township of Cavan Monaghan

December 14, 2020

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## 1.0 REPORT PURPOSE

The purpose of this Report is to: i) review and assess recent federal legislation on cannabis cultivation and processing and the impacts on land use planning; and ii) identify options for regulating this activity in the Township of Cavan Monaghan.

This report will outline a number of factors that support cannabis cultivation and cannabis processing as distinct land uses that should be regulated accordingly in the Township's Zoning By-law. As such, this report will also identify a number of options on where and under what conditions cannabis cultivation and cannabis processing could be permitted.



## 2.0 FEDERAL CANNABIS ACT

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

regulated cannabis, and to control its production, distribution, sale, importation, exportation, and possession. Following parliamentary review, the Cannabis Act received royal assent on June 21, 2018 and became law on October 17, 2018.

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

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

In order to achieve the above, the Cannabis Act:

- Creates a general control framework for cannabis by establishing a series of criminal prohibitions, while providing for exceptions or authorizations to permit persons to engage in otherwise prohibited activities;

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

It should be noted that by virtue of the enactment of the Cannabis Act, the Access to Cannabis for Medical Purposes Regulations (ACMPR) was repealed when the Cannabis Act became law on October 17, 2018.

All producers with a licence (commercial and personal use) under the ACMPR were

allowed to continue operating until their existing licences expired, at which time they will have to apply for a licence under the new federal Regulation.

## 3.0 FEDERAL CANNABIS REGULATION

The Federal Cannabis Regulation SOR-2018-144 ('the Regulation') was published in the Canada Gazette, Part II, on July 11, 2018. The Regulation is actually dated June 27, 2018 and also came into effect on October 17, 2018. This Regulation is one of a series of regulations that are intended to implement the Cannabis Act.

### 3.1 CLASSES OF LICENCES

The Regulation establishes a series of classes of licences that authorize activities that are related to cannabis and these are as follows:

- A licence for cultivation;
- A licence for processing;
- A licence for analytical testing;
- A licence for sale (medical purposes);
- A licence for research; and,
- A cannabis drug licence.

A series of subclasses of a licence for

cultivation have also been established and they are:

- A licence for micro-cultivation;
- A licence for standard cultivation; and,
- A licence for a nursery.

In addition, the following subclasses have been established of a licence for processing:

- A licence for micro-processing; and,
- A licence for standard processing.

One person or company can hold multiple licences.

## 3.2 LICENCE PERMISSIONS

### 3.2.1 Licence for Cultivation

Cultivation can occur indoors or outdoors and the plants can be rooted in the native soils. If grown indoors, plants would be typically grown in a greenhouse type building. If grown outside, plants would have the appearance of a typical cash crop.

The holder of a licence for micro-cultivation or standard cultivation is permitted to:

- Possess cannabis;
- Obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis;

- For the purpose of testing, obtain cannabis by altering its chemical or physical properties by any means; and,
- Sell cannabis.

The holder of a licence for micro-cultivation or standard cultivation can sell cannabis to:

- The holder of other licences established by the Regulation; and,
- Certain persons that have been granted an exemption under the Cannabis Act (for medical reasons for example).

However, it does not appear that the holder of a licence for micro-cultivation or standard cultivation is authorized to sell cannabis to the general public from the facility. This means that general retail sales would not be permitted.

The difference between a licence for micro-cultivation and standard cultivation is that the surface area for a licence for micro-cultivation cannot exceed 200 square metres, in which all cannabis plants, including all the parts of the plants, must be contained.

The holder of a licence for a nursery (which is a subclass of a licence for cultivation) is allowed to carry on the activities of a holder of a licence for micro-cultivation or standard cultivation, except they are not able to obtain dried cannabis or fresh

cannabis. In other words, only cannabis plants or cannabis plant seeds can be used for growing cannabis in a nursery. If the holder of a licence for a nursery cultivates cannabis for the purpose of obtaining cannabis plant seeds, the total surface area that can be devoted to this purpose cannot exceed 50 square metres.

Some of the facilities that have been constructed in accordance with the Regulation are very large, such as the Aurora Sky facility in Edmonton that has an approximate floor area of about 75,000 square metres (which is about the same size as the Toronto Premium Outlets in Halton Hills). The Aurora Sky facility shares many of the characteristics of an industrial or warehouse building. However, the interior of the building has the appearance of a greenhouse. It is important to note that the size of the Aurora Sky facility is at the high end, and that many of the other known facilities are considerably smaller.

### **3.2.2 Licence for Processing**

There are many producers in Ontario that have obtained both a licence for cultivation and a licence for processing, so that both activities can take place in the same building and/or on the same property.

Two types of licences have been established

for processing – standard processing and micro-processing. In both circumstances, the licence does not allow the cultivation, propagation or harvesting of cannabis. In other words, a processing licence only allows the licence holder to produce cannabis for sale.

The difference between a standard processing licence and a micro-processing licence is that no more than 600 kilograms of dried cannabis can be sold or distributed in a calendar year with a micro-processing licence.

### **3.2.3 Licence for Analytical Testing**

The holder of a licence for analytical testing is authorized to possess cannabis and to obtain cannabis by altering its chemical or physical properties by any means.

The sale or distribution of any product from the holder of a licence for analytical testing is not permitted and there are rules on how long cannabis can be kept on site before it needs to be destroyed.

The holder of this licence may also have other licences.

### **3.2.4 Licence for Sale of Cannabis for Medical Purposes**

The holder of a licence for sale of cannabis for medical purposes is permitted to

possess cannabis products and to sell cannabis products. These products can be sold to other types of licence holders, a person to whom an exemption has been granted under the Cannabis Act or to a hospital employee.

The holder of this licence may also have other licences.

### **3.2.5 Licence for Research**

The holder of a licence for research is permitted to possess cannabis, produce cannabis or transport, send or deliver cannabis between the sites that are set out by the licence. Additionally, the licence holder can sell cannabis plants and cannabis plant seeds to other licence holders, the Minister or a person to whom an exemption has been granted under the Cannabis Act.

As per above, the holder of this licence may also have other licences.

### **3.2.6 Cannabis Drug Licence**

The holder of a cannabis drug licence is permitted to possess cannabis and produce or sell a drug containing cannabis. These products can be sold to other types of licence holders, a person to whom an exemption has been granted under the Cannabis Act or to a pharmacist, a practitioner or a hospital employee.

## **4.0 THE ROLE OF A MUNICIPALITY IN THE LICENCING PROCESS**

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

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

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

In addition to the above, licence holders are also required to notify the local government



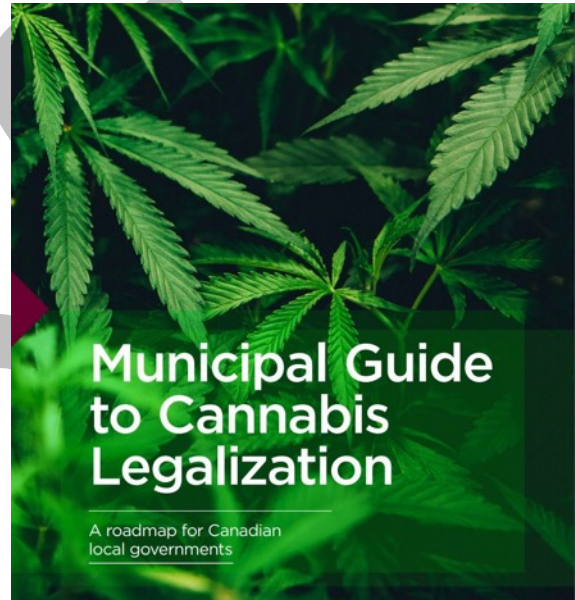
when a new licence has been issued as per Section 35(1) of the Regulation as set out below:

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

In the Spring of 2018, the Federation of Canadian Municipalities (FCM) released the 'Municipal Guide to Cannabis Regulation' ('FCM Guide'). It is noted that the FCM Guide was released prior to the Regulation and there was, and continues to be, much discussion about implementation and interpretation. In this regard, the Guide indicates the following:

*If a business obtains a federal licence under the Cannabis Act, it will not mean that the company will not be subject to provincial/territorial or local government regulations dealing with land use management. Locally, this constitutional arrangement can provide municipalities with the authority to prohibit particular*

*land uses. We recommend that municipalities consult their individual provincial/territorial enabling land use laws for specific direction. But generally, there is no obligation for municipalities to permit cannabis cultivation in specific areas.*



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

*Local governments are entitled to interpret enabling legislation broadly enough to address emerging issues and respond effectively to community objectives. However, they cannot extend its scope beyond what the wording of the legislation can reasonably bear. Some enabling legislation across Canada may allow local governments to deal with particular uses on*

*a “conditional use” or “direct control” basis, which might be particularly appropriate in the case of new land use activities (such as those associated with cannabis) whose impacts are not well-understood at the outset.*

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

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

Based on the information provided, and in the absence of other countervailing views on the matter, it is our opinion that a local municipality can regulate cannabis-related land uses that are subject to Federal licences much like any other land use.

This means that while there is no municipal role in the licensing process, there would still be a requirement for licence holders to

comply with local zoning controls.

#### **4.1 IMPACTS OF FEDERAL LEGISLATION**

The Federal regulatory regime does not provide the basis for creating specific land use regulations. For example, there are no setback requirements specified and there are no specific requirements for any type of licence holder to carry out authorized activities away from other land uses.

The only specific part of the Regulation that deals with adjacent land uses relates to the production of cannabis for personal medical purposes only.

In this regard, it is indicated that any outdoor cultivation (presumably in an individual's backyard) cannot be adjacent to a school, public playground, day-care facility or other public place frequented mainly by individuals less than 18 years of age. In this case, 'adjacent' means, according to Section 306, if the parcel has at least 1 point in common with the boundary of the other parcel of land with these uses.

It is not clear how this will ever be enforced or whether it will be possible to regulate the type of plants grown in a person's backyard through a zoning by-law. It is also noted that the Federal government also proposes

to permit anyone to grow up to four plants on their property for personal use. This will make it even more difficult to regulate since everyone will have this as-of-right permission.

Notwithstanding the above, local municipalities do have the ability to regulate larger licenced uses and facilities, should they choose to do so. However, any regulation would need to be based on empirical evidence, particularly if a minimum setback is required.

There are however, a few requirements in the Regulation dealing with security that could be considered through a planning approval process. More specifically, those with cultivation, processing or sale licences are required to design their sites to prevent unauthorized access. This includes physical barriers around the perimeter, an intrusion detection system, and 24-hour visual recording.

This means fencing or another suitable barrier will be required and the location and design of the fencing may need to be assessed through an approval process to lessen the impact of these barriers on the public realm and adjacent land uses. This also means that gatehouses that control the entry and exit of people accessing a property will be a key element of the use

and the location of the gatehouse may need to be reviewed from a design perspective as well. It should be noted that the use of visual recording devices is also required along with 24-hour monitoring.

Given the above, the prospect exists for the establishment of fenced in compounds that may not be compatible with adjacent land uses, such as a business park with generous landscaping around the perimeter. The prospect also exists for fenced in compounds in agricultural and rural areas, and this may also not be compatible with the open space character of these areas.

The above rules on security generally apply to other licence holders as well (micro-cultivation, micro-processing or a nursery).

It should be noted that there are also a number of complex exemptions to the security requirements in the Regulation, which are designed primarily to recognize existing licences or permissions relating to cannabis for medical purposes.

The Regulation further states that cannabis must be processed, packaged, labelled, stored, sampled and tested in a building. This requirement could be included in a zoning by-law; however, the licence would require this in any event.



The Regulation also requires that all buildings be equipped with a system that filters air to prevent the escape of odours. This could also be codified in a zoning by-law; however, this would again be a requirement of the licence.

The Regulation does expressly prohibit the holder of any licence from conducting any activity authorized by the licence in a 'dwelling-house'. This could also be expressly prohibited in the Township's zoning by-law.

Notwithstanding the above, the growing of up to 4 plants in a dwelling for personal use would still be permitted. As a result, a distinction would need to be made between the growing of plants pursuant to a licence and the growing of plants for personal use, if the above prohibition was contemplated.

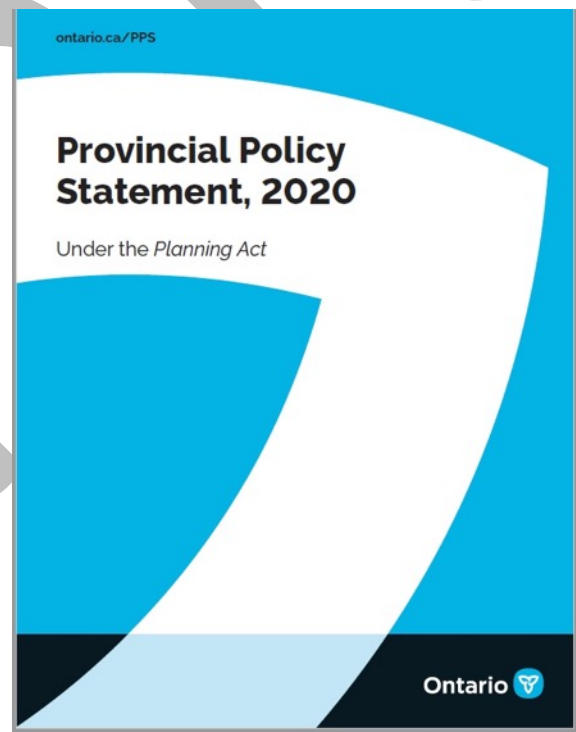
*Agricultural Use: means the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures,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

## 5.0 PROVINCIAL POLICY

### 5.1 PROVINCIAL POLICY STATEMENT 2020

The purpose of this section is to review the relevant policies in the Provincial Policy Statement that relate to agricultural use.

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



The PPS 2020 does not make any distinctions between the types of crops that are grown, as long as whatever is produced

is harvestable, which means that the cultivation of cannabis would be an agricultural use, whether that cultivation occurs indoors or outdoors.

### **5.1.1 Classification of Agricultural and Rural Lands in Cavan Monaghan**

The PPS 2020 divides the Province into two general land use categories with one being urban 'settlement areas' and the second being 'rural area', with rural areas including rural settlement areas, rural lands, prime agricultural areas, natural heritage features and areas and resource areas. Rural lands and prime agricultural areas are considered to be mutually exclusive, with rural lands not encompassing prime agricultural areas.

The PPS recognizes rural areas as important to the economic success of the Province and to quality of life. Section 1.1.4.1 encourages rural areas to be supported by building rural character and amenities, promoting redevelopment, accommodating a range of housing, encouraging the conservation of the housing stock, promoting diversification, providing opportunities for tourism, conserving biodiversity and providing opportunities for economic activities in prime agricultural areas. Section 1.1.4.1 i) specifically addresses prime agricultural areas in the rural area and states:

*Healthy, integrated and viable rural areas should be supported by:*

- i. Providing opportunities for economic activities in prime agricultural areas, in accordance with policy 2.3.*

The majority of the land that is not within the Natural Heritage System in the Township is designated Agricultural. A number of areas within this broader designation are designated Rural, in recognition of historical rural residential development. Lands to the east of Highway 7 and County Road 28 are also designated Rural.

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

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

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

*In prime agricultural areas, all types, sizes and intensities of agricultural uses and*

*normal farm practices shall be promoted and protected in accordance with provincial standards.*

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

Section 1.1.5 of the PPS establishes policies that apply to rural lands and these include lands outside of settlement areas and outside of prime agricultural areas. Section 1.1.5.2 sets out the permitted uses for rural lands as follows:

- a) The management or use of resources;*
- b) Resource-based recreational uses (including recreational dwellings);*
- c) Residential development, including lot creation, that is locally appropriate;*
- d) Agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices, in accordance with provincial standards;*
- e) Home occupations and home industries;*
- f) Cemeteries; and*
- g) Other rural land uses.*

It is noted that agricultural uses, agriculture-related uses and on-farm

diversified uses are identified in the permitted uses list in Section 1.1.5.2 of the PPS and that Section 1.1.5.7 further indicates that:

*Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses.*

### **5.1.2 Land Use Compatibility**

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

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

It is recognized that there is a difference of opinion on whether Section 1.2.6.1 applies to agricultural uses. This is 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 PPS 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 our opinion, Section 1.2.6.1 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 PPS 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 our opinion, cannabis cultivation may require separation from sensitive uses.

### **5.1.3 Agriculture-Related Uses**

It is also important to consider whether a use related to cannabis cultivation is an agriculture-related use, which is also permitted by the PPS 2020 in prime agricultural areas. These uses must be carefully planned so that they are compatible with agricultural uses as per Section 2.3.3.1 of the PPS 2020:

*Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.*

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

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

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

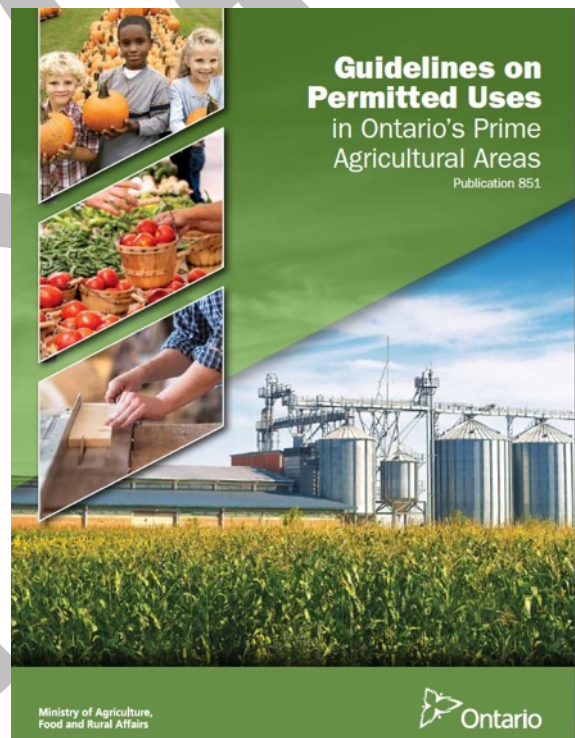
- Is directly related to farm operations in the area;
- Supports agriculture;
- Benefits from being in close proximity to farm operations; and,
- Provides direct products and/or services to farm operations as a primary activity.

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

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

Section 1.1 of the OMAFRA Guidelines also states that:

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



Section 2.2 of the OMAFRA Guidelines indicates that agriculture-related uses may be located on farms or on separate agriculture-related commercial or industrial properties.

With respect to farm-related commercial



uses, Section 2.2.1.1 of the OMAFRA Guidelines specify the following:

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

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

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

- Apple storage and distribution centre serving apple farm operations in the area;
- Agricultural research centre;
- Farmers' market primarily selling products grown in the area;
- Winery using grapes grown in the area;

- Livestock assembly yard or stock yard serving farm operating in the area;
- Processing of produce grown in the area (e.g., cider-making, cherry pitting, canning, quick-freezing, packing);
- Abattoir processing and selling meat from animals raised in the area;
- Grain dryer farm operations in the area;
- Flour mill for grain grown in the area;
- Farm equipment repair shop;
- Auction for produce grown in the area; and,
- Farm input supplier (e.g., feed, seeds, fertilizer (serving farm operations in the area.

Based on the examples above, cannabis processing could be considered an agriculture-related use subject to the other criteria being satisfied.

Below is a brief discussion of these criteria.

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

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

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

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

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

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

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

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

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

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

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

Section 2.2.1.6 of the OMAFRA Guidelines state the following:

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

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

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

Section 2.2.1.5 of the OMAFRA Guidelines indicate the following:

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

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

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

*Means uses that are secondary to the principal agricultural use of the property,*

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

In order for a use to be considered an on-farm diversified use, it would have to be both secondary to the principal use of the property and be limited in area.

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

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

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

## **5.2 THE OAK RIDGES MORAINÉ CONSERVATION PLAN (2017)**

As noted in the Township's Official Plan, approximately 15% of the land area in the



Township is within the Oak Ridges Moraine, and is subject to the Oak Ridges Moraine Conservation Plan (ORMCP).

The lands subject to the ORMCP are also subject to the Greenbelt Plan, and together these Plans build on the Provincial Policy Statement by identifying where urbanization should not occur, to provide permanent protection to the agricultural land base and the ecological and hydrological features, areas and functions.

As result, there is a significant amount of overlap with respect to terminology between the ORMCP and the PPS 2020. The ORMCP identifies similar permitted uses which are of relevance to cannabis cultivation and processing, such as agricultural uses, on-farm diversified uses and agriculture-related uses, which are already discussed above. The definitions for these terms in the ORMCP, included below, while reflecting some minor differences from those included in the Provincial Policy Statement, nonetheless communicate a similar intent.

***Agricultural uses means,***

- a) *Growing crops, including nursery, biomass and horticultural crops,*
- b) *Raising livestock and other animals,*

*including poultry and fish, for food, fur or fibre,*

- c) *Aquaculture,*
- d) *Apiculture,*
- e) *Agro-forestry and maple syrup production, and*
- f) *Uses associated with on-farm buildings and structure including,*
  - i) *Livestock facilities,*
  - ii) *Manure storage structures,*
  - iii) *Value-retaining facilities, and*
  - iv) *Accommodations for full-time farm labour.*

***Agriculture-related uses means farm-related commercial and industrial uses that,***

- a) *Are directly related to, and compatible with, farm operations in the surrounding area and do not hinder those farm operations,*
- b) *Support agriculture,*
- c) *Benefit from being in close proximity to farm operations, and*
- d) *Provide products or services, or*

*both, directly to farm operations as a primary activity.*

*On-farm diversified uses means, with respect to a farming operation, uses that are secondary to the principal agricultural use of the property, that are compatible with and do not hinder the surrounding agricultural operations and that occupy a limited area of the property including,*

*a) Home occupations,*

*b) Home industries,*

*c) Agri-tourism, and*

*d) Uses that produce value-added products.*

The ORMCP divides the Moraine into four land use categories, three of which apply to the Township: Natural Core Areas, Natural Linkage Areas and Countryside Areas.

### **5.2.1 Natural Core Areas**

The Natural Core Area designation applies to lands that have key natural heritage features that are essential to maintaining the Oak Ridges Moraine. The primary objective of this designation is to maintain, improve and restore the integrity of the moraine and its ecological features.

The permitted uses within the Natural Core Areas include agricultural uses. On-farm

diversified uses and agriculture-related uses are also permitted, but only in prime agricultural areas.

