

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018) 770 Foss Road (File No. AM-01-2019)

Executive Summary:

The purpose of this report is provide Council with a recommendation regarding the request to amend Interim Control By-law 4046 (2018) for 770 Foss Road. By-law 4046 (2018) prohibits the use of land, buildings or structures for cannabis purposes during the period of the interim control by-law other than those that lawfully existed prior to the passing of the by-law. Following the February 25th, 2019 public meeting, Council approved the recommendation in the Information Report directing staff to prepare the Recommendation Report on this matter.

The applicant seeks approval to establish a cannabis production facility consisting of: a retrofitted 8,361.3 m² (90,000 ft²) greenhouse for the purpose of cannabis cultivation, a retrofitted 2,787.1 m² (30,000 ft²) headhouse with a 929 m² (10,000 ft²) addition for the purpose of cannabis harvesting and utility infrastructure and a 464.5 m² (5,000 ft²) office accessory to the cannabis production facility.

Location:

The property is located on the south side of Foss Road, north side of Sumbler Road, west of the CP Railway tracks and east of Church Street in the rural area of Pelham. The surrounding land uses include a greenhouse operation and residential uses to the north, the railway and agricultural uses with accessory residential uses to the east, residential and agricultural uses to the south and residential uses to the south (Figure 1).

The property is 12.0 ha (29.74 acres) in area, with 6.0m (19.6 ft) driveway frontage on Foss Road. It is noted that the driveway is a shared driveway with 776 Foss Road. In addition to the existing greenhouse on the property, a single detached dwelling is also located on the site. It is also noted that demolition permits have been issued for the demolition of some of the greenhouse structures that were on site.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Figure 1 – Location Map

