

August 09, 2022

To: Mayor Marvin Junkin

Councillors: Lisa Haun, Marianne Stewart, Bob Hildebrandt, Ron Kore, Wayne Olson, John Wink

Dear Mayor and Councillors,

Subject: Closing Memo from the Cannabis Control Committee & Recommendations for Next Council

The Cannabis Control Committee (CCC), established by this Council in the Spring of 2019, will complete its mandate with this Closing Memo on August 22, 2022, as a result of the Fall municipal elections.

This Closing Memo is intended to succinctly report to this Council and the next a summary of the *Pelham Cannabis Regulations* we have developed for and with the Town, along with recommendations and guiding principles we believe the next Council should adopt to complete this pioneering work.

This Closing Memo and the Pelham Cannabis Regulations have been informed by literally thousands of hours of work by the CCC members Carla Baxter, Louis Damm, Bill Heska, Jim Jeffs, John Langendoen, James Steele and myself, countless hours from staff led by Barbara Wiens and David Cribbs and supported by Bob Lymburner, Jennifer Stirton, Shannon Larocque, Jodi Legros, & Craig Genesse, countless hours from councillor Bob Hildebrandt and the late councillor Mike Cioffi, and the full support of Council who provided us with outside professional experts including legal (Aird & Berlis LLP: Laura Dean, John Mascarin and Patrick Harrington), planning (Meridian Planning Consultants: Nick McDonald), and odour (PG Compliance Management Inc: Phil Girard). It has been a pleasure working with such a committed, focused, intelligent and diverse group of individuals where occasional disagreements and the openness to debate them led to better work product. I thank them for their efforts, I have learned so much from them, and I am honored to have had a part in leading this team to fulfil the CCC's mandate.

Summary of the Pelham Cannabis Regulations as of this date

The CCC developed these municipal/planning tools to mitigate adverse effects from cannabis facilities:

Municipal & Planning Tools	Approved by Council	Legally Challenged by Redecan, CannTrust (now called Phoena) and/or Woodstock Biomed
Official Plan Amendment (OPA)	Bylaw 4251 (2020) adopted OPA No.9 on July 13, 2020 https://www.pelham.ca/en/town-hall/resources/Documents/cannabis/4251-2020_Complete.pdf	The OPA/ZBA were appealed to the Ontario Land Tribunal (OLT). Hearings were held January 24-26, 2022 and July 25, 2022.
Zoning Bylaw Amendment (ZBA)	Bylaw 4252 (2020) amended the Town's Zoning Bylaw 1136 (1987) on July 13, 2020 https://www.pelham.ca/en/town-hall/resources/Documents/By-law-4252-2020-Zoning-By-law-Amendment-for-Cannabis.pdf	Hearing results: The hearings are complete. Redecan settled with the Town and CannTrust withdrew their appeal. Woodstock remained. The OLT Decision is expected in the Fall 2022.
Odorous Industries Nuisance Bylaw (OINBL)	Bylaw 4202 (2020) was approved on March 23, 2020 and amended by Bylaw 4263 (2020) on July 27, 2020 https://www.pelham.ca/en/town-hall/resources/Documents/bylaws/4202-2020.pdf https://www.pelham.ca/en/town-hall/resources/Documents/bylaws/4263-2020.pdf	The OINBL was appealed to the Ontario Superior Court. Hearings will likely not occur until 2023.
Site Plan Control Bylaw	Bylaw 4262 (2020) was approved on July 27, 2020 to amend the Site Plan Control Bylaw 1118 (1987)	The bylaw is in effect. There are no legal challenges.
Light Bylaw	A light bylaw was drafted but deferred pending legal challenges of a similar bylaw in Leamington	Pelham can proceed as the Leamington bylaw was enacted and settled on June 14, 2022.

The purpose and summary of each of these regulations, along with links to the regulations themselves as approved by Council can be found at https://www.pelham.ca/en/town-hall/resources/Documents/cannabis/CCC-TwoPager-CannabisRegulations_22020605.pdf¹.