### **5.2.2 Natural Linkage Areas**

Similar to the Natural Core Area designation, the objective of the Natural Linkage Area designation is to maintain, improve and restore the Oak Ridges Moraine and its ecological features, as well as maintains, improve and restore the Moraine's open space linkages. This designation applies to lands that are natural and open space linkages between natural core areas and rivers and streams.

Again, agricultural uses are permitted within this designation, while on-farm diversified uses and agriculture-related uses are only permitted in prime agricultural areas.

### **5.2.3 Countryside Areas**

The Countryside Area designation applies to lands that are buffers between Natural Core Areas, Natural Linkage Areas and Settlements Areas. The objectives of this designation include promoting and protecting agricultural land uses, while maintaining, improving and restoring the integrity of the Oak Ridges Moraine and its ecological features. In particular:

*(a) Protecting prime agricultural areas; and  
(b) promoting and protecting agricultural  
and other rural land uses and normal farm  
practices.*

Agricultural uses, on-farm diversified uses  
and agricultural-related uses are permitted  
within this designation.

*Draft*

## 6.0 THE COUNTY OF PETERBOROUGH OFFICIAL PLAN

The County of Peterborough Official Plan (County OP) applies to all lands within the Township of Cavan Monaghan. The Township of Cavan Monaghan's Official Plan must conform to the County of Peterborough Official Plan.

The County of Peterborough Official Plan's goal for rural and cultural landscapes is to "preserve and enhance the rural character of the County as a cultural resource and ensure the viability of the agricultural industry." This goal is further supported by numerous objectives that support the preservation of agricultural lands while encouraging compatible economic diversification, including the following:

*To ensure that the agricultural industry remains viable;*

*To preserve prime agricultural soils and protect farms, where possible, from activities and land uses which would limit productivity or efficiency;*

*To encourage compatible economic diversification including greater flexibility*

*for on-farm activities, home-based businesses and agri-tourism;*

The County's Official Plan requires local municipalities within their Official Plans to protect prime agricultural areas for long-term agricultural use, and only allow agricultural uses, secondary uses and agriculture-related uses (Section 4.3.3.2). This policy is generally consistent with the PPS 2020.

The County OP allows local municipalities to also restrict permitted uses within other agricultural areas to only the uses allowed in prime agricultural areas. In prime agricultural areas:

*Any proposed new secondary uses and agriculture-related uses as defined in the Provincial Policy Statement will be compatible with, and will not hinder, surrounding farm operations. These uses shall be limited in scale and the local plans will include criteria for the uses.*

Secondary uses are defined as follows in the County OP:

*Shall include home occupations, home industries and uses that produce value added agricultural products from the farm operation on the property.*

On the basis of the above definition,

secondary uses could be considered on-farm diversified uses as per the PPS 2020. The above policy also indicates that local municipalities must establish limits to the scale of such uses and provide criteria that would include an assessment compatibility with the principal agricultural operation and surrounding agricultural lands.

## **6.1 OFFICIAL PLAN AMENDMENT #58 – CANNABIS CULTIVATION AND PROCESSING IN SELWYN**

The County's Official Plan was recently amended by Official Plan Amendment (OPA) #58 – Cannabis Cultivation and Processing in Selwyn. This OPA allows for indoor cannabis cultivation to be permitted as an agriculture use subject to the passage of a Zoning By-law Amendment (ZBLA) by the Township of Selwyn. If such a ZBLA were approved, indoor cannabis cultivation would also be subject to Site Plan Control.

The processing of cannabis may be permitted as an agricultural-related use, operating in conjunction with a cannabis cultivation operation, subject to the passage of a ZBLA and Site Plan Control.

Before approving a ZBLA, the OPA indicates that Council must be satisfied that:

- i. The use shall not have a negative impact on the enjoyment and privacy of neighbouring properties;*
- ii. The proposed use will not have a negative impact on adjacent agricultural uses and is compatible with normal practices as set out in an Agricultural Impact Assessment to the satisfaction of the Township and the County;*
- iii. The proposed use will not cause any traffic hazards or an unacceptable level of congestion on surrounding roads;*
- iv. The proposed use can be designed and sited to blend in with surrounding land uses such that the rural character of the area is maintained; and where necessary the proposed use can be appropriately buffered from adjacent uses;*
- v. The impact of the noise, odour and dust generated by the proposed use on adjacent land uses can be appropriately mitigated;*
- vi. There will be no negative impact on the quality and quantity of groundwater and surface water;*

- vii. *Adequate parking facilities are available on the lot for the proposed use;*
- viii. *The use can be serviced with an appropriate water supply and an appropriate means of sewage disposal;*
- ix. *Stormwater management needs can be met on site;*
- x. *The signage advertising the use is to be designed and located in accordance with the Township's sign by-law; and*
- xi. *The proposed setback from adjacent land uses is appropriate, and in this regard, the minimum setback from lot lines should be at least 150 metres. However, a setback that is appropriate for the site can be established and if it less than 150 metres, an Amendment to this Plan will not be required.*

In addition, in order for it to qualify as an agriculture-related use, the processing of cannabis must satisfy the following criteria:

- i. *Is directly related to farm operations in the area;*
- ii. *Supports agriculture;*
- iii. *Benefits from being in close proximity to farm operations; and*

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

Outdoor cannabis cultivation is an agricultural use and is required to be set back a minimum of 50 metres from adjacent lot lines.

## **7.0 CAVAN MONAGHAN OFFICIAL PLAN**

The Township of Cavan Monaghan Official Plan applies to all lands within the Township of Cavan Monaghan. The Land Use policies are separated into three sections that are consistent with the structure of the Township: Settlement Area, Countryside Areas and Natural Heritage System.

The Countryside Area and the Natural Heritage System sections of the Official Plan broadly permit agricultural uses.

Within the Countryside Area, the following land use designations permit agricultural uses:

The Agricultural designation (Section 5.1), applies to lands that have a high capacity for agriculture (generally soil Classes 1, 2 and 3) and the primary use of lands will be for agricultural uses as defined by the PPS. Additional permitted uses include farm

related industrial uses that directly service and support the agricultural industry and require locations in close proximity to farming operations.

Section 5.1.5 Oak Ridges Moraine (ORM) – Prime Agricultural, is a sub category of the Agricultural designation. This designation includes prime agricultural lands within the ORM, and permits agriculture, agriculture related and secondary uses.

Section 5.2 of the Official Plan, Rural Areas, states that the predominant use of land within the Rural designation shall be for agricultural uses, in accordance with the Agricultural designation. An objective of the Rural designation is to:

*Encourage rural economic activity that does not adversely impact agricultural uses and is compatible with rural residential uses.*

Section 5.2.4 ORM – Rural is a sub category of the Rural designation. The intent of this designation is to maintain the rural character and protect lands from uncontrolled and scattered development. This designation permits the same uses as the ORM – Prime Agricultural, with some additions. Section 5.2.5.1 states that:

*An application for a small-scale agriculturally-related commercial or*

*industrial use shall not be approved unless the proponent demonstrates that:*

- i) It is not feasible to locate the use in a settlement area; and,*
- ii) The buildings or structures will be planned, designed, and constructed so as not to adversely affect the rural character of the Countryside Area nor adversely impact the ecological integrity of the Oak Ridges Moraine.*

In the Official Plan Section 5.3 Recreational, lands designated Recreational are intended primarily for recreation, conservation, forestry or agricultural purposes. While agriculture is permitted, the uses within this designation are primarily related to recreation and conservation activities.

In the Rural Employment designation (Section 5.4), permitted uses include agriculturally related industrial uses, processing and storage of agricultural commodities, light manufacturing, processing of semi-manufactured goods, assembly of manufactured goods, warehousing, wholesale distribution centres, transportation terminals, accessory professional or business offices and research facilities. Employment uses within this designation are encouraged to develop on private water supply and



sewage disposal services.

General development policies for this designation include that more intensive activities should be separated from adjoining sensitive land uses by a minimum of 90 metres and that an analysis should prove a development's compatibility with existing development and the rural character of the surrounding area.

Section 5.5 Mineral Aggregate Extractive, only applies to lands that are currently licenced for aggregate and mineral extraction by the Ministry of Natural Resources and Forestry. This designation does allow for agricultural operations, and any lands that are designated Mineral Aggregate Extractive but are no longer licenced, are considered to be designated Agricultural.

Within the Natural Heritage System section, the following land use designations permit agricultural uses:

Section 6.3 Natural Core Areas, notes that this designation applies to lands that have significant natural features and functions. Under this designation, existing agricultural operations are permitted.

Section 6.4 Natural Linkage Area, applies to lands forming a 120 metre vegetative

protective buffer zone for Key Natural Heritage Features. Agriculture, agriculture related and secondary uses are permitted within this designation. Expansions to existing agricultural operations are also permitted if there is no alternative and the expansion is directed away from the Natural Feature and the impact on the Natural Feature is minimized.

Beyond areas with agricultural permissions, the Urban Employment Areas designation within the Settlement Area (Section 4.6), has potential for accommodating indoor cannabis cultivation and processing facilities, provided the facilities are designed in a matter that is compatible with an industrial context. It is the intent of this designation to accommodate new and expanded business activities, and to allow for diverse employment opportunities. Both of these objectives have the potential to be met through the introduction of a cannabis facility, which may create jobs and diversify the employment base within the Township.

Permitted uses within this designation also lend support to introducing cannabis production facilities within this designation. Permitted uses include manufacturing, assembling, processing, fabricating and warehousing, wholesaling and distribution



facilities. In addition, accessory office uses and outdoor storage uses are permitted.

## **8.0 CAVAN MONAGHAN ZONING BY-LAW**

The Township's Zoning By-law applies to all lands within the Township. The Agriculture (A) and Rural (RU) zones are the most permissive for agricultural, permitting agricultural uses, agriculture-related uses, agricultural service and supply establishment, farm business and farm greenhouses.

The Natural Core (NU) zone permits agricultural uses and the Natural Linkage (NL) zone permits agriculture uses and agriculture-related uses.

The Oak Ridges Moraine Zones broadly permit agricultural uses, but only the Oak Ridges Moraine Countryside (ORMCO) and Oak Ridges Moraine Rural Settlement (ORMRS) zones permit agricultural related uses.

Open Space (OS) and Future Development (FD) zones permit agricultural uses, however agricultural uses are only permitted in the FD zone where the use legally existed on the effective date of the By-law.

Agricultural uses are permitted within the Recreational Commercial (C3) zone, and

agricultural service and supply establishments are permitted within the Rural Employment (M2) zone.

## 8.1 CANNABIS PRODUCTION FACILITIES

Cannabis production facilities are only permitted in Urban Employment (M1) zones. In addition, Cannabis production facilities are subject to the following provisions:

- Cannabis production facilities are prohibited in dwellings and cannot be located within 70 metres from:
  - Community centres;
  - Day care centres;
  - Dwellings;
  - Public parks and private parks; and,
  - Schools.
- No store fronts, onsite retail, outdoor signage or advertising is permitted
- No part of the facility, including storage and accessory use can be located outside
- Cannabis production facilities require Site Plan approval and loading areas must be located within an enclosed

building or to the rear of lots, screened by landscaping or building placement

## 9.0 MUNICIPAL BEST PRACTICES

There are several examples of municipalities in Ontario that have taken steps to regulate cannabis. In some cases, this means including policies in an Official Plan as well as provisions in a Zoning By-law, but there are also a number of municipalities that have only included provisions in their Zoning By-laws.

The purpose of this section is to provide a summary of the best practices review completed for municipalities that regulate cannabis. Below is a review of a number of Ontario municipalities and their approach to regulating cannabis.

### 9.1 TOWN OF PELHAM

Council passed an Interim Control By-law (ICBL) 4046-2018 that applied to all lands within the municipality, except those that are under the Development Permit Control Area of the Niagara Escarpment Commission. The ICBL had the effect of restricting the use of all land within the municipality for any cannabis-related land

uses for a period of one year. On September 23, 2019, the ICBL was extended to July 15, 2020. During this time, it was intended that the Town would develop an approach to regulating cannabis.

Following the passage of the ICBL, Town planning staff began conducting research on best practices to inform an approach to regulating cannabis in the Town with the intention of bringing forward amendments to the Official Plan and Zoning By-law to implement the recommended approach. In this regard and on September 10, 2019, a statutory Public Meeting was held to consider amendments to the Town's Official Plan and Zoning By-law prepared by the Town to regulate cannabis-related uses.

In order to provide advice to the Town on this issue, Council formed an advisory committee known as the Cannabis Control Committee (CCC) to provide advice to Council, review options provided by the Town's Community Planning and Development staff and to conduct research.

In order to provide some additional expertise on developing an appropriate policy and regulatory framework, on January 13, 2020, the Town of Pelham retained Meridian Planning Consultants to provide professional planning advice on the planning approach and planning

instruments being proposed to regulate cannabis within the community.



CannTrust Facility in Town of Pelham (Source: Google)

A draft Official Plan Amendment (OPA) and a draft zoning by-law amendment (ZBA) were released on April 17, 2020. Numerous comments were received on these drafts and final versions were prepared in July 2020.

The purpose of the final OPA was 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. The OPA recognized that 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

and that 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.



Ventilation equipment on east side of CannTrust Facility in the Town of Pelham (Source: Google)

The OPA also recognized that the cultivation of cannabis is an agricultural use and is permitted in agricultural areas by the PPS 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, the OPA also recognized 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. However, the MDS 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 the OPA was to do just that, by establishing 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.

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.

An implementing ZBA was also prepared; the effect of which is to create two new zones that would only be applied in the future to new indoor cannabis and industrial hemp cultivation facilities, subject to Council approval in accordance with the process and criteria established by the OPA.

In the case of indoor cannabis cultivation and processing in the Town of Pelham, it was determined to not be 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.

It is noted that the ZBA also establishes a 300 metre setback for outdoor cultivation from sensitive uses as well, based on the precedent established by the County of Norfolk. Both the OPA and ZBA have been appealed by the cannabis industry.

## 9.2 COUNTY OF NORFOLK

The County of Norfolk regulates cannabis production and processing in the Zoning By-

law as well. The County permits cannabis production and processing in the Industrial and Agricultural zones and also includes references the requirement for air treatment control, which is different from most of the other Zoning By-laws reviewed. It is noted, however, that air treatment control is a requirement of a Federal licence. The Zoning By-law includes a definition for cannabis production and processing facility and air treatment control.

A cannabis production and processing facility is permitted in the General Industrial (MG), Light Industrial (ML) and Rural Industrial (MR) zones, but is required to be equipped with air treatment control and be set back a minimum of 70 metres from a lot that is within a Residential, Institutional or Open Space zone. However, this minimum setback is increased to 150 metres from:

- A dwelling on a separate lot;
- Public school;
- Private school;
- Place of worship;
- Campground;
- Group home;
- Hotel;
- Long-term care facility;

- Mobile home park;
- Park;
- Place of assembly;
- Place of entertainment;
- Place of sports and recreation;
- Tent and trailer park;
- Tourist cabin;
- Hospital; or,
- Day care nursery.

In the Agricultural (A) zone, cannabis production and processing that is equipped with air treatment control is permitted and is required to be set back a minimum of 150 metres from a lot that is within a Residential, Institutional or Open Space zone.

When a cannabis production facility that is not equipped with air treatment control is situated in the Agricultural (A), General Industrial (MG), Light Industrial (ML) or Rural Industrial (MR) zones, a minimum setback of 300 metres is required from:

- A dwelling on a separate lot;
- Public school;
- Private school;
- Place of worship;



- Campground;
- Group home;
- Hotel;
- Long-term care facility;
- Mobile home park;
- Park;
- Place of assembly;
- Place of entertainment;
- Place of sports and recreation;
- Tent and trailer park;
- Tourist cabin;
- Hospital; or,
- Day care nursery.

The above means that any cannabis and processing facility that does not implement air treatment control is required to provide a minimum setback of 300 metres. This minimum setback of 300 metres also applies to outdoor cultivation, as confirmed in the County of Norfolk recommendation report (DCS 18-38) as follows:

*The policy now includes provisions for outdoor production, which the previous policy did not contemplate. Should an applicant wish to pursue outdoor cannabis production, a larger (300 metre) setback from a sensitive land use will be required.*

In addition to the above, the Zoning By-law permits a building or structure for security purpose to locate in a front yard and is not subject to the yard requirements. In addition, the Zoning By-law prohibits outdoor storage and requires Site Plan Control for the establishment of or expansion to all cannabis production and processing facilities. Illumination required for cannabis production facilities is also subject to the lighting facilities regulations, as follows:

*Where private lighting facilities, whether internal or external to any building or structure, are provided in any Zone to illuminate buildings, structures or uses, they shall be designed to be energy efficient, be directed downwards, and located or arranged to deflect glare away from adjacent residential uses, streets and the night sky and to avoid causing nuisance to adjacent property owners, or any confusion with traffic signals.*

### **9.3 MUNICIPALITY OF CHATHAM-KENT**

The Municipality of Chatham-Kent’s Official Plan permits cannabis production in the Employment, Agricultural and Rural Industrial designations. The Official Plan policies indicate that a cannabis production

facility should not be located within close proximity to a sensitive land use, such as residential, institutional, open space or as more specifically outlined within the Zoning By-law. The policies also require that the construction of a new cannabis production facility is subject to site plan approval, should be located and designed in accordance with Federal regulations to mitigate potential impacts including light emissions, air emissions, odour and so forth and must be registered or licensed with Health Canada.

The Zoning By-law also permits cannabis production as-of-right in the Agricultural and Industrial zones. The following minimum separation distances apply to buildings and structures:

- Within the General Industrial zone: no closer than 75 metres to any residential, institutional or open space zone boundary; and,
- Within the Agricultural (A1) and Rural Industrial (MR) zone, no closer than:
  - 100 metres to an existing residential dwelling on a separate lot; or,
  - No closer to any residential institutional or open space zone boundary than 100 metres.

The Zoning By-law also requires two spaces

per three employees or one space per 18 square metres of floor area used for office (whichever is greater) as well as one space per 1,000 square metres of area used for production.

In addition to the above, the minimum separation distance and parking requirement do not apply to a cannabis production facility where the cultivation area is less than 200 m<sup>2</sup> (known as micro-cultivation facilities under the Cannabis Act) or to outdoor cultivation.

#### 9.4 CITY OF OTTAWA

In 2018, City staff began a review of the provisions that applied to medical marihuana production facilities with the intent of updating the provisions for cannabis, in accordance with the Cannabis Act. On June 12, 2019, City staff brought forward a recommendation report on the cannabis zoning by-law amendment that recommended that the previous minimum setback for medical marihuana production facilities be increased from 150 metres to 300 metres. Below is the reasoning for the increase:

*Outdoor cultivation, however, will emit strong odours while the cannabis plants are flowering, whether in a green house or outdoors. For outdoor cultivation a*



*minimum separation distance will apply of 300 metres from any residential use and Institutional and Rural Institutional zones. This separation distance is suitable because, at a distance of 300 metres, the odour from outdoor cannabis cultivation should be sufficiently diminished that it is not a nuisance. This separation distance is based on Norfolk County's Zoning By-law, which included the 300 metre distance separation standard after inspections of cannabis cultivation in outdoor areas.*

It is noted that the City considers the cultivation of cannabis within a greenhouse to be outdoor cultivation, meaning that the 300-metre setback applies to outdoor cultivation and cultivation within greenhouses.

In addition to the above, smaller cannabis production facilities that meet the micro-processor, micro-cultivator, or nursery classification and are contained within a building, will be permitted in additional zones with a maximum size of 350 square metres to provide opportunities for local production comparable to a micro-brewery. These zones include light industrial zones and business park industrial zones.

The Zoning By-law also requires that no cannabis production facility that is contained entirely within a building may

become a nuisance because of odour or fumes.

In addition to the above, cannabis production facilities are not permitted to have any outdoor storage and are not permitted in a dwelling.

## 9.5 TOWNSHIP OF HAVELOCK-BELMONT-METHUEN

The Township of Havelock-Belmont-Methuen also regulates cannabis uses in the Zoning By-law. The Township amended the definition of Agricultural use to add 'shall not include any land, building or structure for the growing of cannabis'. In addition, the Township created a definition for cannabis production facility.

The general provisions section of the Zoning By-law requires that a cannabis production facility only be permitted on lands that are zoned Restrictive Industrial on full municipal and water services with no other uses on the same lot. The Zoning By-law also applies the following regulations to cannabis production facilities:

- Minimum lot area: 4,000 m<sup>2</sup>;
- Minimum lot frontage: 45 metres;

- Minimum setback from Residential, Institutional Commercial or Open Space zone: 70 metres.

## 9.6 TOWN OF HALTON HILLS

The Town of Halton Hills includes policies in its Official Plan and provisions in the Zoning By-law to regulate cannabis uses. Cannabis cultivation and processing is permitted in the Agricultural and Rural designation as well as in the Employment Area. The Official Plan contains policies that require an applicant to demonstrate that the processing of cannabis is an agriculture-related use in the Agricultural and Rural designations, referring to the 4 criteria set out in the PPS guidelines.

Indoor cannabis cultivation and processing is permitted as-of-right in the General Employment Area and Prestige Industrial Area designations and is subject to site plan control. In these designations, indoor cannabis cultivation and processing is required to be set back a minimum of 150 metres from a lot that is the site of a child care centre, a private or public school, a place of worship or other institutional use, a residential use, a long term care facility, a retirement home or a public park.

Indoor cannabis cultivation is also permitted in the Agricultural Area in the

Town's Official Plan, but requires a Zoning By-law Amendment to permit the use as well as Site Plan Control. A minimum setback of 150 metres from adjacent land uses is required. However, the policy permits a reduced setback if it can be demonstrated that a reduced setback is appropriate. The minimum 150-metre setback applies to all lots in the Urban, Hamlet and Rural Cluster Area where a sensitive land use is present.

Outdoor cannabis cultivation is permitted as-of-right in the Town's Official Plan and the Town's Zoning By-law, but is required to provide a minimum 50 metre setback from adjacent lot lines.

The Zoning By-law establishes a cannabis definition for each type of cannabis use licence as defined in the Regulation. Cannabis uses are permitted in certain Urban Employment zones, subject to a minimum setback of 150 metres from sensitive land uses and are required to be located within a fully enclosed building.

The Zoning By-law also requires that all loading docks be located entirely within an enclosed building and establishes a minimum parking requirement for all cannabis uses (except outdoor cannabis cultivation) of 1/100 square metres of gross floor area.