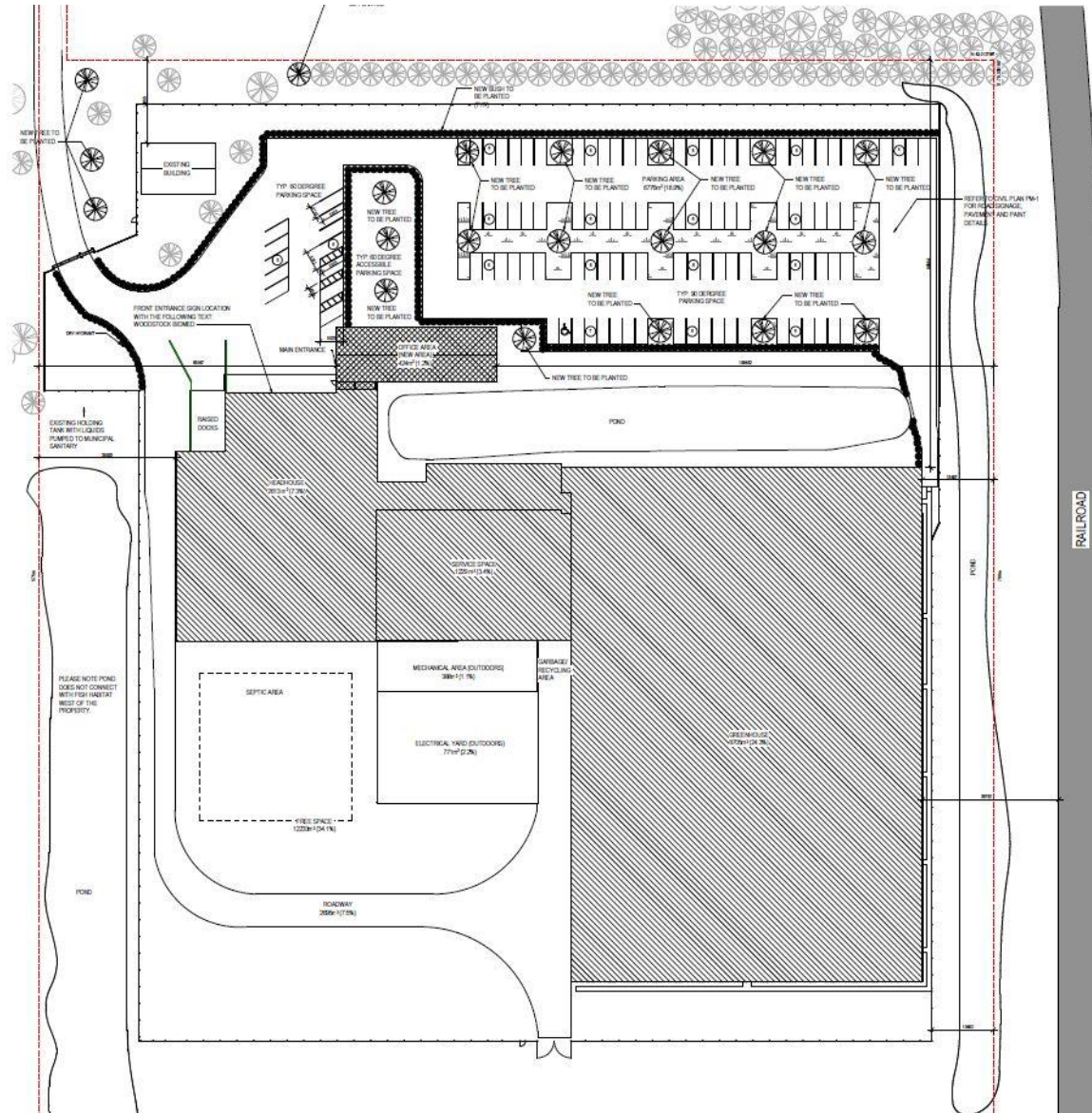


Project Description and Purpose:

The applicant has requested an amendment to the Interim Control By-law 4046 (2018) to establish a cannabis production facility consisting of: a retrofitted 8,361.3 m² (90,000 ft²) greenhouse for the purpose of cannabis cultivation, a retrofitted 2,787.1 m² (30,000 ft²) headhouse with a 929 m² (10,000 ft²) addition for the purpose of cannabis harvesting and utility infrastructure and a 464.5 m² (5,000 ft²) office accessory to the cannabis production facility. This is depicted on the applicant's Site Plan in Figure 2.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Figure 2: Proposed Site Plan



Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Agency Comments:

On February 5, 2019, a notice was circulated to commenting agencies and Town departments. To date the following comments have been received (Appendix A):

Niagara Region

- It is the Region's position that the growing, processing and distribution of cannabis is considered an agricultural use according the Region of Niagara Official Plan in the rural agricultural areas and may be considered industrial uses in urban areas. No objection subject to meeting technical requirements, however supports the Town's efforts to review its policies and regulations regarding cannabis-related uses. Further comments can be provided if the circulation of any future Planning Act application is required.

Building

- Building permits are required for any buildings over 10m². Written approval of the Niagara Peninsula Conservation Authority and the Niagara Region will be required.

Enbridge

- No objection.

Canada Post & Hydro One

- No comments or conditions.

Public Works

- Request further information regarding servicing (subject to further review).

Public Comments:

On February 5, 2019, a public meeting notice was circulated to all property owners within 120 metres of the property. A summary of comments that have been received as of the date of writing of this report has been included below. Full copies of written comments are included in Appendix B. The comments received verbally are detailed in the Public Meeting Minutes in Appendix C.

Sue Aide / Henry Penner

- Object due to concerns about odour, impact on enjoyment of property, light pollution and traffic.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

- Encroachment of the westerly irrigation pond on property. Would like the pond removed or property purchased. Concerned about liability due to the pond.

Anthony Bachynski

- Requests future notices on this file.

Peter & Lynda Haakman

- Concerned about odour, light pollution, excessive noise and decreased property value.
- Shared driveway creates concerns about increased traffic, security and safety.

Pati Troup & Ray Vandendogerd

- Highly opposed. Believe too close to Town and that it should be away from houses.
- Concerned about decreased property value, odour, enjoyment of property, light pollution, traffic volume and amount of taxes cannabis production facilities pay.

Valerie McCombs

- Concerned about decreased property values, location too close to residences, increased traffic.

Jim Jeffs (Pelham Community Preservation Coalition)

- Indicates the request for amendment in premature.
- Concerned about property values, traffic and requests Council deny the request for amendment.

Lin Zavitz

- Requested amendment be denied and that future facilities only occur in industrial areas.

Rob Enter

- Concerned about odour, light, property values and impacts on the community.

Peter Van Caulart

- Impressed by the odour suppression technology proposed.

Dave Shafford

- Town is a trusting community and does not wish to be fooled.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Dave Nicholson

- Requested information on lighting, type of product produced and prospect of a lawsuit.
- Asked how Leviathan would deal with fungus on plants.

Bill Heska

- Concerned the technologies proposed are not proven technology.

Sant (Beri) Grewal

- Questioned how carbon filters will be maintained.

David & Brenda Horton

- Concerned about the facility's impact on ground water resources.

Clara Rosati

- Concerned about lighting and the potential health impacts on a family member sensitive to UV light.
- Believes more time is needed to understand the impact of cannabis facilities.

Tim Nohara

- Questioned whether the Town could collect additional property taxes from the facility.
- Believes the request for amendment is premature in the absence of regulations.