Recommendations

OPA/ZBA

The cannabis OPA and ZBA are the Town's first line of defence to ensure that adverse effects (especially odour) from new or expanding indoor cannabis and industrial hemp facilities are avoided completely or suitably mitigated.

The purpose of the OPA is to establish permissions for indoor cannabis and industrial hemp cultivation, subject to a zoning by-law amendment, and to establish approval criteria. Outdoor cultivation in agricultural areas is allowed. New facility approval requires adverse effects to be avoided or appropriately mitigated with setbacks determined on a case-by-case basis through peer reviewed odour and light studies and contingency mitigation plans, and subject to Site Plan Control in accordance with Section E1.4 of the Plan.

The purpose of the ZBA is to add two specific Agricultural-Cannabis and General-Industrial-Cannabis zones to regulate newly approved indoor and outdoor cannabis facilities. The ZBA sets a 300m setback for outdoor uses and lot area, coverage, frontage, front yard, rear yard and side yard standards for indoor uses, as well as parking standards.

Once the MOS (see item 3 below), OPA and ZBA are approved by the OLT, we recommend the following:

1. Staff publish the OPA and ZBA on the Town website: <https://www.pelham.ca/en/town-hall/cannabis.aspx>
2. Staff create a one-page report explaining the typical process the public can expect for new applications for indoor cannabis or industrial hemp and publish the same at <https://www.pelham.ca/en/town-hall/cannabis.aspx>
3. The next Council direct staff to implement the Community Liaison Committee (CLC) for the Redecan facility at 182 Foss Rd. as soon as possible in early 2023, in accordance with the Minutes of Settlement (MOS) agreed between Redecan and the Town as reported at the OLT Hearing on July 25, 2022. A senior staff member should be tasked with reporting to Council at a public Council Meeting at least semi-annually on the progress of the Redecan CLC.
4. Considerable care was taken in the OPA and ZBA to organize their contents into separate sections so there is no conflict with our existing Official Plan and Zoning By-law. It is critical that this separation be maintained in future amendments to our Official Plan and Zoning By-law. Council to

¹ There may be some modest changes to the OPA, ZBA or the OINBL as a result of the legal actions described in the table above. We have every confidence to believe we will be successful in defending these as Aird & Berlis LLP, Meridian Planning Consultants, and PG Compliance Management Inc. advised in their development and the bylaw drafting to be defensible to legal challenges.

direct staff to ensure the provisions of our OLT-approved cannabis OPA/ZBA are maintained precisely in their approved form in future revisions to our Town's Official Plan and Zoning By-law(s).

OINBL

The Odorous Industries Nuisance Bylaw (OINBL) is the Town's second line of defence and is designed to encourage indoor cannabis and industrial hemp facilities to eliminate the release of nuisance odours into their neighboring community. The OINBL is an enforcement tool that provides for small AMPS (Administrative Monetary Penalty System) fines as well as larger fines/offences under the Municipal Act including seeking a Court order to shutdown a facility which continues to be non-compliant and causing adverse odour impacts in the community.

The purpose of the OINBL is to regulate certain matters related to odorous industrial facilities including cannabis, landfill, slaughter house and rendering operations. In order to avoid adverse effects (such as material discomfort or loss of enjoyment of one's property) from obnoxious odours, facilities are required to employ air filtration systems and take corrective action to prevent the escape of obnoxious odours. A professional odour contractor regularly measures and publishes odour levels in accordance with an ambient neighbourhood odour monitoring program (ANOMP) to be paid for by the cannabis facilities; and Bylaw Enforcement takes random or spot measurements in response to complaints to ensure odour levels are within specified limits.

The OINBL uses the same air quality tools found in our OPA and in the Redecan MOS as recommended by the Town's odour expert. The Town competed and was ready to award the ANOMP in summer 2021 when it pulled back as a result of CannTrust and Redecan filing an "order to quash" lawsuit with the Ontario Superior Court against the OINBL. It is critical that Council removes this unwarranted lawsuit brought over a year after the OINBL was passed by Council, in order to ensure the ANOMP's full implementation proceeds. We believe we have a strong case for our day in Court against these parties².