## 9.7 TOWNSHIP OF SELWYN

The Township of Selwyn includes policies in the County Official Plan (which functions as the local Official Plan) as well as provisions in the Zoning By-law to regulate cannabis uses. Outdoor cannabis cultivation is permitted as-of-right in the Agricultural and Rural designations, subject to a 50 metre setback from lot lines.

Indoor cannabis cultivation is permitted as-of-right in the Agricultural and Rural Area designations in the County's Official Plan. Indoor cannabis processing may be permitted in the Agricultural and Rural Area designations in the County's Official Plan, subject to the 4 criteria as set out in the PPS guidelines. Indoor cannabis cultivation and processing is also permitted in the Industrial designation, subject to a Zoning By-law amendment to permit the use. Site Plan control is also required for any indoor cannabis cultivation and processing.

The Zoning By-law establishes a cannabis definition for each type of cannabis use licence as defined in the Regulation. A minimum setback of 150 metres from sensitive land uses is required for indoor cannabis cultivation and processing.

The Zoning By-law also requires that all loading docks be located entirely within an

enclosed building and establishes a minimum parking requirement for all cannabis uses (except outdoor cannabis cultivation) of 1/100 square metres of gross floor area.

## 9.8 TOWN OF ERIN

The Town of Erin, through a Council Report on October 3, 2017, indicated that it considers cannabis production in a greenhouse as a permitted use in the Agricultural Area and an Industrial use in the Industrial Area in its Official Plan. There are no other policies that specifically address cannabis production in the Official Plan. However, the Town's Zoning By-law includes a number of provisions that apply to a cannabis production facility.

In the Zoning By-law, a cannabis production facility is only permitted in the Agricultural (A), Light Industrial (M1), and General Industrial (M2) or Rural Industrial (M3) zones.

If located in the Light Industrial or General Industrial zones, then a minimum setback of 70 metres is required from residential zone or use, institutional zone or open space zone. If located in the Agricultural or Rural industrial zones, then a minimum setback of 150 metres is required from a residential zone or use, institutional zone or

open space zone.

The Zoning By-law also requires that a cannabis production facility must be located within a wholly enclosed building and prohibits outdoor storage. A building or structure used exclusively for a security guard(s) may be located in the front, side or rear yards. The establishment or expansion of a cannabis production facility requires site plan approval. In addition, the Zoning By-law provisions indicate that no minor variance to the cannabis production facility regulations shall be permitted by the Committee of Adjustment and shall only be dealt with by a Zoning By-law Amendment.

## 9.9 COUNTY OF BRANT

The County of Brant regulates cannabis through its Zoning By-law only. The County's Zoning By-law permits a cannabis production facility as-of-right within the Agricultural (A), Agricultural Employment (AE), Light Industrial (M2) and Heavy Industrial (M3) zones. A building or structure used for a licensed cannabis production facility is required to be setback a minimum of 150 metres from a residential zone or use, industrial zone or use or from an open space zone. All development in relation to the establishment or expansion to a cannabis production facility requires

site plan control.

The Zoning By-law requires a minimum of 1 parking space per 100 metres<sup>2</sup> of gross floor area. In addition, the Zoning By-law requires that loading spaces and storage be located within a wholly enclosed building and only accessible through a rear yard. Outdoor storage is prohibited. The Zoning By-law permits a security building or structure for a security person to locate in a front yard.

## 9.10 TOWN OF BLUE MOUNTAIN

The Town of Blue Mountains includes provisions in its Official Plan and Zoning By-law to regulate cannabis production.

Section B2.12 of the Official Plan permits a medical marihuana production facility on lands that are designated Rural Employment Lands, Urban Employment Lands and Rural. A medical marihuana production facility is not permitted on lands that are designated as Agricultural or Special Agricultural in the Official Plan.

The policies that apply to a medical marihuana production facility require a site-specific Zoning By-law amendment to permit the use and to establish minimum setbacks from sensitive land uses such as residential, institutional and open space.

The policies also indicate that no residential use is permitted on the same lot and all associated activities are required to be within a wholly enclosed building as part of the operation.

The Zoning By-law includes a definition for a cannabis production facility, however the use is not permitted in any zone and no regulations are included. The Agricultural Use definition specifies that ‘an agricultural use does not include a cannabis production facility’. On the basis of the above, a site-specific Zoning By-law amendment is required to permit a cannabis production facility and to establish the standards that would apply.

### 9.11 TOWNSHIP OF KING

The Township of King also regulates cannabis in the Zoning By-law. The Zoning By-law includes definitions and regulations for Industrial Cannabis Processing Facility, Agricultural Cannabis Production Facility and Medical Cannabis Production Site. Definitions are also included within the Zoning By-law for sensitive land use and air treatment control, similar to the County of Norfolk, as well as industrial cannabis production facility, agricultural cannabis production facility and medical cannabis production site.

An agricultural production facility or a medical cannabis production site is permitted on a lot that is at least 10 hectares in size. When equipped with air treatment control, a minimum setback of 150 metres is required from a sensitive land use or any residential zone, institutional zone or open space zone. This minimum setback is increased to 300 metres for a medical cannabis production site that is not equipped with air treatment control.

The same setback requirements as mentioned above apply to industrial cannabis production facilities.

The Zoning By-law also requires the following parking requirements:

- *Industrial cannabis production facility and medical cannabis production site: 1.0 parking spaces for every 37 m<sup>2</sup> of gross floor area up to 3,000 m<sup>2</sup>, plus 1.0 for each additional 100 m<sup>2</sup> of gross floor area up to 6,000 m<sup>2</sup> and 1.0 spaces for each 200 m<sup>2</sup> over 6,000 m<sup>2</sup>; and,*
- *Agricultural cannabis production facility: 1.0 parking space for every 37 m<sup>2</sup> of gross floor area.*

In addition to the above, outdoor storage and signage and advertising are prohibited. Any building required for security purposes

for an agricultural cannabis production facility or industrial cannabis production facility may be located in the required front yard, subject to a minimum 2.0 metres from any property line. All development in related to the establishment or expansion to an agricultural cannabis production facility, industrial cannabis production facility or medical cannabis production site shall be subject to site plan control.

### 9.12 CITY OF WINDSOR

The City of Windsor also regulates cannabis production in the Zoning By-law. Cannabis production is included in the definition of a Manufacturing Facility. This means wherever a Manufacturing Facility is permitted then a cannabis production facility is also permitted. The Zoning By-law permits a Manufacturing Facility in 7 of the 8 existing Industrial zones.

The Zoning By-law does not include any specific minimum setbacks from sensitive land uses, however there are minimum yard requirements established for each of the Industrial zones that would apply to a Manufacturing Facility.

### 9.13 OTHER MUNICIPALITIES

At the time of writing this Report there are also a number of municipalities that have an

Interim Control By-law in effect while completing a land use study to formulate an approach to regulating cannabis. These municipalities include but are not limited to:

- City of Niagara Falls;
- Township of Wainfleet;
- Town of Lincoln;
- City of St. Catharines
- Town of New Tecumseth and
- Town of Welland

In addition to the above, the City of Hamilton and Town of Caledon are examples of other municipalities that have adopted an Official Plan Amendment and Zoning By-law Amendment, but that were subsequently appealed to the LPAT. These are discussed further in Section 11 of this Report.

## 10.0 EMERGING TRENDS

The purpose of this section of the Report is to identify emerging trends and provide an analysis of the municipalities that were included in the Best Practices Review.

### 10.1 OFFICIAL PLAN POLICIES

Of the municipalities that were reviewed as



part of the Best Practices Review, there are four municipalities that have Official Plan provisions that apply to cannabis uses. These include the Town of Pelham, of Halton Hills, the Township of Selwyn, the Municipality of Chatham-Kent and the Town of Blue Mountains. In each of these Official Plans, cannabis uses are permitted as-of-right in specific land use designations, subject to criteria, which means an Official Plan Amendment is not required. Of the municipalities that contain Official Plan policies, the Municipality of Chatham-Kent is the only municipality that does not require a Zoning By-law Amendment to permit cannabis uses, which are permitted as-of-right in certain zones in the Zoning By-law.

The Towns of Pelham and Halton Hills and the Township of Selwyn permit cannabis cultivation and processing within the Agricultural Area and Rural Area designations (the latter designation does not exist in Pelham). These Official Plans also require that an applicant demonstrate that cannabis processing is an agriculture-related use when it is being proposed as such and how it meets the four criteria for agriculture-related uses in the PPS guidelines. Both the Halton Hills and Selwyn Official Plans require a minimum setback of 50 metres from lot lines for outdoor

cultivation; however the Pelham zoning by-law requires a 300-metre setback instead.

The Town of Halton Hills also permits indoor cannabis cultivation and processing in the Employment Area designation. For the Township of Selwyn, the same applies but within the Industrial designation. Both Official Plans require a Zoning By-law Amendment to permit the use and it is subject to site plan control.

In the Municipality of Chatham-Kent, indoor cannabis production is permitted within the Employment Area and Rural Industrial designation. It is also permitted in the Zoning By-law, which means no Zoning By-law Amendment is required to permit the use, however the use is subject to setbacks. As is the case with Halton Hills and Selwyn, a cannabis production facility in Chatham-Kent is required to obtain Site Plan Approval.

The Town of Blue Mountains Official Plan has not been updated to reflect the terminology of the Cannabis Act. The Official Plan permits a medical marijuana production facility on lands that are designated Rural Employment Lands, Urban Employment Lands and Rural. However, a medical marijuana production facility is not permitted in the Agricultural or Special Agricultural designations. A Zoning By-law

Amendment is required to permit the use and it is subject to site plan control.

Each of the above Official Plans also require a varying number of policies that address matters such as compatibility with adjacent land uses, servicing, mitigation of potential adverse effects (odour, noise, traffic), and setbacks.

In addition to the above, the Town of Erin through a Council Report in October 2017 clarified how cannabis uses are interpreted within the Township's current Official Plan. In this regard, a cannabis production operation in a greenhouse is considered as a permitted use within the Agricultural Area designation and as an industrial use within the Industrial Area designation.

## **10.2 ZONE CLASSIFICATION FOR CANNABIS USES**

All of the municipalities that were reviewed in the Best Practices Review classify cannabis uses as being either an agricultural use or an industrial use in the Official Plan and/or Zoning By-law. In this regard, all of the Zoning By-laws recognize the use in either an Agricultural or Rural Zone or in some type of Industrial or Employment zone.

For the zoning by-laws that specifically

permit outdoor cultivation of cannabis, it is only permitted in the Agricultural or Rural zones. In a number of municipalities, indoor cultivation and/or processing is also permitted in the Agricultural or Rural zones, subject to certain criteria.

For the zoning by-laws that permit cannabis uses in the Employment zones, the use must be within a wholly enclosed building (which in some cases does not include a greenhouse) and typically has specific standards such as those that deal with setbacks from certain land uses and the requirement of site plan control to deal with specific site design matters. In these zones, outdoor cannabis cultivation would not be permitted.

## **10.3 DEFINING CANNABIS**

All of the municipalities reviewed permit cannabis uses in some way, either as-of-right or by requiring a site-specific Zoning By-law Amendment. However, there are varying approaches to how cannabis uses are defined in the Zoning By-laws that were reviewed. The following broad terms were used within the Official Plans and Zoning By-laws:

- Cannabis Growing and Harvesting Facility;



- Cannabis Production;
- Cannabis Production Facility;
- Cannabis Production and Processing; and,
- Cannabis Related Facility.

All of the definitions are intended to describe the specific cannabis uses that are permitted by the term, which can include any combination of cultivation, growing, processing, testing and packaging of cannabis. Some of the definitions also make reference to the Cannabis Regulation and/or the Cannabis Act, or a previous legislation as amended. A few of the definitions mention that retail sale is not permitted on the same property.

In some cases, municipalities have updated existing definitions such as agricultural use and industrial use to either include or exclude cannabis uses. For example, the Municipality of Chatham-Kent updated the definition of agricultural use to include a cannabis production facility and also updated the definition of industrial use to include a cannabis production facility, but exclude outdoor cultivation of cannabis. Another example is in the County of Norfolk, where three definitions (farm, garden centre and wholesale outlet) were amended to exclude cannabis production and processing.

The Town of Halton Hills and the Township of Selwyn have both introduced 6 cannabis definitions that mirror the types of licences that are available under the Cannabis Regulation, and these include:

- Cannabis Analytical Testing Facility;
- Cannabis Cultivation – Indoor;
- Cannabis Cultivation – Outdoor;
- Cannabis Drug Production Facility;
- Cannabis Processing Facility; and,
- Cannabis Research Facility.

Based on recent work completed in the Town of Pelham, specifically defining each use based on license class may no longer be necessary.

#### 10.4 OTHER ZONING PROVISIONS

All of the municipalities reviewed in the Best Practices Review have implemented a varying number of specific zoning provisions that apply to cannabis uses. Below is a summary of the provisions that are most commonly used:

- Minimum setbacks from cannabis uses and other land uses, lots or certain zones. Typically the minimum setbacks are applied from a residential use or zone, institutional use or zone and open

space zones and sometimes these uses are referred to as sensitive land uses.

- The setbacks appear to range from 50 metres to 300 metres, however 150 metres and 300 metres appear the most often;
- Separation distance between greenhouses, buildings and structures that are part of a cannabis operation;
- Requirement for a security fence around the premises that require the same setbacks as facilities. It is noted that the presence of a security fence is also a requirement of a Cannabis licence;
- Parking requirements that include a number of spaces based on building size;
- Loading spaces are generally required to be located within a wholly enclosed building;
- Site Plan Control is required in many of the zoning by-laws to address site matters;
- Requirement for mitigation from potential adverse effects such as light, air and odour emissions that may be supported by the submission of certain studies related to odour and dust,

transportation, light, hydrogeological requirements and others; and,

- Prohibition of retail stores and sales as well as dwellings on the same property as a cannabis operation.

## 11.0 CANNABIS FILES AT THE LOCAL PLANNING APPEAL TRIBUNAL

The purpose of this section of the Report is to provide an overview of applications that are at the LPAT that deal with cannabis regulations.

### 11.1 CITY OF HAMILTON

On September 12, 2018, City Council adopted a City-initiated Official Plan Amendment and Zoning By-law Amendment to regulate cannabis growing and harvesting. Below is a summary of the LPAT appeal.

**Issue Date:** May 10, 2019  
**Case No.:** PL180818, PL180819  
**Appellants:** Red Hill Cannabis Inc.  
**Subject:** OPA 21 and ZBL 18-266  
**Municipality:** City of Hamilton

The purpose of OPA 21 was to revise medical marihuana growing and harvesting facility policies to reflect the recent approval of the Cannabis Act and to include additional regulations related to the use.

The purpose of the Zoning By-law amendment was to introduce new definitions into the comprehensive ZBL 05-200, as amended, most particularly with respect to a cannabis growing and harvesting facility, and replaced references to medical marihuana throughout the by-law. The ZBLA also introduced additional regulations for a cannabis growing and harvesting facility as well as enhanced setback standards from sensitive uses, the latter being the provisions that largely drew the appeals.

On May 2, 2019, the first case management conference was held on the appeals to OPA 21 and ZBL18-266. LPAT issued partial approval for the unappealed portions of OPA 21 and the ZBLA. The following policy in OPA 21 remains under appeal:

- *4.1.1. d) An appropriate setback between a cannabis production growing and harvesting facility and a sensitive land use shall be established in the Zoning By-law.*

In addition to the above, the following provisions of the ZBLA that apply to the rural zones remain under appeal:

- *12.1.3.1 m) iv) Notwithstanding Section 4.12 d), any building, structure used for a cannabis growing and harvesting*

*facility shall be setback a minimum of 150 metres from:*

- *Any portion of a lot line abutting Residential, Institutional Commercial and Mixed Use Zones, Settlement Residential (S1), Settlement Commercial (S2) or Settlement Institutional (S3) Zone; or,*
  - *Any residential dwelling unit existing at the date of the passing of the by-law, any building used for farm labour residence, mobile home, educational establishment, residential care facility, place of worship, day care or park.*
- *12.2.3.1 m) iv) Notwithstanding Section 4.12 d), any building, structure used for a cannabis growing and harvesting facility shall be setback a minimum of 150 metres from:*
    - *Any portion of a lot line abutting Residential, Institutional Commercial and Mixed Use Zones, Settlement Residential (S1), Settlement Commercial (S2) or Settlement Institutional (S3) Zone; or,*
    - *Any residential dwelling unit existing at the date of the passing of the by-law, any building used for farm*

*labour residence, mobile home, educational establishment, residential care facility, place of worship, day care or park.*

On December 19, 2019, the second case management conference was held with the purpose of finalizing the issues list and discussing the scoping of the appeals to a site-specific appeal. The Appellant indicated that their Counsel had withdrawn and they were seeking new Counsel. The LPAT ordered a subsequent case conference meeting to finalize the issues list and scope the appeals.

On February 18, 2020, a third case management conference was held with the Tribunal at which time the City noted that numerous attempts had been made to finalize the issues list without success. The City indicated that they would be bringing a motion to the Tribunal to dismiss the appeals on the grounds that the Appellant has failed and/or refused to comply with directions from the Tribunal. In the alternative the City indicated that they would be bringing a motion to have the appeal scoped in order to have the amendments under appeal brought into force throughout the City, save and except for the Appellant's property.

## 11.2 TOWN OF CALEDON

On April 23, 2019, Town Council adopted a Zoning By-law Amendment to regulate cannabis production facilities. Below is a summary of the LPAT appeal.

**Issue Date:** February 18, 2020  
**Case No.:** PL190256  
**Appellants:** Kelly Roldo and 1994192 Ontario Inc. c.o.b. as L.L.C Farms  
**Subject:** ZBLA 2019-27  
**Municipality:** Town of Caledon

The purpose of the Town-initiated Zoning By-law Amendment was to amend comprehensive ZBL 2006-50 to permit and regulate cannabis production facilities in Prestige Industrial (MP) and service industrial (MS) zones within the Town, by deleting, adding and amending definitions and general provisions to reflect new legislation and requirements and changing the permitted use in the A2-595 zone to permit a cannabis production facility rather than a medical marihuana production facility.

The Appellant has applied for and expects to receive a Federal licence to grow cannabis on a property that they lease at 2049 Highpoint Sideroad. Their issues with

the amendment were: is growing cannabis a permitted use and what are the requirements that need to be met to get necessary permits for the building(s) on site for the intended activities.

Counsel for the Town indicated that the issues list appeared to deal with agricultural matters. However, the purpose of the ZBLA was to update the references to medical marihuana production facility in the existing Zoning By-law to cannabis production facility to reflect the changes in the Cannabis Act. The ZBLA did not propose to allow the use anywhere other than in the industrial zones where the use was already established and permitted in the Town's Zoning By-law for a medical marihuana production facility.

## 11.3 COUNTY OF NORFOLK

On May 28, 2019, County Council refused a site-specific Zoning By-law Amendment to permit a cannabis production facility in the rural area. Below is a summary of the LPAT appeal.

**Issue Date:** February 13, 2020  
**Case No.:** PL190355  
**Appellants:** 1970488 Ontario Inc.  
**Subject:** Application to amend Zoning

**DECEMBER 14, 2020**

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**By-law No. 1-Z-2014 – Refusal of Application by the County**

**Municipality: County of Norfolk**

The proposed privately - initiated Zoning By-law Amendment included a site-specific provision to permit a cannabis production facility located on a property in a rural area. The property was previously used for vegetable production and contains a large greenhouse and an existing farm dwelling.

The County's staff report from May 28, 2019, indicated that rural residential lots to the east, south and west, and an orchard to the north surround the property. The cannabis production processing facility being proposed on the subject property was located 12 metres from a sensitive land use (single detached dwelling) where the Zoning By-law requires a minimum of 150 metres for a facility that is equipped with air treatment control. In addition, the application requested a reduction in the minimum required parking spaces to 9 spaces, where the Zoning By-law requires a minimum of 62 parking spaces be provided.

On the basis of the above, County staff recommended refusal to County Council on the basis that the application is not consistent with the PPS, the County Official Plan and does not represent good planning.

Council agreed with Staff's recommendation and refused the application.

A hearing has been scheduled for November 20<sup>th</sup>, 2020.

## 12.0 REGULATORY OPTIONS FOR CONSIDERATION

The establishment of various cannabis operations throughout Ontario has highlighted the importance of ensuring that adverse effects are considered in the development of an approach to regulating cannabis at the local level. In particular, odour and lighting impacts from larger operations need to be considered. As demonstrated in earlier sections of this report, Official Plan policies and/or Zoning By-law provisions can be crafted to ensure that these factors are considered when a new cannabis operation is being proposed.

The Township's current zoning provisions for cannabis production facilities apply to indoor facilities only and are permitted in the Urban Employment Zone. There are currently no provisions that apply to indoor facilities elsewhere in the Township.

A number of regulatory options were prepared for consideration that include options to include policies in the Township OP and provisions in the Township ZBL to regulate cannabis cultivation and processing.

It is our opinion that the inclusion of policies in the Township OP for cannabis cultivation and processing could provide clarity to staff and producers on where such uses are permitted and what factors need to be considered for potential future cannabis operations.

In addition to the above, a number of options were considered to regulate cannabis uses in the Township ZBL.

### **OPTION A – REQUIRE SITE-SPECIFIC ZONING FOR INDOOR CANNABIS CULTIVATION AND PROCESSING**

Option A would permit indoor cannabis cultivation and processing in the Agricultural and Rural designations in the Township OP, including the ORM sub-designations, subject to certain criteria.

Cannabis processing would also be permitted as-of-right in the Rural Employment and Urban Employment Areas designations, subject to the same criteria. The Township OP would need to include a

policy to require a site-specific rezoning for each cannabis application and would need to establish the criteria/policy test for evaluating rezoning applications, such as setbacks, adequate servicing, and air quality and odour control.

These criteria would be designed to demonstrate that:

- 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;
- 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 required studies;
- 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;
- 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;

- The proposed facility can be serviced with an appropriate water supply and an appropriate means of sewage disposal;
- Stormwater management needs can be met on site;
- The waste generated from the facility can be appropriately managed; and
- The proposed setback, as determined by required studies from sensitive land uses in the area is appropriate to avoid, and if avoidance is not possible, minimize and appropriately mitigate any adverse effects.

Policies in the OP would also set out what the study requirements are. These could include: Odour Emission and Dispersion Modelling Report, Contingency Odour Mitigation Plan, Light Mitigation Plan, Contingency Light Mitigation Plan, Agricultural Impact Assessment and, Traffic Impact Study. The results of these studies would be used to establish an alternative minimum setback from sensitive land uses to be included in the site-specific Zoning By-law Amendment, if it is determined that the established standard setback is not appropriate.