Sandy Jeffs

- Concerned about odour, light pollution, sewer capacity and crime in proximity to children.
- Believes facility should be located in an industrial area.
- Believes Leviathan should enter into a Site Plan Agreement with the Town.

Natalie Diduch

- Requests future notices regarding this application.

Donna Huxley

- Questioned the type of lighting proposed and the size of trees proposed to be planted.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Louis Dam

- Questioned the statistics provided by Leviathan relating to the odour mitigation techniques.

Dave Klynhesselink

- Questioned Health Canada requirement for odour and light pollution and correspondence from the Town.

Tod Mowter

- Questioned why the facility is proposed to be located close to residences.

John Glasbergen

- Concerned that the odour mitigation technology will not work, about dust from use of the gravel driveway and that Leviathan has indicated they may take legal action against the Town.

Roger Robert

- Concerned about potential trespassing on neighbouring properties and security of facility.

Eva Brown

- Enquired as to whether the facility is in production and whether Leviathan would consider growing a different crop.

Bruce Russel

- Concerned about impact on property values.

Phil Glasbergen

- Concerned about the potential for expansion to the facility in the future.

David Ripley

- Questioned whether Leviathan would employ the same technologies in other parts of the Town if purchased additional property.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Katherine Willard

- Requested that Council make good intentional decisions for the community now and in the future.

Patrick Handscombe

- Suggested Leviathan employ the odour mitigation technology that was successful at the illegal facility Molson Brewery in Barrie.

Nancy Beamer

- Council needs to be given time to make a good decision on a challenging issue.

Planning staff further note that verbal comments were received from members of the public who wished to remain anonymous due to the controversial nature of the requested amendment. These verbal comments indicated that they were supportive of the request for amendment by Leviathan subject to conditions requiring the installation of the systems related to odour and light suppression. Further, the verbal comments spoke to the number of jobs being created by the industry and the spin off benefits associated with it. They also noted that there was a bad odour in proximity to existing operations prior to their operation due to nearby farming operations and that the greenhouses were creating light pollution prior to being used for cannabis production.

In response to the large number of public comments and concerns raised in writing and at the public meeting on February 25, 2019, Planning staff have organized the comments into major topics for ease of response.

Odour

One of the largest concerns for residents and staff is odour impacts resulting from cannabis cultivation. Staff note that the existing cannabis cultivation facilities in the Town where odour has been a problem are within greenhouses which are not sealed and often vented. These greenhouses have tried to reduce their odour impacts by installing carbon filters and misting of air before it leaves the building which have been somewhat successful. However, carbon filters will only clean the air that passes through the filters and direct venting to the outdoors has gone unfiltered resulting in a bad odours.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

The Leviathan Cannabis Group is proposing to construct a sealed greenhouse with air locks included in the floor plan which will reduce the amount of odour able to escape the facility as well as to employ additional odour mitigation techniques including charcoal filters, bi-polar ionization and high pressure fog. Each of these systems are proven technology in mitigating odours in various settings. Carbon filtration can remove 50 - 98 % of Volatile Organic Compounds (VOCs) from cannabis production provided they are replaced according to the manufacturer's directions (generally 6-12 months).¹ Bi-polar ionization is a widely documented method of cleaning air including VOCs with a range between 75 and 100 percent removal efficiency.² High pressure fog and misting systems are widely documented for their success in addressing odours from landfills. In addition to this information, the Leviathan Group has provided anecdotal research on these technologies being implemented specifically in cannabis production. This research provided consistent testimony from producers and regulators in various locations that the technologies were effective (refer to Appendix 4 of Appendix D).

Staff recommend that the Leviathan Group enter into a Site Plan Agreement with the Town which will control the development of the property. Further, staff recommend that the agreement contain clauses which require Leviathan to provide a security deposit to the Town for the value of the odour mitigation systems that are proposed. The security deposit will only be released when Leviathan provides the Town with a certification from a Professional Engineer or Industrial Hygienist that the systems are installed and operational as well as maintenance and monitoring plan for the odour mitigation systems. These measures would give the Town and citizens some assurance that odours will be controlled as committed to by Leviathan. Further, planning staff recommend that the Town amend the current nuisance by-law or alternatively, adopt a separate cannabis nuisance by-law which will allow the Town to fine cannabis producers for allowing offensive odours to cross the property line. It is anticipated that a by-law could be prepared and adopted by Council prior to the 770 Foss Road facility being operational if the amendment to the Interim Control By-law is approved by Council.

¹ Denver Public Health & Environment, *Cannabis Environmental Best Management Practices Guide*, https://www.denvergov.org/content/dam/denvergov/Portals/771/documents/EQ/MJ%20Sustainability/CannabisBestManagementPracticesGuide_FINAL.pdf, (October 2018).