We recommend the following:

1. The next Council instruct Aird & Berlis LLP to expedite the legal action brought against the OINBL so that it is either withdrawn by the applicants, dismissed, or ruled upon by the Court as soon as possible.
2. The next Council contract the Town's Odour Expert, Mr. Phil Girard, P.Eng, to revise the ANOMP design so that it is appropriate for the indoor cannabis facilities operating at the time and causing odour-based adverse effects in their respective local communities. For example, the ANOMP will likely be needed for the Phoena (formerly called CannTrust) facility on Balfour St., but may not be needed to the same extent or at all for the Redecan facility on 182 Foss Rd. if its CLC is functioning well in accordance with the Redecan MOS.

² An order to quash requires the litigants to prove that Pelham acted in bad faith in approving the OINBL. This allegation couldn't be further from the truth, and Pelham can easily defend against this allegation. No municipality has worked harder, been more transparent, brought in more experts and sought more feedback from stakeholders to develop this bylaw. Furthermore, Woodstock Biomed, Redecan and CannTrust (now called Phoena) have already accepted the merits of the odour measurement methods employed in the OINBL as they are also found in the OPA odour management policies and the Redecan MOS which the relevant parties agreed to at the OLT on July 25, 2022.

3. Update the Fees and Services Bylaw or introduce a cannabis licencing framework to charge the cost of the ANOMP to the respective indoor cannabis facilities. The CCC, through the initiative of the Town's solicitor and a review by Aird & Berlis, drafted such a licencing framework to support the implementation of the OINBL. This draft OINBL amendment is ready for Council's review and approval, and provides an excellent starting point for the next Council.
4. Council to direct Bylaw Enforcement to fully enforce the OINBL.
5. Once the new PSR system that the Town is developing is operational, Council to direct staff to communicate to the public how to file odour nuisance complaints on the new system.
6. Council to direct staff to quantify the cost burden of mitigating the adverse impact of the unintended cannabis odour on the community and to draft resolutions which Council could endorse to seek the means for requesting financial support from the Provincial and/or Federal governments for municipalities with indoor cannabis facilities in their jurisdictions that are experiencing the impacts of unintended cannabis odour in their communities. These costs include the added costs to Bylaw Enforcement, outside experts, and third-party contractors.
7. Council to direct staff to report regularly to the public on progress with respect to the above, and on how the public can assist the Town with odour nuisance awareness and enforcement.

Site Plan Control By-law

The purpose of the Site Plan Control By-law is to ensure that indoor cannabis and industrial hemp facilities are subject to site plan control. The prior exemption for cannabis and industrial hemp agricultural uses was removed. We have no further recommendations to make here.

Light Bylaw

A dark skies bylaw was drafted by staff and the CCC reviewed it but deferred it pending legal challenges of another light abatement bylaw in Leamington. Leamington adopted a new light bylaw being Bylaw 41-22 on June 14, 2022 which resolved the disputes and court challenge with the original light bylaw and has been accepted by the local greenhouse industry. This bylaw is specifically a light abatement bylaw for greenhouses and requires sidewall curtains fully closed, and ceiling curtains which are to be closed 90% or more.

Based on the above, we recommend that:

1. Council develop a light bylaw for greenhouse light abatement patterned after the Leamington Light Bylaw as those goal posts (i.e., a collection of requirements with legal precedent) have now been set.

Guiding Principles

Pelham has been a pioneer in developing planning and municipal instruments to guide how new cannabis and industrial hemp facilities can establish in the Town, while proactively and reactively mitigating their adverse effects on the neighbouring community. Some key guiding principles have supported our successful work and should continue to guide the future completion of this work.