Site Plan Approval would also be required.

The Township's ZBL would also need to be updated, however it would only include definitions for the types of cannabis uses and would not permit them in any zones. This would involve removing a cannabis production facility as a permitted use in the Urban Employment Zone. Since a rezoning would be required to permit the use, this means that a public process with mandatory public consultation would also be required.

In addition to the above, the Township's ZBL would also need to require a minimum parking requirement for all cannabis uses. In this regard, the following parking standard is recommended:

- 1/100 square metres of gross floor area.

Given that it is not possible to predetermine what the setbacks would be or could, no setback requirements would be included within the Township's ZBL. A 300-metre setback for outdoor cultivation from sensitive uses could also be implemented in the Township's ZBL, along with express permission for outdoor cultivation. Meridian Planning Consultants can support this option, because it establishes a conservative approach to permitting this use.



## **OPTION B – CONTINUE TO PERMIT AS OF RIGHT IN URBAN EMPLOYMENT ZONE IN MILLBROOK**

This option would apply the same as-of-right permissions in the Township OP as described in Option A.

The differences for implementation would occur within the Township ZBL. Option B would permit cannabis processing in the Urban Employment zone as-of-right provided that a minimum 150-metre setback from sensitive uses is met. This is consistent with the current approach where a cannabis production facility is a permitted use (however, with a setback being added). However, the permissions and definitions would be updated as per Option A. Indoor cannabis cultivation and processing in the Agriculture zone, Rural zone, ORM zones and Rural Employment zone would require a rezoning application to permit the use as per Option A.

Given that the Urban Employment Zone in Millbrook is mostly undeveloped and with very few sensitive uses in the area (with the exception of the new community centre to the west of the southern extent of the Urban Employment zone and an emerging residential area to the south), establishing such a use would appear to be feasible.

Site Plan Approval would be required for all proposals for cannabis uses.

Meridian Planning Consultants can support this option, because the use is already permitted in the Urban Employment Zone and it appears very probable that a minimum 150-metre or greater setback can be established. Notwithstanding the above, a greater setback may be desirable from the new residential area to the south and the new community centre.

## **OPTION C – PERMIT AS OF RIGHT IN URBAN EMPLOYMENT ZONE IN MILLBROOK AND OTHER RURAL EMPLOYMENT ZONES**

This option is the same as Option B, but would permit indoor cannabis facilities in Rural Employment Zones as well, subject to a 150-metre setback being maintained. These rural employment zones are located to the south of Cavan on County Road 10, to the north and west of the Mr. Pleasant Road and Highway 7 intersection, the south side of Whittington Drive east of Highway 7 and extensive undeveloped areas on the Clifford Line, Moncrief Line and extending south from Brown Line.

Most of the above areas (with the exception of the lands on the south side of

Whittington Drive) are undeveloped or under-developed and are generally well setback from sensitive uses. A further review of land uses adjacent to these Rural Employment Zones would need to be carried out to determine if this option can be supported from a land use planning perspective.

Draft



# Regulating Cannabis in the Township of Cavan Monaghan

December 14, 2020

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## 1.0 REPORT PURPOSE

The purpose of this Report is to: i) review and assess recent federal legislation on cannabis cultivation and processing and the impacts on land use planning; and ii) identify options for regulating this activity in the Township of Cavan Monaghan.

This report will outline a number of factors that support cannabis cultivation and cannabis processing as distinct land uses that should be regulated accordingly in the Township's Zoning By-law. As such, this report will also identify a number of options on where and under what conditions cannabis cultivation and cannabis processing could be permitted.



## 2.0 FEDERAL CANNABIS ACT

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

regulated cannabis, and to control its production, distribution, sale, importation, exportation, and possession. Following parliamentary review, the Cannabis Act received royal assent on June 21, 2018 and became law on October 17, 2018.

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

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

In order to achieve the above, the Cannabis Act:

- Creates a general control framework for cannabis by establishing a series of criminal prohibitions, while providing for exceptions or authorizations to permit persons to engage in otherwise prohibited activities;

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

It should be noted that by virtue of the enactment of the Cannabis Act, the Access to Cannabis for Medical Purposes Regulations (ACMPR) was repealed when the Cannabis Act became law on October 17, 2018.

All producers with a licence (commercial and personal use) under the ACMPR were

allowed to continue operating until their existing licences expired, at which time they will have to apply for a licence under the new federal Regulation.

## 3.0 FEDERAL CANNABIS REGULATION

The Federal Cannabis Regulation SOR-2018-144 ('the Regulation') was published in the Canada Gazette, Part II, on July 11, 2018. The Regulation is actually dated June 27, 2018 and also came into effect on October 17, 2018. This Regulation is one of a series of regulations that are intended to implement the Cannabis Act.

### 3.1 CLASSES OF LICENCES

The Regulation establishes a series of classes of licences that authorize activities that are related to cannabis and these are as follows:

- A licence for cultivation;
- A licence for processing;
- A licence for analytical testing;
- A licence for sale (medical purposes);
- A licence for research; and,
- A cannabis drug licence.

A series of subclasses of a licence for



cultivation have also been established and they are:

- A licence for micro-cultivation;
- A licence for standard cultivation; and,
- A licence for a nursery.

In addition, the following subclasses have been established of a licence for processing:

- A licence for micro-processing; and,
- A licence for standard processing.

One person or company can hold multiple licences.

## 3.2 LICENCE PERMISSIONS

### 3.2.1 Licence for Cultivation

Cultivation can occur indoors or outdoors and the plants can be rooted in the native soils. If grown indoors, plants would be typically grown in a greenhouse type building. If grown outside, plants would have the appearance of a typical cash crop.

The holder of a licence for micro-cultivation or standard cultivation is permitted to:

- Possess cannabis;
- Obtain dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds by cultivating, propagating and harvesting cannabis;

- For the purpose of testing, obtain cannabis by altering its chemical or physical properties by any means; and,
- Sell cannabis.

The holder of a licence for micro-cultivation or standard cultivation can sell cannabis to:

- The holder of other licences established by the Regulation; and,
- Certain persons that have been granted an exemption under the Cannabis Act (for medical reasons for example).

However, it does not appear that the holder of a licence for micro-cultivation or standard cultivation is authorized to sell cannabis to the general public from the facility. This means that general retail sales would not be permitted.

The difference between a licence for micro-cultivation and standard cultivation is that the surface area for a licence for micro-cultivation cannot exceed 200 square metres, in which all cannabis plants, including all the parts of the plants, must be contained.

The holder of a licence for a nursery (which is a subclass of a licence for cultivation) is allowed to carry on the activities of a holder of a licence for micro-cultivation or standard cultivation, except they are not able to obtain dried cannabis or fresh

cannabis. In other words, only cannabis plants or cannabis plant seeds can be used for growing cannabis in a nursery. If the holder of a licence for a nursery cultivates cannabis for the purpose of obtaining cannabis plant seeds, the total surface area that can be devoted to this purpose cannot exceed 50 square metres.

Some of the facilities that have been constructed in accordance with the Regulation are very large, such as the Aurora Sky facility in Edmonton that has an approximate floor area of about 75,000 square metres (which is about the same size as the Toronto Premium Outlets in Halton Hills). The Aurora Sky facility shares many of the characteristics of an industrial or warehouse building. However, the interior of the building has the appearance of a greenhouse. It is important to note that the size of the Aurora Sky facility is at the high end, and that many of the other known facilities are considerably smaller.

### **3.2.2 Licence for Processing**

There are many producers in Ontario that have obtained both a licence for cultivation and a licence for processing, so that both activities can take place in the same building and/or on the same property.

Two types of licences have been established

for processing – standard processing and micro-processing. In both circumstances, the licence does not allow the cultivation, propagation or harvesting of cannabis. In other words, a processing licence only allows the licence holder to produce cannabis for sale.

The difference between a standard processing licence and a micro-processing licence is that no more than 600 kilograms of dried cannabis can be sold or distributed in a calendar year with a micro-processing licence.

### **3.2.3 Licence for Analytical Testing**

The holder of a licence for analytical testing is authorized to possess cannabis and to obtain cannabis by altering its chemical or physical properties by any means.

The sale or distribution of any product from the holder of a licence for analytical testing is not permitted and there are rules on how long cannabis can be kept on site before it needs to be destroyed.

The holder of this licence may also have other licences.

### **3.2.4 Licence for Sale of Cannabis for Medical Purposes**

The holder of a licence for sale of cannabis for medical purposes is permitted to

possess cannabis products and to sell cannabis products. These products can be sold to other types of licence holders, a person to whom an exemption has been granted under the Cannabis Act or to a hospital employee.

The holder of this licence may also have other licences.

### **3.2.5 Licence for Research**

The holder of a licence for research is permitted to possess cannabis, produce cannabis or transport, send or deliver cannabis between the sites that are set out by the licence. Additionally, the licence holder can sell cannabis plants and cannabis plant seeds to other licence holders, the Minister or a person to whom an exemption has been granted under the Cannabis Act.

As per above, the holder of this licence may also have other licences.

### **3.2.6 Cannabis Drug Licence**

The holder of a cannabis drug licence is permitted to possess cannabis and produce or sell a drug containing cannabis. These products can be sold to other types of licence holders, a person to whom an exemption has been granted under the Cannabis Act or to a pharmacist, a practitioner or a hospital employee.

## **4.0 THE ROLE OF A MUNICIPALITY IN THE LICENCING PROCESS**

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

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

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

In addition to the above, licence holders are also required to notify the local government

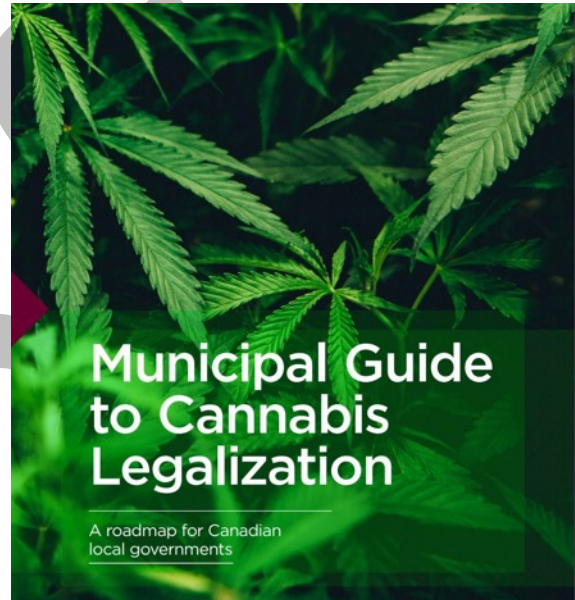
when a new licence has been issued as per Section 35(1) of the Regulation as set out below:

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

In the Spring of 2018, the Federation of Canadian Municipalities (FCM) released the 'Municipal Guide to Cannabis Regulation' ('FCM Guide'). It is noted that the FCM Guide was released prior to the Regulation and there was, and continues to be, much discussion about implementation and interpretation. In this regard, the Guide indicates the following:

*If a business obtains a federal licence under the Cannabis Act, it will not mean that the company will not be subject to provincial/territorial or local government regulations dealing with land use management. Locally, this constitutional arrangement can provide municipalities with the authority to prohibit particular*

*land uses. We recommend that municipalities consult their individual provincial/territorial enabling land use laws for specific direction. But generally, there is no obligation for municipalities to permit cannabis cultivation in specific areas.*



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

*Local governments are entitled to interpret enabling legislation broadly enough to address emerging issues and respond effectively to community objectives. However, they cannot extend its scope beyond what the wording of the legislation can reasonably bear. Some enabling legislation across Canada may allow local governments to deal with particular uses on*

*a “conditional use” or “direct control” basis, which might be particularly appropriate in the case of new land use activities (such as those associated with cannabis) whose impacts are not well-understood at the outset.*

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

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

Based on the information provided, and in the absence of other countervailing views on the matter, it is our opinion that a local municipality can regulate cannabis-related land uses that are subject to Federal licences much like any other land use.

This means that while there is no municipal role in the licensing process, there would still be a requirement for licence holders to

comply with local zoning controls.

#### **4.1 IMPACTS OF FEDERAL LEGISLATION**

The Federal regulatory regime does not provide the basis for creating specific land use regulations. For example, there are no setback requirements specified and there are no specific requirements for any type of licence holder to carry out authorized activities away from other land uses.

The only specific part of the Regulation that deals with adjacent land uses relates to the production of cannabis for personal medical purposes only.

In this regard, it is indicated that any outdoor cultivation (presumably in an individual's backyard) cannot be adjacent to a school, public playground, day-care facility or other public place frequented mainly by individuals less than 18 years of age. In this case, 'adjacent' means, according to Section 306, if the parcel has at least 1 point in common with the boundary of the other parcel of land with these uses.

It is not clear how this will ever be enforced or whether it will be possible to regulate the type of plants grown in a person's backyard through a zoning by-law. It is also noted that the Federal government also proposes

to permit anyone to grow up to four plants on their property for personal use. This will make it even more difficult to regulate since everyone will have this as-of-right permission.

Notwithstanding the above, local municipalities do have the ability to regulate larger licenced uses and facilities, should they choose to do so. However, any regulation would need to be based on empirical evidence, particularly if a minimum setback is required.

There are however, a few requirements in the Regulation dealing with security that could be considered through a planning approval process. More specifically, those with cultivation, processing or sale licences are required to design their sites to prevent unauthorized access. This includes physical barriers around the perimeter, an intrusion detection system, and 24-hour visual recording.

This means fencing or another suitable barrier will be required and the location and design of the fencing may need to be assessed through an approval process to lessen the impact of these barriers on the public realm and adjacent land uses. This also means that gatehouses that control the entry and exit of people accessing a property will be a key element of the use

and the location of the gatehouse may need to be reviewed from a design perspective as well. It should be noted that the use of visual recording devices is also required along with 24-hour monitoring.

Given the above, the prospect exists for the establishment of fenced in compounds that may not be compatible with adjacent land uses, such as a business park with generous landscaping around the perimeter. The prospect also exists for fenced in compounds in agricultural and rural areas, and this may also not be compatible with the open space character of these areas.

The above rules on security generally apply to other licence holders as well (micro-cultivation, micro-processing or a nursery).

It should be noted that there are also a number of complex exemptions to the security requirements in the Regulation, which are designed primarily to recognize existing licences or permissions relating to cannabis for medical purposes.

The Regulation further states that cannabis must be processed, packaged, labelled, stored, sampled and tested in a building. This requirement could be included in a zoning by-law; however, the licence would require this in any event.



The Regulation also requires that all buildings be equipped with a system that filters air to prevent the escape of odours. This could also be codified in a zoning by-law; however, this would again be a requirement of the licence.

The Regulation does expressly prohibit the holder of any licence from conducting any activity authorized by the licence in a 'dwelling-house'. This could also be expressly prohibited in the Township's zoning by-law.

Notwithstanding the above, the growing of up to 4 plants in a dwelling for personal use would still be permitted. As a result, a distinction would need to be made between the growing of plants pursuant to a licence and the growing of plants for personal use, if the above prohibition was contemplated.

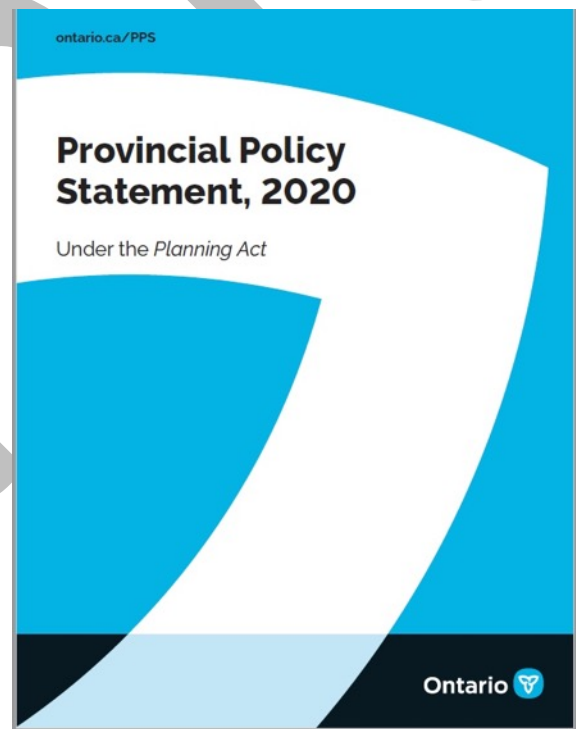
*Agricultural Use: means the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures,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

## 5.0 PROVINCIAL POLICY

### 5.1 PROVINCIAL POLICY STATEMENT 2020

The purpose of this section is to review the relevant policies in the Provincial Policy Statement that relate to agricultural use.

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



The PPS 2020 does not make any distinctions between the types of crops that are grown, as long as whatever is produced

is harvestable, which means that the cultivation of cannabis would be an agricultural use, whether that cultivation occurs indoors or outdoors.

### **5.1.1 Classification of Agricultural and Rural Lands in Cavan Monaghan**

The PPS 2020 divides the Province into two general land use categories with one being urban 'settlement areas' and the second being 'rural area', with rural areas including rural settlement areas, rural lands, prime agricultural areas, natural heritage features and areas and resource areas. Rural lands and prime agricultural areas are considered to be mutually exclusive, with rural lands not encompassing prime agricultural areas.

The PPS recognizes rural areas as important to the economic success of the Province and to quality of life. Section 1.1.4.1 encourages rural areas to be supported by building rural character and amenities, promoting redevelopment, accommodating a range of housing, encouraging the conservation of the housing stock, promoting diversification, providing opportunities for tourism, conserving biodiversity and providing opportunities for economic activities in prime agricultural areas. Section 1.1.4.1 i) specifically addresses prime agricultural areas in the rural area and states:

*Healthy, integrated and viable rural areas should be supported by:*

- i. Providing opportunities for economic activities in prime agricultural areas, in accordance with policy 2.3.*

The majority of the land that is not within the Natural Heritage System in the Township is designated Agricultural. A number of areas within this broader designation are designated Rural, in recognition of historical rural residential development. Lands to the east of Highway 7 and County Road 28 are also designated Rural.

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

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

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

*In prime agricultural areas, all types, sizes and intensities of agricultural uses and*



*normal farm practices shall be promoted and protected in accordance with provincial standards.*

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

Section 1.1.5 of the PPS establishes policies that apply to rural lands and these include lands outside of settlement areas and outside of prime agricultural areas. Section 1.1.5.2 sets out the permitted uses for rural lands as follows:

- a) The management or use of resources;*
- b) Resource-based recreational uses (including recreational dwellings);*
- c) Residential development, including lot creation, that is locally appropriate;*
- d) Agricultural uses, agriculture-related uses, on-farm diversified uses and normal farm practices, in accordance with provincial standards;*
- e) Home occupations and home industries;*
- f) Cemeteries; and*
- g) Other rural land uses.*

It is noted that agricultural uses, agriculture-related uses and on-farm

diversified uses are identified in the permitted uses list in Section 1.1.5.2 of the PPS and that Section 1.1.5.7 further indicates that:

*Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses.*

### **5.1.2 Land Use Compatibility**

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

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

It is recognized that there is a difference of opinion on whether Section 1.2.6.1 applies to agricultural uses. This is 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 PPS 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 our opinion, Section 1.2.6.1 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 PPS 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 our opinion, cannabis cultivation may require separation from sensitive uses.

### **5.1.3 Agriculture-Related Uses**

It is also important to consider whether a use related to cannabis cultivation is an agriculture-related use, which is also permitted by the PPS 2020 in prime agricultural areas. These uses must be carefully planned so that they are compatible with agricultural uses as per Section 2.3.3.1 of the PPS 2020:

*Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve the same objectives.*

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

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

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

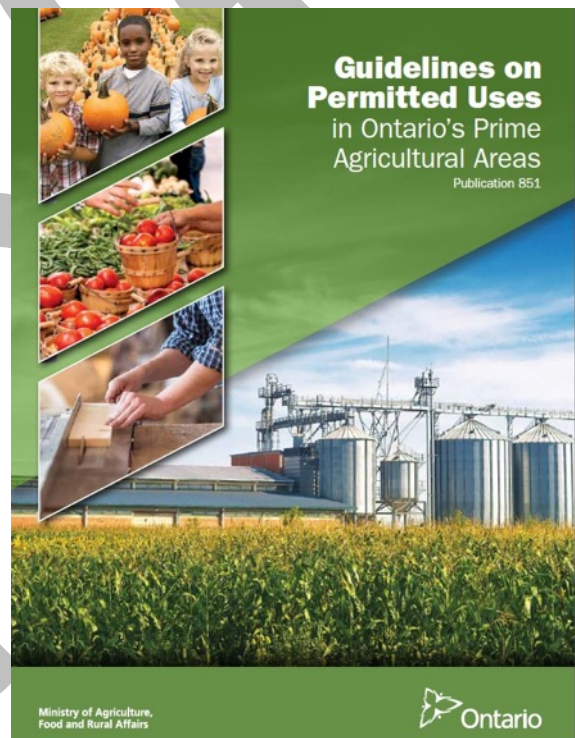
- Is directly related to farm operations in the area;
- Supports agriculture;
- Benefits from being in close proximity to farm operations; and,
- Provides direct products and/or services to farm operations as a primary activity.

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

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

Section 1.1 of the OMAFRA Guidelines also states that:

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



Section 2.2 of the OMAFRA Guidelines indicates that agriculture-related uses may be located on farms or on separate agriculture-related commercial or industrial properties.

With respect to farm-related commercial

uses, Section 2.2.1.1 of the OMAFRA Guidelines specify the following:

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

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

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

- Apple storage and distribution centre serving apple farm operations in the area;
- Agricultural research centre;
- Farmers' market primarily selling products grown in the area;
- Winery using grapes grown in the area;

- Livestock assembly yard or stock yard serving farm operating in the area;
- Processing of produce grown in the area (e.g., cider-making, cherry pitting, canning, quick-freezing, packing);
- Abattoir processing and selling meat from animals raised in the area;
- Grain dryer farm operations in the area;
- Flour mill for grain grown in the area;
- Farm equipment repair shop;
- Auction for produce grown in the area; and,
- Farm input supplier (e.g., feed, seeds, fertilizer (serving farm operations in the area.

Based on the examples above, cannabis processing could be considered an agriculture-related use subject to the other criteria being satisfied.

Below is a brief discussion of these criteria.