² Ki-Hyun Kim et al, "Air ionization as a control technology for off-gas emissions of volatile organic compounds," *Environmental Pollution* 225 (2017): 740.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Light Pollution

Many residents expressed concerns about light pollution from cannabis production facilities. Blackout curtains are a recognized method for reducing the light pollution impacts from greenhouses. Leviathan has committed to installing these curtains on the ceiling as well as the walls of cultivation areas and has provided a product information sheet for the blackout curtains which indicates that the curtains shade 99.9% of light (Appendix 5 to Appendix D).

In addition to the blackout curtains, the proposed cannabis cultivation area is located toward the centre of the property, a significant distance from adjacent dwellings. In addition, the view into this portion of the property is buffered by wooded areas on the south and west sides, an existing greenhouse on the north side and the railway tracks on the west side are significantly higher in elevation than the 770 Foss Road property resulting in a further obstructed view from the west.

Leviathan has also provided a photometric plan demonstrating that there will be no light spill from the parking lot light standards and building light fixtures onto adjacent lands.

Planning staff recommend that the site plan agreement include clauses requiring Leviathan provide a security deposit to the Town which would be released upon certification from an Engineer that the blackout curtains have been installed and are operational as well as the submission of a light control plan. Further, the nuisance by-law as discussed relating to odour would permit the Town to issue fines in the event the curtains are not deployed as indicated in the light control plan.

Proximity to Residential Uses

Another concern that was raised by many members of the public is the location of the proposed cannabis production facility in proximity to residential uses. Planning staff note that the greenhouse (cultivation) portion of the facility will be located approximately 231 metres from the nearest residential use (776 Foss Road) and 219 metres from the nearest residential zone. Most impacts are anticipated from the cultivation process rather than the office, headhouse or processing area and so setbacks from this area have been most heavily considered. Planning staff conducted a review of regulations in a number of different municipalities both within the Niagara Region and outside and noted that where a setback to a sensitive receptor or a residential zone is included for cannabis production facilities, the

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

typical setback is 150 metres. Leviathan's proposed office will be located closest to residential uses and zones and will maintain a setback of more than 150 metres. Based on this analysis, Planning staff are of the opinion that the proposed location of the cannabis production facility is generally consistent with regulations in the industry relating to proximity to sensitive uses. Further, proximity to residential uses is normally cited as a concern due to odour and light impacts which have been discussed in detail above.

Property Values

A number of members of the public raised concerns about cannabis production facilities causing a negative impact to residential property values. Planning staff contacted Municipal Property Assessment Corporation (MPAC) staff for information on this matter. MPAC staff's preliminary analysis has shown no impact on sales of properties within 1 kilometer of a facility at this time. This analysis was upheld as part of a recent decision by the assessment appeals board. MPAC will be completing an official study for the 2021 tax year.

Tax Classification

A number of residents expressed dissatisfaction that cannabis production facilities are classified in the farm tax class and therefore pay lower taxes than many residential property owners. This is currently under review by the Municipal Property Assessment Corporation but has no bearing on Leviathan's proposal. MPAC has advised that they are committed to doing a reassessment of the existing cannabis production facilities in the Town this year.

Ground water

Some residents cited concerns about the impact on groundwater in the area as a number of local residents are on wells. Leviathan has indicated that they will be using the ponds on site for irrigation and potable water (after treatment) purposes. In addition, cannabis is a less water intensive crop than the cucumbers that were previously grown on site. Further the floor area of greenhouses has been greatly reduced from what previously existed. Based on this information, no negative impacts are anticipated to groundwater.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Sewer Capacity

The issue of sewer capacity was raised by residents, Regional and Town Public Works staff. Leviathan will be providing additional information to satisfy Regional and Town Public Works staff that the existing sewer can accommodate the flows from the facility. This information will be subject to further review. It is recommended that clauses be included in the Site Plan Agreement that require Leviathan to confirm the sewer capacity to the satisfaction of the Director of Public Works prior to any building permits being issued.

Security

Some residents raised concerns about the need for security around the site and the resulting perception that the facility was unsafe near children. The security measures are prescribed by Health Canada and include fencing, security personnel, cameras and alarm systems. The security measures are meant to act as a deterrent for potential illegal activity. Further, the legalization and regulation of cannabis as a whole is intended to curb illegal activity related to cannabis. As discussed above, the facility is located a reasonable distance from residential uses which is consistent with regulations in other municipalities. Access to these facilities is highly controlled and would not impact the safety of children.