1. The expert advice we have sought and obtained and incorporated into our work product is necessary and money well spent, and should continue to complete any future cannabis bylaws. This approach ensures that:
 - a. We will have instruments that will stand up in Court;
 - b. While these instruments will be challenged, we can be confident that the challengers will either withdraw their challenges on the eve of the hearing or trial, or come to an agreed and equitable settlement with the Town.
 - c. Once tested through a judicial process, we can have confidence that the goal posts have been set once and for all, which allows all parties to move forward with better collaboration. The Redecan CLC is an example of this.
 - d. We will have reduced the burden on staff who have too many other responsibilities competing for their time.
2. Reducing and eliminating odour emissions from indoor cannabis facilities is the single most important challenge. This challenge arises because of the failure of the federal government to enforce their licencing requirements related to the *no odour off site requirement* of the Cannabis Regulations (see Section 85 of the Cannabis Regulations SOR/2018-144). In Pelham where our variable terrain makes odour dispersion especially challenging, the key to co-existence is separation. For this reason, the OPA we developed requires odour studies to determine the appropriate separation on a case-by-case basis, with peer review by the Town's odour expert. Our work has settled on a 300m separation for outdoor cultivation, where strong odour periods are seasonal as compared to indoor operations; and this separation is reflected in the ZBA we developed.

The CCC recommends that Council should continue to lobby the federal government to enforce their (licencing) air filtration requirements to prevent the escape of odours and the provincial government to develop standards for commercial cannabis growing operations that relate to odour and light pollution with appropriate emission standards. Any progress in this direction can only help municipalities like us better address odour and light pollution from indoor cannabis facilities to the satisfaction of the community.

Closing Remarks

In closing, we ask Council to receive this Closing Memo as the CCC's final work product, and to endorse and recommend it to the incoming Council as a starting point and guide for them to safely see these Pelham Cannabis Regulations through to completion for the benefit of our community.

Sincerely,



Tim J. Nohara, Chair
Cannabis Control Committee
Town of Pelham

Cc: Carla Baxter, Louis Damm, Bill Heska, Jim Jeffs, John Langendoen, James Steele, Barbara Wiens, David Cribbs, Bob Hildebrandt

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 23, 2022

CASE NO(S).: OLT-22-001930
(Formerly) PL200426

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	CannTrust Inc.
Appellant:	Redecan & Redecan Pharm
Appellant:	Woodstock Biomed Inc.
Subject:	Proposed Official Plan Amendment No. OPA 09
Municipality:	Town of Pelham
OLT Case No.:	OLT-22-001930
Legacy Case No.:	PL200426
OLT Lead Case No.:	OLT-22-001930
Legacy Lead Case No.:	PL200426
OLT Case Name:	Woodstock Biomed Inc. v. Pelham (Town)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	CannTrust Inc.
Appellant:	Redecan & Redecan Pharm
Appellant:	Woodstock Biomed Inc.
Subject:	By-law No. BL 4252(2020)
Municipality:	Town of Pelham
OLT Case No.:	OLT-22-001931
Legacy Case No.:	PL200427
OLT Lead Case No.:	OLT-22-001930
Legacy Lead Case No.:	PL200426

Heard: January 24 to 27 and July 25, 2022 by video hearing

APPEARANCES:**Parties**

Phoena Inc. (CannTrust Inc.)
("Phoena")

Redecan & Redecan Pharm
("Redecan")

Woodstock Biomed Inc.
("Woodstock")

Town of Pelham ("Town")

Counsel

Sara J. Premi
Danielle Thomas (observing)

Andrew D. Pelletier
Brian Duxbury

Mark Russell

Patrick Harrington
Laura Dean

DECISION DELIVERED BY T. PREVEDEL AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Town adopted Official Plan Amendment No. 9 ("OPA"), dated April 7, 2020 (By-Law No. 4251(2020)), to establish a Cannabis Overlay designation that would apply to the Good General Agricultural designation and the Industrial designation as identified on Schedule A: Land Use Plan of the Town's Official Plan.

[2] A Zoning By-Law Amendment ("ZBLA") No. 4252 (2020) was enacted at the same time to implement the OPA.

[3] The matters before the Tribunal are multiple appeals under s. 17(24) and s. 34(19) of the *Planning Act* filed against the above OPA and ZBLA.