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

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

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

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

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

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

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

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

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

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

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

Section 2.2.1.6 of the OMAFRA Guidelines state the following:

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



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

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

Section 2.2.1.5 of the OMAFRA Guidelines indicate the following:

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

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

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

*Means uses that are secondary to the principal agricultural use of the property,*

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

In order for a use to be considered an on-farm diversified use, it would have to be both secondary to the principal use of the property and be limited in area.

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

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

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

## **5.2 THE OAK RIDGES MORAINÉ CONSERVATION PLAN (2017)**

As noted in the Township's Official Plan, approximately 15% of the land area in the

Township is within the Oak Ridges Moraine, and is subject to the Oak Ridges Moraine Conservation Plan (ORMCP).

The lands subject to the ORMCP are also subject to the Greenbelt Plan, and together these Plans build on the Provincial Policy Statement by identifying where urbanization should not occur, to provide permanent protection to the agricultural land base and the ecological and hydrological features, areas and functions.

As result, there is a significant amount of overlap with respect to terminology between the ORMCP and the PPS 2020. The ORMCP identifies similar permitted uses which are of relevance to cannabis cultivation and processing, such as agricultural uses, on-farm diversified uses and agriculture-related uses, which are already discussed above. The definitions for these terms in the ORMCP, included below, while reflecting some minor differences from those included in the Provincial Policy Statement, nonetheless communicate a similar intent.

***Agricultural uses means,***

- a) *Growing crops, including nursery, biomass and horticultural crops,*
- b) *Raising livestock and other animals,*

*including poultry and fish, for food, fur or fibre,*

- c) *Aquaculture,*
- d) *Apiculture,*
- e) *Agro-forestry and maple syrup production, and*
- f) *Uses associated with on-farm buildings and structure including,*
  - i) *Livestock facilities,*
  - ii) *Manure storage structures,*
  - iii) *Value-retaining facilities, and*
  - iv) *Accommodations for full-time farm labour.*

***Agriculture-related uses means farm-related commercial and industrial uses that,***

- a) *Are directly related to, and compatible with, farm operations in the surrounding area and do not hinder those farm operations,*
- b) *Support agriculture,*
- c) *Benefit from being in close proximity to farm operations, and*
- d) *Provide products or services, or*

*both, directly to farm operations as a primary activity.*

*On-farm diversified uses means, with respect to a farming operation, uses that are secondary to the principal agricultural use of the property, that are compatible with and do not hinder the surrounding agricultural operations and that occupy a limited area of the property including,*

*a) Home occupations,*

*b) Home industries,*

*c) Agri-tourism, and*

*d) Uses that produce value-added products.*

The ORMCP divides the Moraine into four land use categories, three of which apply to the Township: Natural Core Areas, Natural Linkage Areas and Countryside Areas.

### **5.2.1 Natural Core Areas**

The Natural Core Area designation applies to lands that have key natural heritage features that are essential to maintaining the Oak Ridges Moraine. The primary objective of this designation is to maintain, improve and restore the integrity of the moraine and its ecological features.

The permitted uses within the Natural Core Areas include agricultural uses. On-farm

diversified uses and agriculture-related uses are also permitted, but only in prime agricultural areas.

### **5.2.2 Natural Linkage Areas**

Similar to the Natural Core Area designation, the objective of the Natural Linkage Area designation is to maintain, improve and restore the Oak Ridges Moraine and its ecological features, as well as maintains, improve and restore the Moraine's open space linkages. This designation applies to lands that are natural and open space linkages between natural core areas and rivers and streams.

Again, agricultural uses are permitted within this designation, while on-farm diversified uses and agriculture-related uses are only permitted in prime agricultural areas.

### **5.2.3 Countryside Areas**

The Countryside Area designation applies to lands that are buffers between Natural Core Areas, Natural Linkage Areas and Settlements Areas. The objectives of this designation include promoting and protecting agricultural land uses, while maintaining, improving and restoring the integrity of the Oak Ridges Moraine and its ecological features. In particular:



*(a) Protecting prime agricultural areas; and  
(b) promoting and protecting agricultural  
and other rural land uses and normal farm  
practices.*

Agricultural uses, on-farm diversified uses  
and agricultural-related uses are permitted  
within this designation.

*Draft*

## 6.0 THE COUNTY OF PETERBOROUGH OFFICIAL PLAN

The County of Peterborough Official Plan (County OP) applies to all lands within the Township of Cavan Monaghan. The Township of Cavan Monaghan's Official Plan must conform to the County of Peterborough Official Plan.

The County of Peterborough Official Plan's goal for rural and cultural landscapes is to "preserve and enhance the rural character of the County as a cultural resource and ensure the viability of the agricultural industry." This goal is further supported by numerous objectives that support the preservation of agricultural lands while encouraging compatible economic diversification, including the following:

*To ensure that the agricultural industry remains viable;*

*To preserve prime agricultural soils and protect farms, where possible, from activities and land uses which would limit productivity or efficiency;*

*To encourage compatible economic diversification including greater flexibility*

*for on-farm activities, home-based businesses and agri-tourism;*

The County's Official Plan requires local municipalities within their Official Plans to protect prime agricultural areas for long-term agricultural use, and only allow agricultural uses, secondary uses and agriculture-related uses (Section 4.3.3.2). This policy is generally consistent with the PPS 2020.

The County OP allows local municipalities to also restrict permitted uses within other agricultural areas to only the uses allowed in prime agricultural areas. In prime agricultural areas:

*Any proposed new secondary uses and agriculture-related uses as defined in the Provincial Policy Statement will be compatible with, and will not hinder, surrounding farm operations. These uses shall be limited in scale and the local plans will include criteria for the uses.*

Secondary uses are defined as follows in the County OP:

*Shall include home occupations, home industries and uses that produce value added agricultural products from the farm operation on the property.*

On the basis of the above definition,

secondary uses could be considered on-farm diversified uses as per the PPS 2020. The above policy also indicates that local municipalities must establish limits to the scale of such uses and provide criteria that would include an assessment compatibility with the principal agricultural operation and surrounding agricultural lands.

## **6.1 OFFICIAL PLAN AMENDMENT #58 – CANNABIS CULTIVATION AND PROCESSING IN SELWYN**

The County's Official Plan was recently amended by Official Plan Amendment (OPA) #58 – Cannabis Cultivation and Processing in Selwyn. This OPA allows for indoor cannabis cultivation to be permitted as an agriculture use subject to the passage of a Zoning By-law Amendment (ZBLA) by the Township of Selwyn. If such a ZBLA were approved, indoor cannabis cultivation would also be subject to Site Plan Control.

The processing of cannabis may be permitted as an agricultural-related use, operating in conjunction with a cannabis cultivation operation, subject to the passage of a ZBLA and Site Plan Control.

Before approving a ZBLA, the OPA indicates that Council must be satisfied that:

- i. The use shall not have a negative impact on the enjoyment and privacy of neighbouring properties;*
- ii. The proposed use will not have a negative impact on adjacent agricultural uses and is compatible with normal practices as set out in an Agricultural Impact Assessment to the satisfaction of the Township and the County;*
- iii. The proposed use will not cause any traffic hazards or an unacceptable level of congestion on surrounding roads;*
- iv. The proposed use can be designed and sited to blend in with surrounding land uses such that the rural character of the area is maintained; and where necessary the proposed use can be appropriately buffered from adjacent uses;*
- v. The impact of the noise, odour and dust generated by the proposed use on adjacent land uses can be appropriately mitigated;*
- vi. There will be no negative impact on the quality and quantity of groundwater and surface water;*

- vii. *Adequate parking facilities are available on the lot for the proposed use;*
- viii. *The use can be serviced with an appropriate water supply and an appropriate means of sewage disposal;*
- ix. *Stormwater management needs can be met on site;*
- x. *The signage advertising the use is to be designed and located in accordance with the Township's sign by-law; and*
- xi. *The proposed setback from adjacent land uses is appropriate, and in this regard, the minimum setback from lot lines should be at least 150 metres. However, a setback that is appropriate for the site can be established and if it less than 150 metres, an Amendment to this Plan will not be required.*

In addition, in order for it to qualify as an agriculture-related use, the processing of cannabis must satisfy the following criteria:

- i. *Is directly related to farm operations in the area;*
- ii. *Supports agriculture;*
- iii. *Benefits from being in close proximity to farm operations; and*

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

Outdoor cannabis cultivation is an agricultural use and is required to be set back a minimum of 50 metres from adjacent lot lines.

## **7.0 CAVAN MONAGHAN OFFICIAL PLAN**

The Township of Cavan Monaghan Official Plan applies to all lands within the Township of Cavan Monaghan. The Land Use policies are separated into three sections that are consistent with the structure of the Township: Settlement Area, Countryside Areas and Natural Heritage System.

The Countryside Area and the Natural Heritage System sections of the Official Plan broadly permit agricultural uses.

Within the Countryside Area, the following land use designations permit agricultural uses:

The Agricultural designation (Section 5.1), applies to lands that have a high capacity for agriculture (generally soil Classes 1, 2 and 3) and the primary use of lands will be for agricultural uses as defined by the PPS. Additional permitted uses include farm

related industrial uses that directly service and support the agricultural industry and require locations in close proximity to farming operations.

Section 5.1.5 Oak Ridges Moraine (ORM) – Prime Agricultural, is a sub category of the Agricultural designation. This designation includes prime agricultural lands within the ORM, and permits agriculture, agriculture related and secondary uses.

Section 5.2 of the Official Plan, Rural Areas, states that the predominant use of land within the Rural designation shall be for agricultural uses, in accordance with the Agricultural designation. An objective of the Rural designation is to:

*Encourage rural economic activity that does not adversely impact agricultural uses and is compatible with rural residential uses.*

Section 5.2.4 ORM – Rural is a sub category of the Rural designation. The intent of this designation is to maintain the rural character and protect lands from uncontrolled and scattered development. This designation permits the same uses as the ORM – Prime Agricultural, with some additions. Section 5.2.5.1 states that:

*An application for a small-scale agriculturally-related commercial or*

*industrial use shall not be approved unless the proponent demonstrates that:*

- i) It is not feasible to locate the use in a settlement area; and,*
- ii) The buildings or structures will be planned, designed, and constructed so as not to adversely affect the rural character of the Countryside Area nor adversely impact the ecological integrity of the Oak Ridges Moraine.*

In the Official Plan Section 5.3 Recreational, lands designated Recreational are intended primarily for recreation, conservation, forestry or agricultural purposes. While agriculture is permitted, the uses within this designation are primarily related to recreation and conservation activities.

In the Rural Employment designation (Section 5.4), permitted uses include agriculturally related industrial uses, processing and storage of agricultural commodities, light manufacturing, processing of semi-manufactured goods, assembly of manufactured goods, warehousing, wholesale distribution centres, transportation terminals, accessory professional or business offices and research facilities. Employment uses within this designation are encouraged to develop on private water supply and

sewage disposal services.

General development policies for this designation include that more intensive activities should be separated from adjoining sensitive land uses by a minimum of 90 metres and that an analysis should prove a development's compatibility with existing development and the rural character of the surrounding area.

Section 5.5 Mineral Aggregate Extractive, only applies to lands that are currently licenced for aggregate and mineral extraction by the Ministry of Natural Resources and Forestry. This designation does allow for agricultural operations, and any lands that are designated Mineral Aggregate Extractive but are no longer licenced, are considered to be designated Agricultural.

Within the Natural Heritage System section, the following land use designations permit agricultural uses:

Section 6.3 Natural Core Areas, notes that this designation applies to lands that have significant natural features and functions. Under this designation, existing agricultural operations are permitted.

Section 6.4 Natural Linkage Area, applies to lands forming a 120 metre vegetative

protective buffer zone for Key Natural Heritage Features. Agriculture, agriculture related and secondary uses are permitted within this designation. Expansions to existing agricultural operations are also permitted if there is no alternative and the expansion is directed away from the Natural Feature and the impact on the Natural Feature is minimized.

Beyond areas with agricultural permissions, the Urban Employment Areas designation within the Settlement Area (Section 4.6), has potential for accommodating indoor cannabis cultivation and processing facilities, provided the facilities are designed in a matter that is compatible with an industrial context. It is the intent of this designation to accommodate new and expanded business activities, and to allow for diverse employment opportunities. Both of these objectives have the potential to be met through the introduction of a cannabis facility, which may create jobs and diversify the employment base within the Township.

Permitted uses within this designation also lend support to introducing cannabis production facilities within this designation. Permitted uses include manufacturing, assembling, processing, fabricating and warehousing, wholesaling and distribution

facilities. In addition, accessory office uses and outdoor storage uses are permitted.

## **8.0 CAVAN MONAGHAN ZONING BY-LAW**

The Township's Zoning By-law applies to all lands within the Township. The Agriculture (A) and Rural (RU) zones are the most permissive for agricultural, permitting agricultural uses, agriculture-related uses, agricultural service and supply establishment, farm business and farm greenhouses.

The Natural Core (NU) zone permits agricultural uses and the Natural Linkage (NL) zone permits agriculture uses and agriculture-related uses.

The Oak Ridges Moraine Zones broadly permit agricultural uses, but only the Oak Ridges Moraine Countryside (ORMCO) and Oak Ridges Moraine Rural Settlement (ORMRS) zones permit agricultural related uses.

Open Space (OS) and Future Development (FD) zones permit agricultural uses, however agricultural uses are only permitted in the FD zone where the use legally existed on the effective date of the By-law.

Agricultural uses are permitted within the Recreational Commercial (C3) zone, and

agricultural service and supply establishments are permitted within the Rural Employment (M2) zone.

## 8.1 CANNABIS PRODUCTION FACILITIES

Cannabis production facilities are only permitted in Urban Employment (M1) zones. In addition, Cannabis production facilities are subject to the following provisions:

- Cannabis production facilities are prohibited in dwellings and cannot be located within 70 metres from:
  - Community centres;
  - Day care centres;
  - Dwellings;
  - Public parks and private parks; and,
  - Schools.
- No store fronts, onsite retail, outdoor signage or advertising is permitted
- No part of the facility, including storage and accessory use can be located outside
- Cannabis production facilities require Site Plan approval and loading areas must be located within an enclosed

building or to the rear of lots, screened by landscaping or building placement

## 9.0 MUNICIPAL BEST PRACTICES

There are several examples of municipalities in Ontario that have taken steps to regulate cannabis. In some cases, this means including policies in an Official Plan as well as provisions in a Zoning By-law, but there are also a number of municipalities that have only included provisions in their Zoning By-laws.

The purpose of this section is to provide a summary of the best practices review completed for municipalities that regulate cannabis. Below is a review of a number of Ontario municipalities and their approach to regulating cannabis.

### 9.1 TOWN OF PELHAM

Council passed an Interim Control By-law (ICBL) 4046-2018 that applied to all lands within the municipality, except those that are under the Development Permit Control Area of the Niagara Escarpment Commission. The ICBL had the effect of restricting the use of all land within the municipality for any cannabis-related land



uses for a period of one year. On September 23, 2019, the ICBL was extended to July 15, 2020. During this time, it was intended that the Town would develop an approach to regulating cannabis.

Following the passage of the ICBL, Town planning staff began conducting research on best practices to inform an approach to regulating cannabis in the Town with the intention of bringing forward amendments to the Official Plan and Zoning By-law to implement the recommended approach. In this regard and on September 10, 2019, a statutory Public Meeting was held to consider amendments to the Town's Official Plan and Zoning By-law prepared by the Town to regulate cannabis-related uses.

In order to provide advice to the Town on this issue, Council formed an advisory committee known as the Cannabis Control Committee (CCC) to provide advice to Council, review options provided by the Town's Community Planning and Development staff and to conduct research.

In order to provide some additional expertise on developing an appropriate policy and regulatory framework, on January 13, 2020, the Town of Pelham retained Meridian Planning Consultants to provide professional planning advice on the planning approach and planning

instruments being proposed to regulate cannabis within the community.



CannTrust Facility in Town of Pelham (Source: Google)

A draft Official Plan Amendment (OPA) and a draft zoning by-law amendment (ZBA) were released on April 17, 2020. Numerous comments were received on these drafts and final versions were prepared in July 2020.

The purpose of the final OPA was 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. The OPA recognized that 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

and that 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.



Ventilation equipment on east side of CannTrust Facility in the Town of Pelham (Source: Google)

The OPA also recognized that the cultivation of cannabis is an agricultural use and is permitted in agricultural areas by the PPS 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, the OPA also recognized 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. However, the MDS 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 the OPA was to do just that, by establishing 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.

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.

An implementing ZBA was also prepared; the effect of which is to create two new zones that would only be applied in the future to new indoor cannabis and industrial hemp cultivation facilities, subject to Council approval in accordance with the process and criteria established by the OPA.

In the case of indoor cannabis cultivation and processing in the Town of Pelham, it was determined to not be 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.

It is noted that the ZBA also establishes a 300 metre setback for outdoor cultivation from sensitive uses as well, based on the precedent established by the County of Norfolk. Both the OPA and ZBA have been appealed by the cannabis industry.

## 9.2 COUNTY OF NORFOLK

The County of Norfolk regulates cannabis production and processing in the Zoning By-

law as well. The County permits cannabis production and processing in the Industrial and Agricultural zones and also includes references the requirement for air treatment control, which is different from most of the other Zoning By-laws reviewed. It is noted, however, that air treatment control is a requirement of a Federal licence. The Zoning By-law includes a definition for cannabis production and processing facility and air treatment control.

A cannabis production and processing facility is permitted in the General Industrial (MG), Light Industrial (ML) and Rural Industrial (MR) zones, but is required to be equipped with air treatment control and be set back a minimum of 70 metres from a lot that is within a Residential, Institutional or Open Space zone. However, this minimum setback is increased to 150 metres from:

- A dwelling on a separate lot;
- Public school;
- Private school;
- Place of worship;
- Campground;
- Group home;
- Hotel;
- Long-term care facility;

- Mobile home park;
- Park;
- Place of assembly;
- Place of entertainment;
- Place of sports and recreation;
- Tent and trailer park;
- Tourist cabin;
- Hospital; or,
- Day care nursery.

In the Agricultural (A) zone, cannabis production and processing that is equipped with air treatment control is permitted and is required to be set back a minimum of 150 metres from a lot that is within a Residential, Institutional or Open Space zone.

When a cannabis production facility that is not equipped with air treatment control is situated in the Agricultural (A), General Industrial (MG), Light Industrial (ML) or Rural Industrial (MR) zones, a minimum setback of 300 metres is required from:

- A dwelling on a separate lot;
- Public school;
- Private school;
- Place of worship;

- Campground;
- Group home;
- Hotel;
- Long-term care facility;
- Mobile home park;
- Park;
- Place of assembly;
- Place of entertainment;
- Place of sports and recreation;
- Tent and trailer park;
- Tourist cabin;
- Hospital; or,
- Day care nursery.

The above means that any cannabis and processing facility that does not implement air treatment control is required to provide a minimum setback of 300 metres. This minimum setback of 300 metres also applies to outdoor cultivation, as confirmed in the County of Norfolk recommendation report (DCS 18-38) as follows:

*The policy now includes provisions for outdoor production, which the previous policy did not contemplate. Should an applicant wish to pursue outdoor cannabis production, a larger (300 metre) setback from a sensitive land use will be required.*

In addition to the above, the Zoning By-law permits a building or structure for security purpose to locate in a front yard and is not subject to the yard requirements. In addition, the Zoning By-law prohibits outdoor storage and requires Site Plan Control for the establishment of or expansion to all cannabis production and processing facilities. Illumination required for cannabis production facilities is also subject to the lighting facilities regulations, as follows:

*Where private lighting facilities, whether internal or external to any building or structure, are provided in any Zone to illuminate buildings, structures or uses, they shall be designed to be energy efficient, be directed downwards, and located or arranged to deflect glare away from adjacent residential uses, streets and the night sky and to avoid causing nuisance to adjacent property owners, or any confusion with traffic signals.*

### **9.3 MUNICIPALITY OF CHATHAM-KENT**

The Municipality of Chatham-Kent’s Official Plan permits cannabis production in the Employment, Agricultural and Rural Industrial designations. The Official Plan policies indicate that a cannabis production



facility should not be located within close proximity to a sensitive land use, such as residential, institutional, open space or as more specifically outlined within the Zoning By-law. The policies also require that the construction of a new cannabis production facility is subject to site plan approval, should be located and designed in accordance with Federal regulations to mitigate potential impacts including light emissions, air emissions, odour and so forth and must be registered or licensed with Health Canada.

The Zoning By-law also permits cannabis production as-of-right in the Agricultural and Industrial zones. The following minimum separation distances apply to buildings and structures:

- Within the General Industrial zone: no closer than 75 metres to any residential, institutional or open space zone boundary; and,
- Within the Agricultural (A1) and Rural Industrial (MR) zone, no closer than:
  - 100 metres to an existing residential dwelling on a separate lot; or,
  - No closer to any residential institutional or open space zone boundary than 100 metres.

The Zoning By-law also requires two spaces

per three employees or one space per 18 square metres of floor area used for office (whichever is greater) as well as one space per 1,000 square metres of area used for production.

In addition to the above, the minimum separation distance and parking requirement do not apply to a cannabis production facility where the cultivation area is less than 200 m<sup>2</sup> (known as micro-cultivation facilities under the Cannabis Act) or to outdoor cultivation.

#### 9.4 CITY OF OTTAWA

In 2018, City staff began a review of the provisions that applied to medical marihuana production facilities with the intent of updating the provisions for cannabis, in accordance with the Cannabis Act. On June 12, 2019, City staff brought forward a recommendation report on the cannabis zoning by-law amendment that recommended that the previous minimum setback for medical marihuana production facilities be increased from 150 metres to 300 metres. Below is the reasoning for the increase:

*Outdoor cultivation, however, will emit strong odours while the cannabis plants are flowering, whether in a green house or outdoors. For outdoor cultivation a*

*minimum separation distance will apply of 300 metres from any residential use and Institutional and Rural Institutional zones. This separation distance is suitable because, at a distance of 300 metres, the odour from outdoor cannabis cultivation should be sufficiently diminished that it is not a nuisance. This separation distance is based on Norfolk County's Zoning By-law, which included the 300 metre distance separation standard after inspections of cannabis cultivation in outdoor areas.*

It is noted that the City considers the cultivation of cannabis within a greenhouse to be outdoor cultivation, meaning that the 300-metre setback applies to outdoor cultivation and cultivation within greenhouses.