Traffic

A number of residents brought up concerns about the impact the facility will have on traffic levels on Foss Road. Leviathan has provided a letter from Hugo Chan, Traffic Engineer with IBI Group which indicates that the proposed facility will result in minimal traffic impacts during weekday peak traffic hours (Appendix 12 to Appendix D) on Foss Road. In addition, no concerns have been raised by Town Public Works staff regarding potential traffic impacts resulting from the facility.

Future Expansion

While Leviathan has indicated the potential interest in a future expansion to the proposed facility on this property, the requested amendment at this time would only permit the facility as proposed at this time.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Any future expansion to the facility would be subject to regulations in place at that time as well as an amendment to the recommended site plan agreement with the Town.

Property Specific Concerns

The residents at 781 Church Street have raised concerns that the existing irrigation pond extends onto their property and have requested it be removed. Leviathan has agreed to install gabions in this portion of the pond to effectively remove it from the adjacent property. A security deposit for this work can be included in the Site Plan Agreement.

The resident at 768 Foss Road expressed a concern about dust on the driveway to the facility. Leviathan has agreed to pave the driveway to address this concern and this will be a requirement of the site plan control agreement.

The residents at 776 Foss Road expressed concerns about the increased use of the driveway and the impact on their security and safety. It is acknowledged that the driveway has been used by the cucumber facility for employees and shipments for many years. The proposed cannabis production facility will be equipped with security in the form of personnel, fencing, cameras and alarm systems. Further, Leviathan has indicated willingness to provide some additional tree planting between the shared driveway and the residence on 776 Foss Road (on the 776 Foss Road property) to protect the owner's privacy if they are willing. It is acknowledged that this property will experience some impacts, however the impacts are not so severe to cause an adverse impact.

Policy Review:

Planning Act

Section 38 of the *Planning Act*, R.S.O. 1990 provides Council with the ability to adopt an Interim Control By-law for a one-year period in order to undertake a review of land use planning policies within the municipality. An Interim Control By-law can be extended for an additional year.

On October 15, 2018, Council approved By-law 4046(2018) prohibiting the use of land, buildings or structures for cannabis purposes in order to allow the Town to review policies and regulations relating to cannabis uses.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

The *Planning Act*, R.S.O. 1990 provides that decisions of Council in respect to planning matters shall be consistent with provincial policy statements that are in effect as of the date of Council's decision and shall conform with provincial plans that are in effect.

Provincial Policy Statement, 2014

The Provincial Policy Statement, 2014 (PPS) provides guidance for managing and directing land use to achieve efficient and resilient development and land use patterns. The subject parcels are designated as being partially within a Settlement Area (northern portion of driveway area) and primarily within the Prime Agricultural Area according to the Provincial Policy Statement, 2014 (PPS, 2014).

Policy 1.1.3.1 states that settlement areas will be the focus of growth and development and their vitality and regeneration shall be promoted.

Policy 2.3.3.2 states that all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards in prime agricultural areas. Agricultural uses are defined in the Provincial Policy Statement as "the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment."

The definition of agricultural uses in the Provincial Policy Statement includes the growing of crops and includes horticultural crops. Based on this definition, cannabis cultivation is an agricultural use. Agricultural uses are supported and promoted in the prime agricultural area. No cannabis production is proposed within the settlement area.

Greenbelt Plan, 2017

The subject parcel is located partially within the Towns/Villages (driveway only) identified in the Greenbelt Plan. The southern portion of the property containing the proposed cannabis production facility is located outside of the Greenbelt Plan. Therefore, the policies of the Greenbelt Plan do not apply.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Niagara Escarpment Plan, 2017

The subject parcels are not located in the Niagara Escarpment Plan Area; therefore, the Niagara Escarpment Plan policies do not apply.

The Growth Plan for the Greater Golden Horseshoe, 2017

The guiding principles of the Growth Plan for the Greater Golden Horseshoe, 2017 (Growth Plan) is to support the achievement of complete communities that are designed to support healthy and active living and meet people's needs for daily living throughout their lifetime; prioritize intensification and higher densities to make efficient use of land and infrastructure and support transit viability; support a range and mix of housing options, including second units and affordable housing to serve all sizes, incomes and ages of households; provide different approaches to manage growth that recognizes the diversity of communities in the GGH (Greater Golden Horseshoe); protect and enhance natural heritage, hydrologic and landform systems features and functions and integrate climate change considerations into planning and managing growth; support and enhance natural heritage, hydrologic and landform systems, features and functions; support and enhance the long-term viability and productivity of agriculture by protecting prime agricultural areas and the agri-food network.

According to the Growth Plan for the Greater Golden Horseshoe, the property is located partially within a settlement area (driveway only) and predominantly within a prime agricultural area.