In addition to the above, smaller cannabis production facilities that meet the micro-processor, micro-cultivator, or nursery classification and are contained within a building, will be permitted in additional zones with a maximum size of 350 square metres to provide opportunities for local production comparable to a micro-brewery. These zones include light industrial zones and business park industrial zones.

The Zoning By-law also requires that no cannabis production facility that is contained entirely within a building may

become a nuisance because of odour or fumes.

In addition to the above, cannabis production facilities are not permitted to have any outdoor storage and are not permitted in a dwelling.

## 9.5 TOWNSHIP OF HAVELOCK-BELMONT-METHUEN

The Township of Havelock-Belmont-Methuen also regulates cannabis uses in the Zoning By-law. The Township amended the definition of Agricultural use to add 'shall not include any land, building or structure for the growing of cannabis'. In addition, the Township created a definition for cannabis production facility.

The general provisions section of the Zoning By-law requires that a cannabis production facility only be permitted on lands that are zoned Restrictive Industrial on full municipal and water services with no other uses on the same lot. The Zoning By-law also applies the following regulations to cannabis production facilities:

- Minimum lot area: 4,000 m<sup>2</sup>;
- Minimum lot frontage: 45 metres;

- Minimum setback from Residential, Institutional Commercial or Open Space zone: 70 metres.

## 9.6 TOWN OF HALTON HILLS

The Town of Halton Hills includes policies in its Official Plan and provisions in the Zoning By-law to regulate cannabis uses. Cannabis cultivation and processing is permitted in the Agricultural and Rural designation as well as in the Employment Area. The Official Plan contains policies that require an applicant to demonstrate that the processing of cannabis is an agriculture-related use in the Agricultural and Rural designations, referring to the 4 criteria set out in the PPS guidelines.

Indoor cannabis cultivation and processing is permitted as-of-right in the General Employment Area and Prestige Industrial Area designations and is subject to site plan control. In these designations, indoor cannabis cultivation and processing is required to be set back a minimum of 150 metres from a lot that is the site of a child care centre, a private or public school, a place of worship or other institutional use, a residential use, a long term care facility, a retirement home or a public park.

Indoor cannabis cultivation is also permitted in the Agricultural Area in the

Town's Official Plan, but requires a Zoning By-law Amendment to permit the use as well as Site Plan Control. A minimum setback of 150 metres from adjacent land uses is required. However, the policy permits a reduced setback if it can be demonstrated that a reduced setback is appropriate. The minimum 150-metre setback applies to all lots in the Urban, Hamlet and Rural Cluster Area where a sensitive land use is present.

Outdoor cannabis cultivation is permitted as-of-right in the Town's Official Plan and the Town's Zoning By-law, but is required to provide a minimum 50 metre setback from adjacent lot lines.

The Zoning By-law establishes a cannabis definition for each type of cannabis use licence as defined in the Regulation. Cannabis uses are permitted in certain Urban Employment zones, subject to a minimum setback of 150 metres from sensitive land uses and are required to be located within a fully enclosed building.

The Zoning By-law also requires that all loading docks be located entirely within an enclosed building and establishes a minimum parking requirement for all cannabis uses (except outdoor cannabis cultivation) of 1/100 square metres of gross floor area.



## 9.7 TOWNSHIP OF SELWYN

The Township of Selwyn includes policies in the County Official Plan (which functions as the local Official Plan) as well as provisions in the Zoning By-law to regulate cannabis uses. Outdoor cannabis cultivation is permitted as-of-right in the Agricultural and Rural designations, subject to a 50 metre setback from lot lines.

Indoor cannabis cultivation is permitted as-of-right in the Agricultural and Rural Area designations in the County's Official Plan. Indoor cannabis processing may be permitted in the Agricultural and Rural Area designations in the County's Official Plan, subject to the 4 criteria as set out in the PPS guidelines. Indoor cannabis cultivation and processing is also permitted in the Industrial designation, subject to a Zoning By-law amendment to permit the use. Site Plan control is also required for any indoor cannabis cultivation and processing.

The Zoning By-law establishes a cannabis definition for each type of cannabis use licence as defined in the Regulation. A minimum setback of 150 metres from sensitive land uses is required for indoor cannabis cultivation and processing.

The Zoning By-law also requires that all loading docks be located entirely within an

enclosed building and establishes a minimum parking requirement for all cannabis uses (except outdoor cannabis cultivation) of 1/100 square metres of gross floor area.

## 9.8 TOWN OF ERIN

The Town of Erin, through a Council Report on October 3, 2017, indicated that it considers cannabis production in a greenhouse as a permitted use in the Agricultural Area and an Industrial use in the Industrial Area in its Official Plan. There are no other policies that specifically address cannabis production in the Official Plan. However, the Town's Zoning By-law includes a number of provisions that apply to a cannabis production facility.

In the Zoning By-law, a cannabis production facility is only permitted in the Agricultural (A), Light Industrial (M1), and General Industrial (M2) or Rural Industrial (M3) zones.

If located in the Light Industrial or General Industrial zones, then a minimum setback of 70 metres is required from residential zone or use, institutional zone or open space zone. If located in the Agricultural or Rural industrial zones, then a minimum setback of 150 metres is required from a residential zone or use, institutional zone or

open space zone.

The Zoning By-law also requires that a cannabis production facility must be located within a wholly enclosed building and prohibits outdoor storage. A building or structure used exclusively for a security guard(s) may be located in the front, side or rear yards. The establishment or expansion of a cannabis production facility requires site plan approval. In addition, the Zoning By-law provisions indicate that no minor variance to the cannabis production facility regulations shall be permitted by the Committee of Adjustment and shall only be dealt with by a Zoning By-law Amendment.

### **9.9 COUNTY OF BRANT**

The County of Brant regulates cannabis through its Zoning By-law only. The County's Zoning By-law permits a cannabis production facility as-of-right within the Agricultural (A), Agricultural Employment (AE), Light Industrial (M2) and Heavy Industrial (M3) zones. A building or structure used for a licensed cannabis production facility is required to be setback a minimum of 150 metres from a residential zone or use, industrial zone or use or from an open space zone. All development in relation to the establishment or expansion to a cannabis production facility requires

site plan control.

The Zoning By-law requires a minimum of 1 parking space per 100 metres<sup>2</sup> of gross floor area. In addition, the Zoning By-law requires that loading spaces and storage be located within a wholly enclosed building and only accessible through a rear yard. Outdoor storage is prohibited. The Zoning By-law permits a security building or structure for a security person to locate in a front yard.

### **9.10 TOWN OF BLUE MOUNTAIN**

The Town of Blue Mountains includes provisions in its Official Plan and Zoning By-law to regulate cannabis production.

Section B2.12 of the Official Plan permits a medical marihuana production facility on lands that are designated Rural Employment Lands, Urban Employment Lands and Rural. A medical marihuana production facility is not permitted on lands that are designated as Agricultural or Special Agricultural in the Official Plan.

The policies that apply to a medical marihuana production facility require a site-specific Zoning By-law amendment to permit the use and to establish minimum setbacks from sensitive land uses such as residential, institutional and open space.

The policies also indicate that no residential use is permitted on the same lot and all associated activities are required to be within a wholly enclosed building as part of the operation.

The Zoning By-law includes a definition for a cannabis production facility, however the use is not permitted in any zone and no regulations are included. The Agricultural Use definition specifies that ‘an agricultural use does not include a cannabis production facility’. On the basis of the above, a site-specific Zoning By-law amendment is required to permit a cannabis production facility and to establish the standards that would apply.

### 9.11 TOWNSHIP OF KING

The Township of King also regulates cannabis in the Zoning By-law. The Zoning By-law includes definitions and regulations for Industrial Cannabis Processing Facility, Agricultural Cannabis Production Facility and Medical Cannabis Production Site. Definitions are also included within the Zoning By-law for sensitive land use and air treatment control, similar to the County of Norfolk, as well as industrial cannabis production facility, agricultural cannabis production facility and medical cannabis production site.

An agricultural production facility or a medical cannabis production site is permitted on a lot that is at least 10 hectares in size. When equipped with air treatment control, a minimum setback of 150 metres is required from a sensitive land use or any residential zone, institutional zone or open space zone. This minimum setback is increased to 300 metres for a medical cannabis production site that is not equipped with air treatment control.

The same setback requirements as mentioned above apply to industrial cannabis production facilities.

The Zoning By-law also requires the following parking requirements:

- *Industrial cannabis production facility and medical cannabis production site: 1.0 parking spaces for every 37 m<sup>2</sup> of gross floor area up to 3,000 m<sup>2</sup>, plus 1.0 for each additional 100 m<sup>2</sup> of gross floor area up to 6,000 m<sup>2</sup> and 1.0 spaces for each 200 m<sup>2</sup> over 6,000 m<sup>2</sup>; and,*
- *Agricultural cannabis production facility: 1.0 parking space for every 37 m<sup>2</sup> of gross floor area.*

In addition to the above, outdoor storage and signage and advertising are prohibited. Any building required for security purposes

for an agricultural cannabis production facility or industrial cannabis production facility may be located in the required front yard, subject to a minimum 2.0 metres from any property line. All development in related to the establishment or expansion to an agricultural cannabis production facility, industrial cannabis production facility or medical cannabis production site shall be subject to site plan control.

### 9.12 CITY OF WINDSOR

The City of Windsor also regulates cannabis production in the Zoning By-law. Cannabis production is included in the definition of a Manufacturing Facility. This means wherever a Manufacturing Facility is permitted then a cannabis production facility is also permitted. The Zoning By-law permits a Manufacturing Facility in 7 of the 8 existing Industrial zones.

The Zoning By-law does not include any specific minimum setbacks from sensitive land uses, however there are minimum yard requirements established for each of the Industrial zones that would apply to a Manufacturing Facility.

### 9.13 OTHER MUNICIPALITIES

At the time of writing this Report there are also a number of municipalities that have an

Interim Control By-law in effect while completing a land use study to formulate an approach to regulating cannabis. These municipalities include but are not limited to:

- City of Niagara Falls;
- Township of Wainfleet;
- Town of Lincoln;
- City of St. Catharines
- Town of New Tecumseth and
- Town of Welland

In addition to the above, the City of Hamilton and Town of Caledon are examples of other municipalities that have adopted an Official Plan Amendment and Zoning By-law Amendment, but that were subsequently appealed to the LPAT. These are discussed further in Section 11 of this Report.

## 10.0 EMERGING TRENDS

The purpose of this section of the Report is to identify emerging trends and provide an analysis of the municipalities that were included in the Best Practices Review.

### 10.1 OFFICIAL PLAN POLICIES

Of the municipalities that were reviewed as

part of the Best Practices Review, there are four municipalities that have Official Plan provisions that apply to cannabis uses. These include the Town of Pelham, of Halton Hills, the Township of Selwyn, the Municipality of Chatham-Kent and the Town of Blue Mountains. In each of these Official Plans, cannabis uses are permitted as-of-right in specific land use designations, subject to criteria, which means an Official Plan Amendment is not required. Of the municipalities that contain Official Plan policies, the Municipality of Chatham-Kent is the only municipality that does not require a Zoning By-law Amendment to permit cannabis uses, which are permitted as-of-right in certain zones in the Zoning By-law.

The Towns of Pelham and Halton Hills and the Township of Selwyn permit cannabis cultivation and processing within the Agricultural Area and Rural Area designations (the latter designation does not exist in Pelham). These Official Plans also require that an applicant demonstrate that cannabis processing is an agriculture-related use when it is being proposed as such and how it meets the four criteria for agriculture-related uses in the PPS guidelines. Both the Halton Hills and Selwyn Official Plans require a minimum setback of 50 metres from lot lines for outdoor

cultivation; however the Pelham zoning by-law requires a 300-metre setback instead.

The Town of Halton Hills also permits indoor cannabis cultivation and processing in the Employment Area designation. For the Township of Selwyn, the same applies but within the Industrial designation. Both Official Plans require a Zoning By-law Amendment to permit the use and it is subject to site plan control.

In the Municipality of Chatham-Kent, indoor cannabis production is permitted within the Employment Area and Rural Industrial designation. It is also permitted in the Zoning By-law, which means no Zoning By-law Amendment is required to permit the use, however the use is subject to setbacks. As is the case with Halton Hills and Selwyn, a cannabis production facility in Chatham-Kent is required to obtain Site Plan Approval.

The Town of Blue Mountains Official Plan has not been updated to reflect the terminology of the Cannabis Act. The Official Plan permits a medical marijuana production facility on lands that are designated Rural Employment Lands, Urban Employment Lands and Rural. However, a medical marijuana production facility is not permitted in the Agricultural or Special Agricultural designations. A Zoning By-law

Amendment is required to permit the use and it is subject to site plan control.

Each of the above Official Plans also require a varying number of policies that address matters such as compatibility with adjacent land uses, servicing, mitigation of potential adverse effects (odour, noise, traffic), and setbacks.

In addition to the above, the Town of Erin through a Council Report in October 2017 clarified how cannabis uses are interpreted within the Township's current Official Plan. In this regard, a cannabis production operation in a greenhouse is considered as a permitted use within the Agricultural Area designation and as an industrial use within the Industrial Area designation.

## **10.2 ZONE CLASSIFICATION FOR CANNABIS USES**

All of the municipalities that were reviewed in the Best Practices Review classify cannabis uses as being either an agricultural use or an industrial use in the Official Plan and/or Zoning By-law. In this regard, all of the Zoning By-laws recognize the use in either an Agricultural or Rural Zone or in some type of Industrial or Employment zone.

For the zoning by-laws that specifically

permit outdoor cultivation of cannabis, it is only permitted in the Agricultural or Rural zones. In a number of municipalities, indoor cultivation and/or processing is also permitted in the Agricultural or Rural zones, subject to certain criteria.

For the zoning by-laws that permit cannabis uses in the Employment zones, the use must be within a wholly enclosed building (which in some cases does not include a greenhouse) and typically has specific standards such as those that deal with setbacks from certain land uses and the requirement of site plan control to deal with specific site design matters. In these zones, outdoor cannabis cultivation would not be permitted.

## **10.3 DEFINING CANNABIS**

All of the municipalities reviewed permit cannabis uses in some way, either as-of-right or by requiring a site-specific Zoning By-law Amendment. However, there are varying approaches to how cannabis uses are defined in the Zoning By-laws that were reviewed. The following broad terms were used within the Official Plans and Zoning By-laws:

- Cannabis Growing and Harvesting Facility;



- Cannabis Production;
- Cannabis Production Facility;
- Cannabis Production and Processing; and,
- Cannabis Related Facility.

All of the definitions are intended to describe the specific cannabis uses that are permitted by the term, which can include any combination of cultivation, growing, processing, testing and packaging of cannabis. Some of the definitions also make reference to the Cannabis Regulation and/or the Cannabis Act, or a previous legislation as amended. A few of the definitions mention that retail sale is not permitted on the same property.

In some cases, municipalities have updated existing definitions such as agricultural use and industrial use to either include or exclude cannabis uses. For example, the Municipality of Chatham-Kent updated the definition of agricultural use to include a cannabis production facility and also updated the definition of industrial use to include a cannabis production facility, but exclude outdoor cultivation of cannabis. Another example is in the County of Norfolk, where three definitions (farm, garden centre and wholesale outlet) were amended to exclude cannabis production and processing.

The Town of Halton Hills and the Township of Selwyn have both introduced 6 cannabis definitions that mirror the types of licences that are available under the Cannabis Regulation, and these include:

- Cannabis Analytical Testing Facility;
- Cannabis Cultivation – Indoor;
- Cannabis Cultivation – Outdoor;
- Cannabis Drug Production Facility;
- Cannabis Processing Facility; and,
- Cannabis Research Facility.

Based on recent work completed in the Town of Pelham, specifically defining each use based on license class may no longer be necessary.

#### **10.4 OTHER ZONING PROVISIONS**

All of the municipalities reviewed in the Best Practices Review have implemented a varying number of specific zoning provisions that apply to cannabis uses. Below is a summary of the provisions that are most commonly used:

- Minimum setbacks from cannabis uses and other land uses, lots or certain zones. Typically the minimum setbacks are applied from a residential use or zone, institutional use or zone and open

space zones and sometimes these uses are referred to as sensitive land uses.

- The setbacks appear to range from 50 metres to 300 metres, however 150 metres and 300 metres appear the most often;
- Separation distance between greenhouses, buildings and structures that are part of a cannabis operation;
- Requirement for a security fence around the premises that require the same setbacks as facilities. It is noted that the presence of a security fence is also a requirement of a Cannabis licence;
- Parking requirements that include a number of spaces based on building size;
- Loading spaces are generally required to be located within a wholly enclosed building;
- Site Plan Control is required in many of the zoning by-laws to address site matters;
- Requirement for mitigation from potential adverse effects such as light, air and odour emissions that may be supported by the submission of certain studies related to odour and dust,

transportation, light, hydrogeological requirements and others; and,

- Prohibition of retail stores and sales as well as dwellings on the same property as a cannabis operation.



## 11.0 CANNABIS FILES AT THE LOCAL PLANNING APPEAL TRIBUNAL

The purpose of this section of the Report is to provide an overview of applications that are at the LPAT that deal with cannabis regulations.

### 11.1 CITY OF HAMILTON

On September 12, 2018, City Council adopted a City-initiated Official Plan Amendment and Zoning By-law Amendment to regulate cannabis growing and harvesting. Below is a summary of the LPAT appeal.

**Issue Date:** May 10, 2019  
**Case No.:** PL180818, PL180819  
**Appellants:** Red Hill Cannabis Inc.  
**Subject:** OPA 21 and ZBL 18-266  
**Municipality:** City of Hamilton

The purpose of OPA 21 was to revise medical marihuana growing and harvesting facility policies to reflect the recent approval of the Cannabis Act and to include additional regulations related to the use.

The purpose of the Zoning By-law amendment was to introduce new definitions into the comprehensive ZBL 05-200, as amended, most particularly with respect to a cannabis growing and harvesting facility, and replaced references to medical marihuana throughout the by-law. The ZBLA also introduced additional regulations for a cannabis growing and harvesting facility as well as enhanced setback standards from sensitive uses, the latter being the provisions that largely drew the appeals.

On May 2, 2019, the first case management conference was held on the appeals to OPA 21 and ZBL18-266. LPAT issued partial approval for the unappealed portions of OPA 21 and the ZBLA. The following policy in OPA 21 remains under appeal:

- *4.1.1. d) An appropriate setback between a cannabis production growing and harvesting facility and a sensitive land use shall be established in the Zoning By-law.*

In addition to the above, the following provisions of the ZBLA that apply to the rural zones remain under appeal:

- *12.1.3.1 m) iv) Notwithstanding Section 4.12 d), any building, structure used for a cannabis growing and harvesting*

*facility shall be setback a minimum of 150 metres from:*

- *Any portion of a lot line abutting Residential, Institutional Commercial and Mixed Use Zones, Settlement Residential (S1), Settlement Commercial (S2) or Settlement Institutional (S3) Zone; or,*
  - *Any residential dwelling unit existing at the date of the passing of the by-law, any building used for farm labour residence, mobile home, educational establishment, residential care facility, place of worship, day care or park.*
- *12.2.3.1 m) iv) Notwithstanding Section 4.12 d), any building, structure used for a cannabis growing and harvesting facility shall be setback a minimum of 150 metres from:*
    - *Any portion of a lot line abutting Residential, Institutional Commercial and Mixed Use Zones, Settlement Residential (S1), Settlement Commercial (S2) or Settlement Institutional (S3) Zone; or,*
    - *Any residential dwelling unit existing at the date of the passing of the by-law, any building used for farm*

*labour residence, mobile home, educational establishment, residential care facility, place of worship, day care or park.*

On December 19, 2019, the second case management conference was held with the purpose of finalizing the issues list and discussing the scoping of the appeals to a site-specific appeal. The Appellant indicated that their Counsel had withdrawn and they were seeking new Counsel. The LPAT ordered a subsequent case conference meeting to finalize the issues list and scope the appeals.

On February 18, 2020, a third case management conference was held with the Tribunal at which time the City noted that numerous attempts had been made to finalize the issues list without success. The City indicated that they would be bringing a motion to the Tribunal to dismiss the appeals on the grounds that the Appellant has failed and/or refused to comply with directions from the Tribunal. In the alternative the City indicated that they would be bringing a motion to have the appeal scoped in order to have the amendments under appeal brought into force throughout the City, save and except for the Appellant's property.

## 11.2 TOWN OF CALEDON

On April 23, 2019, Town Council adopted a Zoning By-law Amendment to regulate cannabis production facilities. Below is a summary of the LPAT appeal.

**Issue Date:** February 18, 2020  
**Case No.:** PL190256  
**Appellants:** Kelly Roldo and 1994192 Ontario Inc. c.o.b. as L.L.C Farms  
**Subject:** ZBLA 2019-27  
**Municipality:** Town of Caledon

The purpose of the Town-initiated Zoning By-law Amendment was to amend comprehensive ZBL 2006-50 to permit and regulate cannabis production facilities in Prestige Industrial (MP) and service industrial (MS) zones within the Town, by deleting, adding and amending definitions and general provisions to reflect new legislation and requirements and changing the permitted use in the A2-595 zone to permit a cannabis production facility rather than a medical marihuana production facility.

The Appellant has applied for and expects to receive a Federal licence to grow cannabis on a property that they lease at 2049 Highpoint Sideroad. Their issues with

the amendment were: is growing cannabis a permitted use and what are the requirements that need to be met to get necessary permits for the building(s) on site for the intended activities.

Counsel for the Town indicated that the issues list appeared to deal with agricultural matters. However, the purpose of the ZBLA was to update the references to medical marihuana production facility in the existing Zoning By-law to cannabis production facility to reflect the changes in the Cannabis Act. The ZBLA did not propose to allow the use anywhere other than in the industrial zones where the use was already established and permitted in the Town's Zoning By-law for a medical marihuana production facility.

## 11.3 COUNTY OF NORFOLK

On May 28, 2019, County Council refused a site-specific Zoning By-law Amendment to permit a cannabis production facility in the rural area. Below is a summary of the LPAT appeal.

**Issue Date:** February 13, 2020  
**Case No.:** PL190355  
**Appellants:** 1970488 Ontario Inc.  
**Subject:** Application to amend Zoning

**DECEMBER 14, 2020**

49

**By-law No. 1-Z-2014 – Refusal of Application by the County**

**Municipality: County of Norfolk**

The proposed privately - initiated Zoning By-law Amendment included a site-specific provision to permit a cannabis production facility located on a property in a rural area. The property was previously used for vegetable production and contains a large greenhouse and an existing farm dwelling.

The County's staff report from May 28, 2019, indicated that rural residential lots to the east, south and west, and an orchard to the north surround the property. The cannabis production processing facility being proposed on the subject property was located 12 metres from a sensitive land use (single detached dwelling) where the Zoning By-law requires a minimum of 150 metres for a facility that is equipped with air treatment control. In addition, the application requested a reduction in the minimum required parking spaces to 9 spaces, where the Zoning By-law requires a minimum of 62 parking spaces be provided.

On the basis of the above, County staff recommended refusal to County Council on the basis that the application is not consistent with the PPS, the County Official Plan and does not represent good planning.

Council agreed with Staff's recommendation and refused the application.

A hearing has been scheduled for November 20<sup>th</sup>, 2020.

## 12.0 REGULATORY OPTIONS FOR CONSIDERATION

The establishment of various cannabis operations throughout Ontario has highlighted the importance of ensuring that adverse effects are considered in the development of an approach to regulating cannabis at the local level. In particular, odour and lighting impacts from larger operations need to be considered. As demonstrated in earlier sections of this report, Official Plan policies and/or Zoning By-law provisions can be crafted to ensure that these factors are considered when a new cannabis operation is being proposed.

The Township's current zoning provisions for cannabis production facilities apply to indoor facilities only and are permitted in the Urban Employment Zone. There are currently no provisions that apply to indoor facilities elsewhere in the Township.

A number of regulatory options were prepared for consideration that include options to include policies in the Township OP and provisions in the Township ZBL to regulate cannabis cultivation and processing.

It is our opinion that the inclusion of policies in the Township OP for cannabis cultivation and processing could provide clarity to staff and producers on where such uses are permitted and what factors need to be considered for potential future cannabis operations.

In addition to the above, a number of options were considered to regulate cannabis uses in the Township ZBL.

### **OPTION A – REQUIRE SITE-SPECIFIC ZONING FOR INDOOR CANNABIS CULTIVATION AND PROCESSING**

Option A would permit indoor cannabis cultivation and processing in the Agricultural and Rural designations in the Township OP, including the ORM sub-designations, subject to certain criteria.

Cannabis processing would also be permitted as-of-right in the Rural Employment and Urban Employment Areas designations, subject to the same criteria. The Township OP would need to include a

policy to require a site-specific rezoning for each cannabis application and would need to establish the criteria/policy test for evaluating rezoning applications, such as setbacks, adequate servicing, and air quality and odour control.

These criteria would be designed to demonstrate that:

- 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;
- 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 required studies;
- 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;
- 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;

- The proposed facility can be serviced with an appropriate water supply and an appropriate means of sewage disposal;
- Stormwater management needs can be met on site;
- The waste generated from the facility can be appropriately managed; and
- The proposed setback, as determined by required studies from sensitive land uses in the area is appropriate to avoid, and if avoidance is not possible, minimize and appropriately mitigate any adverse effects.

Policies in the OP would also set out what the study requirements are. These could include: Odour Emission and Dispersion Modelling Report, Contingency Odour Mitigation Plan, Light Mitigation Plan, Contingency Light Mitigation Plan, Agricultural Impact Assessment and, Traffic Impact Study. The results of these studies would be used to establish an alternative minimum setback from sensitive land uses to be included in the site-specific Zoning By-law Amendment, if it is determined that the established standard setback is not appropriate.

Site Plan Approval would also be required.

The Township's ZBL would also need to be updated, however it would only include definitions for the types of cannabis uses and would not permit them in any zones. This would involve removing a cannabis production facility as a permitted use in the Urban Employment Zone. Since a rezoning would be required to permit the use, this means that a public process with mandatory public consultation would also be required.

In addition to the above, the Township's ZBL would also need to require a minimum parking requirement for all cannabis uses. In this regard, the following parking standard is recommended:

- 1/100 square metres of gross floor area.

Given that it is not possible to predetermine what the setbacks would be or could, no setback requirements would be included within the Township's ZBL. A 300-metre setback for outdoor cultivation from sensitive uses could also be implemented in the Township's ZBL, along with express permission for outdoor cultivation. Meridian Planning Consultants can support this option, because it establishes a conservative approach to permitting this use.



## **OPTION B – CONTINUE TO PERMIT AS OF RIGHT IN URBAN EMPLOYMENT ZONE IN MILLBROOK**

This option would apply the same as-of-right permissions in the Township OP as described in Option A.

The differences for implementation would occur within the Township ZBL. Option B would permit cannabis processing in the Urban Employment zone as-of-right provided that a minimum 150-metre setback from sensitive uses is met. This is consistent with the current approach where a cannabis production facility is a permitted use (however, with a setback being added). However, the permissions and definitions would be updated as per Option A. Indoor cannabis cultivation and processing in the Agriculture zone, Rural zone, ORM zones and Rural Employment zone would require a rezoning application to permit the use as per Option A.

Given that the Urban Employment Zone in Millbrook is mostly undeveloped and with very few sensitive uses in the area (with the exception of the new community centre to the west of the southern extent of the Urban Employment zone and an emerging residential area to the south), establishing such a use would appear to be feasible.

Site Plan Approval would be required for all proposals for cannabis uses.

Meridian Planning Consultants can support this option, because the use is already permitted in the Urban Employment Zone and it appears very probable that a minimum 150-metre or greater setback can be established. Notwithstanding the above, a greater setback may be desirable from the new residential area to the south and the new community centre.

## **OPTION C – PERMIT AS OF RIGHT IN URBAN EMPLOYMENT ZONE IN MILLBROOK AND OTHER RURAL EMPLOYMENT ZONES**

This option is the same as Option B, but would permit indoor cannabis facilities in Rural Employment Zones as well, subject to a 150-metre setback being maintained. These rural employment zones are located to the south of Cavan on County Road 10, to the north and west of the Mr. Pleasant Road and Highway 7 intersection, the south side of Whittington Drive east of Highway 7 and extensive undeveloped areas on the Clifford Line, Moncrief Line and extending south from Brown Line.

Most of the above areas (with the exception of the lands on the south side of

Whittington Drive) are undeveloped or under-developed and are generally well setback from sensitive uses. A further review of land uses adjacent to these Rural Employment Zones would need to be carried out to determine if this option can be supported from a land use planning perspective.

Draft





## MEMORANDUM

**To:** John Connolly, Yvette Hurley  
Township of Cavan Monaghan

**From:** Alison Luoma

**Date:** September 21, 2021

**Re:** Assessment of Cannabis Operations

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I have done a bit of research and have an answer for you in regards to Councillor Graham's inquiry on the assessment of cannabis operations.

There are roles for each of the levels of government in establishing the property assessment for a cannabis operation. As you are familiar:

- The federal government through Health Canada issues commercial licenses for the cultivation and processing of cannabis;
- The Provincial government, through MPAC, determines the classification of a property for tax purposes as well as the assessment applied under the Assessment Act;
- The municipal government allocates land use designations and zoning as well as tax rates.

The key inquiry has been should cannabis operations be assessed as agricultural uses or industrial uses? The type and impacts associated with a cannabis operation vary greatly. A warehouse operation in an industrial district is more akin to a pharmaceutical operation than a traditional farm. Likewise, an outdoor operation that simply cultivates a crop, is more in line with an agricultural operation.

MPAC made a determination on this in 2019. The answer is that a cannabis operation may be

assessed as both an industrial use and/or an agricultural use. The Province relies on a hybrid classification system whereby the uses on each portion of the property are assessed independently. Thus, a single property may have a split assessment applied to it with both an industrial and an agricultural assessment applied to various portions of the property.

As of November 2019, there were approximately 200+ cannabis operations in Ontario. MPAC is in the process of individually inspecting every single operation to determine the appropriate assessment for each individual use. Thus, there is no one size fits all. In coming to a determination, MPAC is relying on a number of sources of information including but not limited to Canada Revenue tax definitions<sup>1</sup>, specifics of the federal license issued by Health Canada, the established use of the property, municipal building permits issued, a site visit by MPAC assessors, and historical assessments for a given property. This list is not exhaustive. Thus, the assessments applied amongst cannabis operations will vary.

The question from Councillor Graham regarding the impact on property assessment of permitting cannabis operations in an industrial area was directly addressed in a webinar provided by MPAC for municipalities on November 6, 2019. In essence, the approach taken by MPAC is that the assessment and classification of the property is based on the use, not zoning. So for example, if there was a cannabis cultivation use on lands zoned industrial, the assessment applied to that use would be that of an agricultural use provided that the use is strictly cultivation with no processing on the site. In such as case, this would represent the loss of potential industrial assessment to the municipality. Similarly, if there was a cannabis operation in an agricultural zone that held both a cultivation license and a processing license, that portion of the use that was used for the processing of cannabis would be given an industrial assessment even though the property is located in an agricultural zone. This specific question is addressed at approximately the 29 minute mark of the webinar. Below is a link to the MPAC webinar from November 2019:

<https://www.youtube.com/watch?v=C-7zudPJPsg&list=PLQXpjZB0TXxkhe9C6GsGILX-CPSOFy44r&index=24>

Below are two additional articles which may also be of assistance. Both articles are dated 2019. It should be noted that given the fast pace at which cannabis policy and regulations are evolving, there may be policy or regulatory developments beyond those reported on in these articles.

<https://www.altusgroup.com/services/insights/nugs-of-knowledge-for-canadas-cannabis-producers/>

<https://renx.ca/cannabis-farming-property-assessment-industry-agriculture/>

Please do not hesitate to reach out if there are any further questions regarding our recent cannabis report or presentation.

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<sup>1</sup> The CRA provides that if any processing or manufacturing is involved in a use then it is considered a commercial use. However, the CRA has also characterized cannabis cultivation as farming.



March 7, 2022

Township of Cavan Monaghan  
988 County Road 10  
Millbrook, ON L0A 1G0

Attention: Mr. John Connolly  
*Executive Director of Planning and Development*

Re: Overview of Odour Management Plan for Town Council

Project #: TCM2022-450

## 1. INTRODCUTION

The Township of Cavan Monaghan (“Town”) is amending the Official Plan, developing a new by-law and site plan control instruments to accommodate licensed cannabis production. Through Ms. Alison Luoma from Meridian Planning Consultants (“Meridian”), PG Compliance Management Inc. (“PG Compliance”) was retained by The Township of Cavan Monaghan (“Township”) to:

- i. attend the January 17, 2022 council meeting and provide an overview of an Odour Management Plan and answer questions.
- ii. after the Council meeting, provide a summary of odour management plans and incorporate the responses to questions asked during the council meeting.

Aside: Unfortunately, because of adverse weather, the January 17<sup>th</sup> council meeting was postponed until January 24, 2022 and on that date I was engaged in an OLT hearing. However, provided below is a summary of an Odour Management Plan and a response to a question asked during the January 24<sup>th</sup> council meeting <sup>(1)</sup>.

## 2. BACKGROUND

Indoor cannabis cultivation facilities have Federal, Provincial and Municipal obligations. Federally, in accordance with Section 85 of the Cannabis Regulations licensed cannabis producers must install air filtration systems that prohibit the release of odorous air to the outdoors. Provincially, in accordance with Sections 6 and 14 of the Environmental Protection Act, these facilities must not release chemical contaminants in an amount that exceeds provincial air limits, and emitted odour cannot cause adverse effects where adverse effect includes loss of

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<sup>1</sup> The January 24, 2022 meeting was reviewed via YouTube <https://www.youtube.com/watch?v=4exiAmAQzYA>



enjoyment of normal use of a property and interference with the normal conduct of a business to name a few. Municipally, obligations are established through Official Plan amendments, by-laws and site plan controls.

Odour from indoor cannabis cultivation can migrate many kilometers from the source if not adequately mitigated and land separation buffers by themselves provide no guarantee that adverse effects will be prevented. However, when used together, mitigation and separation can help prevent complaints.

There are a wide variety of odour controls that can be employed to help mitigate cannabis odour. Common air filtration and odour control technologies include high efficiency particulate air filters (“HEPA”), charcoal filters, multi-media scrubbers, odour neutralizers, odour character modifiers, and ultraviolet/ozone to name a few. The odour removal effectiveness of each type of control device can vary considerably and technology selection should be site specific taking into consideration factors including odour strength, exhaust flowrates, and proximity of surrounding receptors such as houses, schools, daycares, hospitals, etc.

In my opinion, to make informed land use planning decisions, Township staff should require proponents to submit an air quality study with their site-specific applications. The study should document the air emissions from the facility and predict the impact of those emissions along the property boundaries of the facility and beyond into the surrounding community. If chemical contaminants are included with odour, the study will demonstrate that provincial air quality limits are satisfied, and the odour modelling will provide Township staff with insight into the likelihood of adverse effects and complaints.

Odour can be measured, and community impact can be modelled using atmospheric dispersion modelling. The Ministry of the Environment, Conservation and Parks (“MECP”) has protocols and guidance materials that are very well known to air practitioners across the province meaning that no new scientific techniques need to be developed.

Odour is present in the air we breathe. In some instances, the odour concentration will be too low for us to detect any odour, such as a rose garden two blocks away, and in some instances the odour will be easily recognizable like when bread comes out of the oven. When the strength of the odour is very low, at a sub-detection concentration, your brain does not acknowledge any odour. At the odour detection threshold, your brain registers a physiological response to the odour stimulus which could be as subtle as goose bumps or the hair on your neck stands up or you simply sense that something in the air has changed. It is not necessarily a smell. At higher odour concentrations you can smell the odour and describe it (I like it, I don’t like it, it smells sweet or putrid, or like a chemical or like a skunk). The point at which 50% of a normal group of people with a normal sense of smell can just detect an odour is defined as one (1) odour unit (“1 OU”). Generally, at 2 odour units or higher, you may be able to recognize or describe the odour and, as the strength increases, so does the likelihood that some individuals will find the odour offensive and complain. Understanding odour numbers is important if the Township incorporates odour limits in the by-laws.



Most people believe that odour is subjective, and they are partially correct. When you are exposed to an odour at the detection threshold, odour is objective because you cannot instruct your brain to register a physiological response. You cannot formulate any opinion because the odour concentration is too low. However, once the concentration is strong enough and you can recognize or describe the odour, it becomes subjective because your experiences influence your opinion of the smell. Fortunately, when odour is analyzed in the laboratory, using trained and calibrated assessors, they determine the odour detection threshold (detection concentration) which is an objective measure and not personal.

Odour complaints are normally associated with the **F**requency of impact, **I**ntensity of the odour, **D**uration of the odour impact, **O**ffensiveness of the odour and **L**ocation of the odour impact (“FIDOL”). For example, if an offensive odour impacts your house regularly then you may be more apt to complain compared to an odour impact that smells pleasant, is infrequent or impacts a vacant field. When assessing the likelihood of complaints, these FIDOL factors are commonly considered in the risk analysis.

With this brief overview of the science of odour, details of an Air Quality Study (“AQS”) and Contingency Odour Control Plan are provided below.

### 3. Air Quality Study

Regarding indoor cultivation of cannabis, the primary purpose of an Air Quality Study (“AQS”) is to demonstrate that odour from the facility will be appropriately contained and controlled and that emissions will not likely cause adverse effects. The Township can regard the AQS as a risk assessment tool. For example, if odour modelling demonstrates a high odour concentration of an offensive odour, and the impact in the community is predicted to be frequent, then complaints can reasonably be anticipated. Conversely, a low concentration infrequent odour impact would present less risk.

A simple AQS will include:

- i. a description of the cultivation process
- ii. a list of the significant air emission sources
- iii. quantification of odour and chemical emissions <sup>(2)</sup>
- iv. property line and off-property contaminant impact predictions
- v. description of the emission control equipment and odour containment and management protocols employed, and

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<sup>2</sup> In accordance with the Ontario EPA, air emissions from cannabis cultivation facilities must not exceed provincial air limits. If the Public is concerned about chemical releases from cannabis cultivation, then the Township should / could include the requirement to include odour and chemicals released from the facility.



- vi. a description of preventative maintenance and inspection measures employed to ensure the odour control system continues to operate optimally.

The AQS submission to the Township should also include the electronic dispersion modelling files so that the Township's peer reviewer can validate the key inputs and conclusions and provide guidance on the likelihood of complaints.

#### **4. Contingency Odour Control Plan**

Despite best efforts, odour complaints may still occur which could warrant implementation of additional odour controls at the owner's expense. It will be important to ensure that the complaints are substantiated and not associated with NIMBYism. Consequently, substantiated complaints or the additional mitigation "triggers" should be defined so that all parties know when additional mitigation will be needed. Triggers could be X number of substantiated odour complaints in a month by Y different people, or it could be community odour measurement based, or perhaps Township staff would investigate upon receipt of a complaint, or some other agreement between the Township and the proponent.

When odour complaints occur and it becomes evident to the Township that additional mitigation is needed to reduce or eliminate adverse effects, the cannabis facility should be prepared and obligated to implement controls to lower the community odour impact in a timely manner. This is where a Contingency Odour Control Plan is useful.

The contingency plan should be prepared in advance so that if substantiated odour complaints occur, the facility is prepared and committed to ordering the equipment, and quickly implementing corrective action. Too often, once complaints occur, a facility will initiate a study, consult with suppliers, develop a plan, report back to the Township, order the equipment, and then install and commission. Such a process can take many months while the adverse impact continues. However, if the contingency plan is already in place, it should greatly expedite the process because the equipment and probably the suppliers have already been identified.

The Plan should document the following:

- a. a description of current odour controls and odour management systems employed to contain and mitigate odour
- b. a detailed description of the additional odour controls and management systems that will be employed in the event of substantiated complaints
- c. an estimate of the anticipated odour reductions that will be achieved once the plan is implemented
- d. preventative maintenance programs that will be implemented

- e. odour control monitoring systems and measures that will be employed to ensure the odour containment and control system continues to operate at maximum efficiency

Like the AQS, the contingency odour control plan should be peer reviewed at the proponent's expense which should ensure that the proposal is sound. It is unfortunate but often equipment suppliers will not guarantee the odour reduction performance of their equipment and the consumer (cannabis cultivator) buys technology that is unlikely to provide meaningful odour reductions and, in some instances, may increase the off-property odour impact. For this reason, a peer review may help flag some deficiencies in the plan that will help protect the buyer and the community.

Lastly, there should be an acknowledgement in the site plan agreement that in the event of ongoing complaints, more mitigation will be required.

#### **5. January 24, 2022 Council Meeting Question by Councillor Huntley – Are odour controls required or legislated?**

Unfortunately, because of a scheduling conflict, the author could not attend the January 24 Council meeting. However, the YouTube video of the meeting was reviewed afterwards. Relevant sections included the presentation by Ms. Alison Luoma, Meridian Planning, and the presentation by Mr. Lenny Kerman, Longhouse Craft Cannabis.

After Mr. Kerman's presentation on "Cannabis Odour Mitigation", Councillor Huntley asked Mr. Kerman about odour controls.

Councillor Huntley's Question (paraphrased): You mentioned that it is in the cannabis producer's best interest to install odour controls but is it required or legislated for them to install odour controls?

Mr. Kerman's Response (paraphrased): It is not legislated that cannabis producers must install a carbon filter system, but the Cannabis Act states that licensed producers must make every attempt to reduce odour leakage from their facility.

My Response: The federal Cannabis Regulations, Section 85 speaks to odour controls and establishes a standard of care. Section 85 states:

***System — filtration and ventilation***

*85 (1) Any building or part of a building where cannabis or anything that will be used as an ingredient is produced, packaged, labelled, stored or tested must be equipped with a system that*

*(a) filters air to prevent the escape of odours associated with cannabis plant material to the outdoors;*

Based on the legislation, Section 85 establishes a prohibition against the release of odour from the licensed cannabis cultivation facility. In my experience achieving zero odour emissions can



be challenging and perhaps financially and technologically infeasible. As an alternative, the Township can try and protect the community from adverse odour effects through development and implementation of appropriate land use planning instruments that could include setbacks, air quality studies, and contingency odour mitigation plans.

The draft Official Plan Amendment and draft Zoning By-law Amendment being considered by the Township require a minimum 300 metre separation distance between cannabis operations and surrounding sensitive land uses. With the air filtration options available and an established Contingency Odour Control Plan, the proponent can decide to locate further away from sensitive receptors beyond the minimum 300 metre requirement and potentially save on odour controls or locate in accordance with the 300 metre threshold and maximize investment in odour control efficiencies.

If more questions arise, please direct them to [phil@pgcompliance.com](mailto:phil@pgcompliance.com).

Regards,

**PG Compliance Management Inc.**

Prepared by:

A handwritten signature in blue ink, appearing to read 'Phil Girard', is written over a light blue horizontal line.

Phil Girard, P.Eng.  
President



## Attachment No. 11 - Public & Agency Comments

Comments: Marion and Ross Thompson

Dated: December 16 2021

I am opposed to Official Plan Amendment, Zoning By-law amendments and Site Plan Control by-law Amendment for the purposes of Cannabis Production Facilities in the Township of Cavan Monaghan. Applications Nos. OPA-02-21 & ZBA-06-21. I do not believe this is in the best interest of our community or our citizens for the following reasons.

### 1) Safety and Security of our Water Resources.

We are all aware of climate change and the impact it is having on our weather patterns around the world including Canada. Wild fires, flooding etc. Record rainfall in BC recently caused the water and wastewater treatment plant in Merritt to fail resulting in all residents having to evacuate. And who can forget the farms completely under water while farmers were trying to lead their cows to safety. Dropping feed from aircraft for those they weren't able to get to in their barns. Thousands of chickens pigs and other animals perished.

There is a publication on the Ontario Government website prepared by the MNR entitled: **Climate Change and Ontario's Water Resources** -[stdprod\\_109241.pdf \(ontario.ca\)](#)

The report talks about the effects of climate change :

“Extreme weather events such as intense precipitation may increase the frequency and level of high water flow events. This combined with increased runoff from hardened surfaces in urban areas increases the likelihood of severe flooding and erosion, and increases the risks these present to human life and property. Meanwhile, warmer average air and water temperatures may lead to lower water levels in Ontario's lakes and rivers, particularly during the summer. Increases in evaporation and decreases in summer precipitation may lead to occurrences of drought. **Changes to water supply will be difficult to predict and could mean that there may be less water available for residential use, agriculture, industry, waterpower generation, transportation, or recreation. Ecologically, changes to water supply will impact Ontario's biodiversity, our wetlands, our shorelines and our forests.**”

Explosive residential growth is being experienced in our Township including proposed or approved applications for some 1700+ units with several more developments in the pipeline . It is important that we keep our water safe and secure for the future of the people living in the Township. Cannabis production facilities will take a great deal of the groundwater. We should be using the precautionary principle to ensure the health and safety of our environment and our citizens. It is my opinion in these precarious times our water resources should be put to better use, not in the production of cannabis.