Policy 4.2.6.2 indicates that prime agricultural areas will be protected for long-term use of agriculture. Policy 4.2.6.3 states that where agricultural uses and non-agricultural uses interface outside of settlement areas, land use compatibility will be achieved by avoiding or where avoidance is not possible, minimizing and mitigating adverse impacts on the Agricultural System. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed.

Portions of the property are also identified as part of the Growth Plan as part of the Provincial Natural Heritage System and are considered Key Natural Heritage and Hydrologic Features. No development is proposed within the identified Key Natural Heritage and Hydrologic Features. Section 4.2.4 of the Growth Plan requires a minimum 30 metre vegetated protection zone (buffer) to protect the functions of the adjacent key features.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

The cannabis production facility is not proposed to be located within the portion of the property designated settlement area.

The definition of agricultural uses in the Growth Plan is consistent with the definition in the Provincial Policy Statement. Therefore, the cultivation of cannabis is considered an agricultural use. Policy 4.2.6.3 speaks to avoidance, minimizing and mitigating land use impacts which is part of Leviathan's proposal. The facility is proposed a significant distance away from sensitive receptors on a property that is relatively isolated from neighbouring properties due to the grade, railway tracks, ponds and location of natural heritage features. Further, mitigation measures including odour and light suppression systems are being proposed and will be required as part of the proposed site plan agreement.

With respect to the Provincial Natural Heritage System, no development is proposed closer to any natural heritage features than the existing greenhouse at this time.

Based on this information, it is Planning staff's opinion that the proposed cannabis production facility is consistent with the Growth Plan for the Greater Golden Horseshoe.

Regional Official Plan, consolidated August 2015

The Region of Niagara Official Plan identifies this property as Built-up Area (driveway only) and Good General Agricultural Area.

Policy 5.B.6 states that the predominant use of land in Agricultural Areas is for agriculture of all types, including livestock operations as well as associated value retention uses.

The Core Natural Heritage System mapping of the Regional Official Plan identifies portions of the property as Environmental Protection Area, due to the presence of the Upper Coyle Creek Provincially Significant Wetland (PSW) complex, and Environmental Conservation Area due to the presence of Significant Woodland. A creek on neighbouring property to the west is also mapped as Type 2 Fish Habitat.

Policy 7.B.1.11 permits development and site alteration in Environmental Conservation Area and on adjacent lands to Environmental Protection and Environmental Conservation Areas if it has been demonstrated that, over the long term, there will be no significant negative impact on the Core Natural Heritage System component or adjacent lands. Policy 7.B.2.2 permits the waiving of a

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

requirement for an Environmental Impact Study in accordance with the Environmental Impact Study Guidelines adopted by Regional Council.

No cannabis production is proposed within the built-up area. It is the Region's position that the growing, processing and distribution of cannabis is considered an agricultural use. Agricultural uses of all types are supported in the Good General Agricultural Area.

No development is proposed closer to Environmental Conservation or Environmental Protection Areas than the existing greenhouse and therefore, requirements for and Environmental Impact Study are waived in accordance with the Region's Environmental Impact Study Guidelines.

It is Planning staff's opinion that the proposed cannabis production facility conforms to the Niagara Region Official Plan.

Town of Pelham Official Plan, 2014

A portion of the property is located within the Urban Settlement area of Fenwick and designated Urban Living Area/Built Boundary (driveway only) and the remainder of the property is designated Good General Agricultural in the Town of Pelham Official Plan. Permitted uses in the Good General Agricultural designation are agriculture, single detached dwellings accessory to a farm business or on a vacant lot of record; accessory residential uses on farm properties; bed and breakfast establishments; home occupations and home industries; forestry and other resource management uses; retail commercial uses on farm properties; passive recreational uses, such as walking trails and nature interpretation centres on lands owned by a public authority; agricultural-related exhibitions and tourism establishments; wineries; mineral aggregate operations; and wayside pits and quarries.

Policy B2.1.3.12 indicates that greenhouses and hoophouses are considered an agricultural use, however in the interest of ensuring compatibility within the Agricultural area, greenhouses and hoophouses shall be subject to a Zoning By-law amendment where:

- a) the lot area of the parcel proposed to accommodate the greenhouse or hoophouse is less than 3 hectares;
- b) The total lot coverage of the greenhouse or hoophouse is greater than 30%; or
- c) A retail component is proposed as an accessory use to the greenhouse or hoophouse; or

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

- d) Greater than 10,000 litres of water per day will be required to sustain the greenhouse or hoophouse.