2) We are living through a pandemic, the first one in over a hundred years. This has taught us a lot about Canada needing to be more self- sufficient while still being part of the rest of the world. Nothing made that more clear than the fact that we gave up our vaccine manufacturing facilities. We had to rely on other countries to produce the vaccines necessary to keep us from the terrible effects of the corona virus, including the variants. This has continued to plague us for almost two years with no end in sight. We have also seen supply chain issues throughout the world resulting in delays, much higher prices and shortages for products that we consume.

Our food supply needs to more self- sufficient. We cannot rely on food imports to keep us fed.

**According to the Ontario Federation of Agriculture over the past two decades Ontario has lost farmland at a rate of 175 acres (about 70 hectares) per day, the equivalent of five family farms each week**

Cavan Monaghan Township has some of the best agricultural land in Ontario, growing quality food for more than 200 years. By allowing cannabis “production facilities” and “outdoor cultivation” of cannabis on agricultural land we would be contributing to the further loss of productive farmland.

“Outdoor cultivation” on agricultural land while licence driven could result in production of 5,10,25,50, 100 or more acres of land being utilized to grow cannabis. This could also lead to and encourage “unwanted visitors” to our township resulting in the need for more security and police presence to keep our community safe.

The experts tell us that pandemics will be more frequent in the future and we need to be prepared for these events. We need to be self- sufficient and ensure that we keep our fertile farmland in food production. It is a much more important commodity than cannabis. Some would hold the opinion that we **want** cannabis in our Township. I would submit that food is essential to our survival and should be the first priority of the Township

Council should say NO to the proposed Applications Nos. OPA-02-21 & ZBA-06-21 allowing cannabis production facilities and outdoor cannabis cultivation in our Township.

Marion Thompson  
1173 County Road 21  
Millbrook

## ORCA Comments

**From:** Matt Wilkinson <[mwilkinson@otonabeeconservation.com](mailto:mwilkinson@otonabeeconservation.com)>

**Sent:** Friday, December 17, 2021 11:44 AM

**To:** John Connolly <[jconnolly@cavanmonaghan.net](mailto:jconnolly@cavanmonaghan.net)>; Karen Ellis <[kellis@cavanmonaghan.net](mailto:kellis@cavanmonaghan.net)>

**Cc:** Donald Allin <[dallin@otonabeeconservation.com](mailto:dallin@otonabeeconservation.com)>

**Subject:** RE: Official Plan Amendment (OPA-02-21), Zoning By-law Amendment (ZBA-06-21) and Site Plan Control Amendment (no File No. assigned) - Cannabis Production Facilities - Township of Cavan Monaghan

Hello,

Otonabee Conservation has no additional comments related to the proposed Official Plan Amendment (OPA-02-21), Zoning By-law Amendment (ZBA-06-21) and Site Plan Control Amendment.

Please feel free to contact me if you have any questions.

Thank you,

Matt



### **Matt Wilkinson**

Planner

Otonabee Region Conservation Authority

250 Milroy Drive, Peterborough, ON, K9H 7M9

705-745-5791 x213

## Future Watch Comments

Dear Councillors,

I am writing on behalf of our new ratepayers' group, Cavan Monaghan Futurewatch, to express concern about the proposed bylaw amendment that would allow cannabis production within the Township boundaries.

The nuisance impacts caused by the odour from cannabis production would adversely affect the use and enjoyment of land by property owners and recreational users for as much as a 5 km radius. Cannabis production facilities will almost certainly create net negative economic impacts including to nearby property values, to the recreational and tourism value of the area and to neighbouring commercial properties. The adverse affects to the community and other commercial endeavours outweigh any economic benefit they would bring to the area.

Here are quotes from residents of two different municipalities in Ontario who have experienced what it is like to live near a cannabis production plant:

"skunk smell that permeates everywhere"

"The obnoxious odour that takes your breath away, that you can taste on your lips and burns your eyes and penetrates your home; that makes you ill and gives you sleepless nights and can even make you vacate your home, is unacceptable." -- (These are the words of someone who lives 5 km from such a facility.)

Concern about the impacts of these facilities is not a "fringe" issue. In a recent Blog article, the Ontario Professional Planners Association said the following about Cannabis Production facilities:

"Can you imagine living next to 10,000 skunks? For some Ontario residents, this is their new reality". <https://ontarioplanners.ca/blog/planning-exchange/june-2018/change-is-in-the-wind>

Cannabis production facilities have now been around long enough that Cavan-Monaghan should be guided by the experience of others to understand what they will mean for our Township.

Introducing cannabis production into our midst will almost certainly become a complaint, land use conflict and enforcement issue for the Township. Odour bylaw enforcement has become an expensive and cumbersome issue for many municipalities. A quick scan of news articles talks of the need for municipalities, such as the small town of Pelham, to buy monitoring equipment to help it with bylaw enforcement and how Simcoe County has had to seek assistance from the Federal Government on nuisance mitigation. <https://www.orilliamatters.com/local-news/simcoe-county-asking-feds-for-help-to-deal-with-cannabis-issues-3132083>

In addition to the nuisance problems associated with Cannabis production, health and safety concerns are emerging for people who work in the facilities and who live near them. There is a near total absence of study on issues of worker health and safety exposure to cannabis production. Nor have the long term impacts of exposure to nearby residents been studied, including impacts on sensitive individuals such pregnant women and people with chronic health problems. Agencies including Public Health Ontario have flagged the absence of literature on this subject:

<https://www.safetyandhealthmagazine.com/articles/21427-workplace-exposures-in-the-cannabis-industry>

It is difficult to understand why our Township would be running towards these potentially harmful and certainly unpleasant facilities with open arms while virtually every other municipality in Ontario is doing what they can to close the doors on new facilities while trying to mitigate the impacts from existing cannabis production sites. Here is a partial list of municipalities that have recently passed interim control bylaws to pause approval of additional facilities while they study and try to find ways to mitigate their negative impacts: Norfolk, Niagara-on-the-Lake, Pelham, Wainfleet, Welland, Port Colborne, Thorold, St. Catharines, Orilla, Essa, New Tecumseh, Clearview, Fort Erie, Creemore, Cobourg, Trent Hills, East Gwillimbury, Port Hope, Brock and Scugog.

Cavan Monaghan is lucky enough to be one of the municipalities in the province that doesn't currently permit cannabis production as a land use. We urge you to keep the door closed on this issue-- there can be no compelling reason to open the doors to something we all know will cause land use conflict, potential health impacts and nuisance within the Township.

Below is a quick list of news articles and publications that discuss the adverse community impacts from cannabis production facilities. Please read about the experience of other municipalities and residents. If you are still tempted to approve this OP amendment after reviewing the articles, we ask you to pause before approving until you are able identify and connect with a single municipality *anywhere* in Ontario that has had a positive experience from the presence of a cannabis production facility and which has found that, at the end of the day, the jobs it produced were worth the harm such a facility has caused.

Sincerely,

Nancy Jack

Cavan Monaghan Future Watch

publications and academic articles

[file:///C:/Users/nancy/Downloads/gfung,+Vaughan,+Mathew+-+FINAL%20\(1\).pdf](file:///C:/Users/nancy/Downloads/gfung,+Vaughan,+Mathew+-+FINAL%20(1).pdf)

1. <https://ontarioplanners.ca/blog/planning-exchange/june-2018/change-is-in-the-wind>
2. [https://uwspace.uwaterloo.ca/bitstream/handle/10012/17098/Boerema\\_Gerrit.pdf?sequence=6&isAllowed=y](https://uwspace.uwaterloo.ca/bitstream/handle/10012/17098/Boerema_Gerrit.pdf?sequence=6&isAllowed=y)

health and safety concerns:

3. <https://www.safetyandhealthmagazine.com/articles/21427-workplace-exposures-in-the-cannabis-industry>

<https://workersafety.3m.com/growing-worker-safety-concerns-medical-marijuana-industry/>

[https://www.publichealthontario.ca/-/media/documents/e/2018/eb-cannabis-production-odours.pdf?sc\\_lang=en](https://www.publichealthontario.ca/-/media/documents/e/2018/eb-cannabis-production-odours.pdf?sc_lang=en)

News articles about Cannabis production and odour Nuisance problems:

1. <https://www.cbc.ca/news/canada/ottawa/smelly-cannabis-production-blair-bc-ontario-1.5164646>
2. <https://financialpost.com/cannabis/pot-producers-face-pushback-over-odour-smell-in-ontario-farming-town>

3. <https://windsorstar.com/news/local-news/neighbours-plead-with-city-to-regulate-skunky-odours-from-monstrous-legal-grow-op>
4. <https://www.brantfordexpositor.ca/news/local-news/city-looks-into-odour-by-law-to-deal-with-stinky-pot-growing-operations>
5. <https://www.timminstoday.com/around-ontario/ontario-niagara-area-town-buys-5000-device-to-measure-weed-smell-after-repeated-complaints-from-residents-2545977>
6. <https://www.growopportunity.ca/smell-science-addressing-odour-issues-in-growing-cannabis-32422/>
7. <https://www.nytimes.com/2018/12/19/us/california-marijuana-stink.html>
8. <https://wtop.com/business-finance/2021/05/biggest-complaint-about-cannabis-growers-the-smell/>
9. <https://www.summerlandreview.com/news/salmon-arm-residents-city-frustrated-with-health-canada-on-cannabis-odour-concerns/>
10. <https://www.achrnews.com/articles/143060-reducing-cannabis-odors-is-a-growing-concern>
11. <https://www.stcatharinesstandard.ca/news/niagara-region/2020/02/09/st-catharines-residents-raising-stink-about-cannabis-production-facilities.html>
12. <https://www.iheartradio.ca/purecountry/kingston/local-news/neighbours-fuming-over-foul-smell-from-marijuana-greenhouses-1.14979718>
13. <https://globalnews.ca/news/4952638/hyde-park-medical-pot-smell/>  
<https://www.thepeterboroughexaminer.com/local>
14. [barrie/news/2021/04/28/desperately-seeking-cannabis-help-in-simcoe-county.html](https://www.thepeterboroughexaminer.com/local/barrie/news/2021/04/28/desperately-seeking-cannabis-help-in-simcoe-county.html)
15. <https://www.orilliamatters.com/local-news/simcoe-county-asking-feds-for-help-to-deal-with-cannabis-issues-3132083>

Mr. Connolly,

The purpose of this correspondence is to circle back and provide documented resources to substantiate my personal experiences, that legal large scale indoor production and processing cannabis operations can and do meet/exceed government odour guidelines if correctly designed, operated, and maintained as stated at the Public Meeting – December 20<sup>th</sup>, 2021. I have no personal experience with outdoor (large or small) cannabis grow operations and as such, have no comments other than the attached information provides interesting input on that matter.

The following links are the related sources for the three attached documents. While there are many public domain documents on the odour topic, these were chosen because of the direct relevance technical aspects of odour, and one has updates (bylaw amendments) on some of the sites/townships mentioned by others at the Public Meeting.

<https://www.springwater.ca/en/business-and-development/resources/Documents/Cannabis-Production-Review-Study.pdf>

[https://www.publichealthontario.ca/-/media/documents/e/2018/eb-cannabis-production-odours.pdf?sc\\_lang=en](https://www.publichealthontario.ca/-/media/documents/e/2018/eb-cannabis-production-odours.pdf?sc_lang=en)

<https://www.goderich.ca/en/stay-and-play/resources/Images/199-Anglesea-Odour-Study---Final.pdf>

The WSP Study for the Township of Springwater (Document 1) outlines WSP's findings of jurisdictions' 'Best Practices' and 'Key (industry) Findings' starting on page 15 and on page 33 of the 'Study' report respectively. Of note, you will find many of the jurisdictions mentioned by other parties at December's Public Meeting are part of this list. As surmised by Mayor McFadden, these locations were early adopters of the industry and as shown here, have gone back to amend their bylaws to incorporate 'state of the art' practices and technology to rectify negative situations. For example, in Norfolk County, Section 4.7 (page 22) of the report, WSP notes:

“In addition to a definition for “Cannabis Production and Processing” the County identifies new definition for “Air Treatment Control” as follows:



AIR TREATMENT CONTROL shall mean the functional use of industrial grade multi-stage carbon filtration system, or similar technology, to reduce and/or treat the emission of pollen, dust and odours expelled from a facility and sized accordingly in comparison to the facility it serves as designed by a qualified person.”

In the ‘Key Findings’ section WSP states:

“Odour is a common concern regarding cannabis production facilities. Air treatment control and ventilation and filtration standards have been implemented to mitigate odours for indoor facilities and Federal regulations require that the escape of odour be controlled. However, there are limited and less reliable options for mitigating odours from outdoor cultivation. Other than attempting to mitigate odours through minimum setbacks from sensitive land uses, there were no measures identified during the best practice review that specifically addresses potential odour from outdoor facilities. An option for municipalities include obtaining devices with the ability to measure particles in the air to monitor odours. However, particle levels in the air can quickly change due to wind conditions, and this is not necessarily a reliable means of mitigating odours from outdoor facilities, which can create issues from an enforcement perspective.”

The Ontario Government document: EVIDENCE BRIEF - Odours from cannabis production (document 2) (which seems to be the de facto standard for this topic), its ‘Discussion and Conclusions’ section states:

“In general, cannabis production facilities can implement and maintain appropriate ventilation and filtration systems to satisfy applicable local odour nuisance standards. A formal system for residents to document and report nuisance odours can facilitate the enforcement of these standards or municipal bylaws. As part of the permitting process, odour control plans can be reviewed to determine whether emissions are adequately treated such that cannabis odours are not perceptible outside the exterior of the building.”

As mentioned in the December Public Meeting, my daughter was recruited to manage the conversion of a light industrial building in a mixed industrial/residential suburb of Toronto, to an ISO Certified indoor medical cannabis production and processing facility (first in North America) and manage the facility to be ISO complaint. For just under 5 years (before moving on), she employed remote offsite monitoring equipment to continually ensure the air treatment control system was functioning correctly for not only the neighbourhood but also the production and ISO compliance.

In discussing this letter with her, her comment was that the technology available can more than address the issue if properly designed up front and it is maintained correctly. For the operator, non-compliance can mean the lose of hundreds of thousands of dollars through crop contamination (air control); local and federal fines; and can ultimately result in the lose of their licence to grow.

Document 3 – BCX's odour impact assessment report was added to address Councillor Huntley's questions around testing and modeling. The report talks to the methodology and the technology employed at this facility. While my daughter referred to this test site's 'air control system' as a 'starter system' it was more than able to meet the requirements and could be added on to meet increased demands.

These three documents contain a wealth of insight to the cannabis production and processing odour control issue.

In closing, I need to say, I have 'no skin in this game'. I nor any of my family work in this industry, nor use the products produced. Like many things people seem to take objection to in this Township, cannabis use and cultivation are legal in this Province and interested parties that are willing to invest and work as good corporate citizens in the Township should be given the opportunity to show how they can work 'hand in hand' to meet the needed requirements of the community.

Regards,

Al Steel

1622 Tapley Quarter Line,

Cavan ON L0A 1C0

(705) 944-5411

[alsteel@nexicom.net](mailto:alsteel@nexicom.net)

Thank you for your circulation.

Enbridge Gas Inc. does not object to the proposed application however, we reserve the right to amend our development conditions.

Please continue to forward all municipal circulations and clearance letter requests electronically to [MunicipalPlanning@Enbridge.com](mailto:MunicipalPlanning@Enbridge.com).

Regards,

**Casey O'Neil**  
Sr Analyst Municipal Planning  
**Engineering**



**ENBRIDGE**  
TEL: 416-495-5180  
500 Consumers Rd, North York, ON M2J1P8

enbridge.com  
**Safety. Integrity. Respect. Inclusion.**

As your name was mentioned in the article in the Millbrook Times with regard to commercial Cannabis cultivation/production in this area, I am writing to you to express my concern and disagreement with this type of production-indoor or outdoor being brought into our community. Thank you, Carrie Patton

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Origin:

<https://www.cavanmonaghan.net/Modules/contact/search.aspx?s=XXkoMuLgth04ehFw9W5T2AeQuAleQuAl>

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This email was sent to you by Carrie Patton<[carrie-dwayne@nexicom.net](mailto:carrie-dwayne@nexicom.net)> through <https://www.cavanmonaghan.net/>



January 6, 2022

Township of Cavan Monaghan  
988 County Road 10  
Millbrook ON L0A 1G0

Attention: John F. Connolly, MCIP, RPP  
Executive Director, Planning & Development

**Re: Proposed Official Plan and Zoning By-law Amendments  
related to Cannabis Production Facilities with the Township  
File Nos.: OPA-02-21 & ZBA-06-21**

*Trustees:*

*Diane Lloyd  
(Chairperson)*

*Angela Lloyd  
(Vice-chairperson)*

*Cathy Abraham  
Sarah Babka  
Terry Braun  
Cynai Dickson  
Kaitie Dupuis  
Rae Kitney  
Jaine Klassen Jennings  
Emilia Ojeda  
Steve Russell*

*Ryan Haggerty-Gade  
Justine MacKay  
(Student Trustees)*

---

*Rita Russo  
Director of Education*

**EDUCATION CENTRE**

*1994 Fisher Drive  
Peterborough, Ontario  
K9J 6K6*

*(705) 742-9773  
1 (877) 741-4577  
Fax: (705) 742-7801*

*Website: [www.kprdsb.on.ca](http://www.kprdsb.on.ca)*

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Thank you for circulating the Notice of Public Meeting Concerning Official Plan Amendment, Zoning By-law Amendment and Site Plan Control By-law Amendment for the purposes of Cannabis Production Facilities in the Township of Cavan Monaghan.

Kawartha Pine Ridge District School Board (KPRDSB) has reviewed the draft official plan and zoning by-law amendments together with the supporting materials – including the report and technical update completed by Meridian Planning dated December 21, 2020 and September 20, 2021, respectively; and the staff report dated December 20, 2021.

The proposed Official Plan Amendment (OPA) requires a setback of 300-metres between cannabis outdoor cultivation / production facilities and sensitive land uses.

The proposed OPA allows a Land Use Compatibility Study to identify an alternate distance between a production facility and a sensitive land use. KPRDSB Planning Staff has concerns that the distance will be decreased from 300 meters within proximity of a school property. We would request that if a decrease in the separation distance is being proposed, we be consulted early in the pre-consultation / planning approval process.

The proposed Zoning By-law Amendment (ZBA) identifies a minimum distance separation of 300-metres from a sensitive land use and an outdoor cultivation site; however, there does not appear to a required minimum separation distance between a sensitive land use and a production facility.

The ZBLA defines a sensitive land use as "buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may

*include, but are not limited to: residences, day care centres, and educational and health facilities.*" This does not appear to consider lands which are designated or zoned for the purpose of a sensitive land use, but are currently vacant.

Given the above, KPRDSB requests that the Township consider a 300-metre minimum separation distance be included in the ZBLA in order to maintain conformity with the OPA. Further, KPRDSB would request that language be included in the definition of sensitive land use which would ensure that vacant lands which are designated and/or zoned for the purposes of a sensitive land use but are presently vacant be included.

Notwithstanding the above, KPRDSB has no further issues or concerns with the proposed OPA and ZBLA, as it is KPRDSB's **opinion that the** proposed setback from a sensitive land use (i.e., school facility) has been adequately justified. Further, it is noted that there are to be several mitigative measures, including the implementation of site plan control which will ensure that a site will be developed appropriately if situated near a KPRDSB school site.

KPRDSB would ask to be circulated any additional information / notices related to this proposed amendment.

Please do not hesitate to contact the undersigned by email at [jeannette\\_thompson@kprdsb.ca](mailto:jeannette_thompson@kprdsb.ca) or by telephone at 705.742.9773 x 2169 or 1.877.741.4577 x 2169 if you have any questions, concerns or require additional information.

Sincerely,

*Jeannette Thompson*

Jeannette Thompson, BSc, MCIP, RPP  
Manager, Planning Services

cc: Chris Arnew, Superintendent of Business and Treasurer

January 4, 2022

John Connolly  
Township of Cavan Monaghan  
988 County Road 10  
Millbrook, ON.  
L0A 1G0

Dear Sir:

SENT VIA EMAIL ONLY

Re: Proposed Cannabis Production Facilities OPA

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The County of Peterborough is in receipt of your second Notice of Public Meeting received by email on December 22, 2021, regarding the above-noted OPA.

With respect to the contents of the OPA, the County offers the following comments:

Section 3.28.2 deals with Cannabis Production Facility and Outdoor Cannabis Cultivation Setbacks. Subsection (a) states that "...minimum separation distance of 300 metres from any surrounding sensitive land uses or an alternate distance as determined by a Land Use Compatibility Study to the satisfaction of the Township."

Section (b) then states: "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:..." and then lists 6 criteria.

This may be semantic but the setback identified in subsection (a) is not a guideline but a policy. We would suggest simply deleting the word "guidelines" from subsection (b). Since subsection (a) clearly states that a Land Use Compatibility Study will be the determinant of an alternative setback distance then shouldn't the criteria of subsection (b) more aptly be identified as components of a Land Use Compatibility Study?

If so, possibly the section could be reworded as follows:

"The setback established in subsection (a) may be higher or lower and will be supported by a Land Use Compatibility Study to assist in that determination. Such study must include the following considerations:"

It is also suggested that the policy should provide a minimum setback from sensitive land uses regardless of any outcome of a Land Use Compatibility Study. This will provide an inherent level of protection to surrounding sensitive land uses should there be any failing with the facility once operational. Council may wish to add the following sentence at the end of subsection (b) following the 6 criteria:

"Under no circumstances will a setback from surrounding sensitive land uses be less than XXX metres." (XXX to be determined by Council)

It is also unclear whether the higher or lower setback would be achieved through a site specific OPA or whether the wording of subsections (a) and (b) provide the latitude to then achieve a rezoning which would allow the alternate setback. The Planning mechanism is not clear.

Thank you for the opportunity to review and comment on this proposed amendment. Please do not hesitate to contact me should you wish to discuss any of the points raised in this letter.

Yours truly,

*Iain Mudd*

Iain Mudd, MCIP, RPP

Manager of Planning

Cc: Karen Ellis