Any proposal to develop a greenhouse or hoophouse will be subject to Site Plan Control to ensure lighting, traffic, landscaping and other planning and design matters can be addressed prior to the issuance of a building permit. However, it is noted that the current Town Site Plan Control By-law 1118 (1987) exempts agricultural uses including greenhouses from Site Plan Control.

The cannabis production facility is not proposed to be located within the Urban Living Area/Built Boundary.

With respect to Policy B2.1.3.12(a) of the Official Plan, the property is approximately one hectare in size which triggers the requirement for a Zoning By-law amendment. However, Planning staff note that the Zoning By-law permits the use of a greenhouse on the property as of right and the use of the property for greenhouses is existing. In fact, Leviathan has significantly reduced the floor area of greenhouses on site. Further, the process for a Zoning By-law amendment has been followed as part of the request for amendment to Interim Control By-law 4046(2018), including statutory requirements for public notice and a public meeting under Section 34 (Zoning By-law Amendment) of the Planning Act, despite an amendment to an Interim Control By-law not requiring these processes.

In response to Policy B2.1.3.12(b), the lot coverage of the greenhouse will not exceed 30% of the total lot area. Planning staff also note that the existing zoning permits 60% lot coverage for greenhouses as of right. As discussed above, Leviathan has reduced the floor area of greenhouses on the property.

In response to Policy B2.1.3.129(c) and (d), no retail component is proposed as part of the cannabis production facility and water will be supplied by the ponds on site and therefore, greater than 10,000 liters of water per day will not be required.

Finally, Planning staff recommend that the facility be subject to Site Plan Control and that Council amend Site Plan Control By-law 1118(1987) in order to require this.

The property is also designated Environmental Protection One and Environmental Protection Two. Permitted uses in the Environmental Protection One designation are forest, fish and wildlife management uses, conservation, flood control projects and agricultural drains, small-scale passive

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

recreational uses and mineral aggregate operations with no negative impact on natural features or ecological functions. Policy B3.2.4.3 permits development and site alteration on adjacent lands subject to and Environmental Impact Study demonstrating no negative impacts on the feature or its ecological functions. The Environmental Protection Two designation permits locally significant wetlands outside of the Greenbelt Plan, significant habitat of special concern species, significant woodlands, significant valley lands, regionally significant Life Science Areas of Natural and Scientific Interest, savannahs and tall grass prairies, significant wildlife habitat and publicly owned conservation lands. Policy B.3.3.4.1 permits development in the Environmental Protection Two designation provided it has been demonstrated through and Environmental Impact Study that there will be no negative impact to the natural heritage feature or its ecological functions.

As discussed, all development will take place within the footprint of the existing operation and additions will be located further away from the portions of the property designated Environmental Protection One and Two. Therefore, there is no requirement for an Environmental Impact Study.

It is Planning staff's opinion that the proposed cannabis production facility conforms to the Town's Official Plan as agricultural uses are supported in the Good General Agricultural designation and the requirements of Policy B2.1.3.12 specific to greenhouses are satisfied subject to amending the Town Site Plan control by-law to require greenhouses to be under site plan control.

Zoning By-law 1136 (1987), as amended

The property is zoned 'Residential Village 1 (RV1)' (driveway only) and 'Agricultural (A)'. The 'Agricultural' zone permits agricultural uses, including greenhouses, seasonal or permanent farm help houses on farms larger than 10 hectares, one single detached dwelling on one lot, home occupations, kennels, animal hospitals, uses, buildings and structures accessory to the foregoing permitted uses and forestry and conservation uses.

Regulations for greenhouses are:

7.3 (a) Minimum Lot Frontage	100 metres (328.08 feet)
(b) Minimum Lot Area	2 hectares (4.94 acres)
(c) Maximum Lot Coverage	(i) 60 percent (greenhouse only) (ii) 70 percent (greenhouse in conjunction with permitted use)
(d) Minimum Front Yard	20 metres

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
 770 Foss Road (File No. AM-01-19)
 Monday, April 15, 2019

(e) Minimum Side Yard or Rear Yard	15 metres (49.21 feet) except where ventilating fans exhaust into the respective side or rear yard, the minimum yards shall be 25 metres (82.02 feet)
(f) Minimum Exterior Side Yard	30 metres (98.43 feet) from the centre line of the road, or 20.5 metres (67.26 feet) from the lot line whichever is greater
(g) Supplementary Setback Distances	(i) All greenhouses shall be located a minimum distance of 45 metres (147.64 feet) from any dwelling on an adjacent lot; (ii) no manure, compost or equipment storage area shall be permitted within 30 metres (98.43 feet) of a street or residential use on an adjacent lot.

Council approved Interim Control By-law 4046 (2018) which prohibits the use of land, buildings or structures for cannabis purposes on October 15, 2018. The By-law is in effect for one-year. Council Approval of an amendment to By-law 4046 (2018) is required for the establishment of a new cannabis production facility while the Interim Control By-law is in effect.

The site plan provided by Leviathan for the proposed facility demonstrates that it complies with the requirements of Zoning By-law 1136 (1987) for greenhouses in the Agricultural zone. Leviathan advises that they will locate ventilating exhaust fans in compliance with the side yard setbacks.

Staff Comments:

The applicant filed the request to amend the Interim Control By-law 4046(2018) in December, 2018. Once an application is received, the Town is obligated to process the application and give it its due consideration. Accordingly, the application was circulated to Town departments and agencies and a public meeting was convened. The recommendations of the February 25th, 2019 Committee of the Whole meeting, following the public meeting that was held that same date, directed staff to prepare a recommendation report on the request to amend the Interim Control By-law 4046(2018) related to 770 Foss Road. Also, following the public meeting, the applicant provided additional information to respond to the public comments received at that meeting and to respond to staff and agency comments.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Staff acknowledge that there has been considerable public interest in this matter and the public meeting was well attended. The applicant has responded to the concerns identified and staff have completed the review of this application with the analysis provided in the preceding sections of this report.

Town Planning, Public Works and Regional staff have reviewed the drawings and submitted materials with the request for amendment to the Interim Control By-law. In addition to reviewing the proposal for land use compatibility and regulations, Planning staff have reviewed the application in the context of an application for Site Plan approval. This has resulted in additional trees and landscaping to improve aesthetics of the site, paving the driveway access, compliance with Town engineering standards, and the requirement of odour monitoring which Leviathan is been agreeable to.

As discussed in this report, Planning staff are of the opinion that the proposed cannabis production facility is consistent with accepted practices for these facilities, is consistent with provincial plans and policies, conforms to the Town's Official Plan and that compatibility concerns expressed by residents can be addressed satisfactorily through a Site Plan Agreement which includes requires:

- odour and light mitigation plans including maintenance and monitoring of odour;
- security deposits for the value of the odour and light mitigation systems;
- certification from a Professional Engineer or Industrial Hygienist that the odour and light mitigation systems are installed and operational;
- confirmation of adequate servicing capacity;
- upgrading the driveway surface to asphalt;
- installation of a gabion to remove the pond from 781 Church Street (if agreeable to resident);
- tree planting on 776 Foss Road (if agreeable to resident);

Based on this assessment and these conditions, Planning staff recommends that Committee of the Whole approve an amendment to Interim Control By-law 4046 (2018) for the property located at 770 Foss Road and amend the Town Site Plan Control By-law 1118 (1987) to require greenhouses to be subject to site plan control approval.

Staff will continue to work on other matters related to lifting the Interim Control By-law 4046(2018) and will be bringing those forward to Council for its consideration in a future report.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

Prepared by: Shannon Larocque, MCIP, RPP, Senior Planner

Reviewed by: Barbara Wiens, MCIP, RPP, Director of Community Planning and Development

Alternatives:

Council could deny the request to amend Interim Control By-law 4046(2018).

Council could approve the request to amend Interim Control By-law 4046(2018) subject to additional conditions or changes to conditions.

Council could defer approval of the request to amend the Interim Control By-law 4046(2018) with respect to 770 Foss Road until after Council has dealt with the matters relating to lifting the Interim Control By-law 4046(2018).

Attachments:

Appendix A	Agency Comments
Appendix B	Public Comments
Appendix C	Public Meeting Minutes
Appendix D	Response from Leviathan
Appendix E	By-law to Amend Site Plan Control By-law 1118(1987)

Recommendation:

THAT Committee receives this Department of Community Planning and Development Report as it pertains to File No. AM-01-19 regarding 770 Foss Road;

AND THAT Committee recommends that Council approve the by-law, attached hereto as Appendix E, amending By-law No. 1118 (1987) to require site plan control for greenhouses.

AND THAT Committee directs staff to prepare a by-law, authorizing the Mayor and Clerk to execute a Site Plan Agreement with Leviathan Cannabis Group Inc. for 770 Foss Road.

AND THAT Committee directs staff to amend the Interim Control By-law 4046 (2018) to permit a cannabis production facility at 770 Foss Road.

Recommendation Report Regarding Amendment to Interim Control By-law 4046 (2018)
770 Foss Road (File No. AM-01-19)
Monday, April 15, 2019

AND THAT Committee directs staff to prepare an amendment to the Town's nuisance by-law or a standalone cannabis by-law which would authorize the Town to issue fines to licensed cannabis producers relating to odour and light.