ADMINISTRATIVE MATTERS

[4] Prior to the Hearing, the Parties, on consent, requested an extension of five days to the total Hearing time allotted. This was not possible, due to scheduling restrictions,

and it was agreed, on consent, to commence the Hearing as scheduled and discuss the potential for a second phase.

[5] At the outset of the Hearing, Patrick Harrington, the Town's counsel, advised the Tribunal that two of the Appellants, namely Phoena and Redecan, were currently in active discussions with the Town towards a potential settlement agreement, which would be presented to Town Council during the month of February. He asked the Tribunal to schedule a second phase to the Hearing sometime after February 2022.

[6] Mr. Harrington proposed that the Town call its evidence-in-chief first, followed by Woodstock, and that Redecan and Phoena stand down until the second phase of the Hearing. He opined that the second phase could potentially be a settlement hearing. Counsel for Redecan and Phoena were in agreement with Mr. Harrington's approach to Phase 1 of this Hearing.

[7] Mr. Russell, counsel for Woodstock, expressed his concern with respect to this proposal, as he felt that this went against paragraph 20 of the Procedural Order and could potentially prejudice his client as he had no expert on odour issues and was relying on his cross-examination of Brian Sulley, Redecan's odour expert, which would now be excluded from Phase 1 of the Hearing.

[8] The Tribunal ruled that the Hearing would proceed as scheduled, for the sake of efficient use of resources, as per Mr. Harrington's suggestion. Mr. Russell was reassured that his client would not be prejudiced and that the Tribunal would take this matter into account during the upcoming proceedings to ensure fairness and transparency.

[9] The second phase of this Hearing was scheduled for July 25, 2022 for a five-day period and details were issued to all Parties by the Case Coordinator.

THE PHASE 1 HEARING

[10] The Hearing of Phase 1 of this Appeal took place over the course of four days. The conduct of the Hearing was governed by a Procedural Order issued on October 20, 2021.

[11] This Phase of the Hearing was focussed on the Town's evidence-in-chief with respect to the OPA and the ZBLA and Woodstock's issues as they relate to the Town's OPA and ZBLA.

[12] The Tribunal heard from four (4) expert witnesses, on behalf of the Parties. All expert witnesses were qualified to provide expert evidence in their respective fields. The Tribunal also heard from one witness that provided insight on the operations of Woodstock.

Town's Witnesses

- Nick McDonald – land use planning
- Philip Girard – environmental odour

Woodstock's Witnesses

- Kevin Bechard – land use planning
- Sean Colville – agrologist
- Paul Gri – land use and operations, Woodstock BioMed.

BACKGROUND AND CHRONOLOGICAL CONTEXT

[13] Mr. McDonald provided the Tribunal with a thorough and comprehensive overview of the background and chronological context leading up to the passing of the OPA, the ZBLA and the subsequent appeals.

[14] He stated that in early 2018, the Town began receiving complaints from residents regarding the impacts they were experiencing from the operation of the existing cannabis facilities in the municipality.

[15] The following is a chronology of key dates and events as presented by Mr. McDonald:

- On October 15, 2018, Town Council passed Interim Control By-law No. 4046-2018 ("ICBL") that applied to all lands within the municipality, except those 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.
- In the spring of 2019, Council formed an advisory committee known as the Cannabis Control Committee ("CCC") to provide advice to Council on opportunities to mitigate against adverse land use impacts of cannabis production facilities and cannabis-related uses in the Town. As part of their updates to Council, the CCC prepared a number of Draft Recommendation Reports.
- As a result of a statutory Public Meeting held on September 10, 2019 to discuss planning controls to regulate cannabis-related uses, staff prepared a recommendation report which was considered by Council at a Special Meeting held on September 23, 2019. The Recommendation Report noted that additional time was warranted to make modifications and improvements to several of the draft land use planning policies, regulations and procedures which had been prepared by Town staff. Accordingly, the Recommendation Report recommended that Council consider approval of a by-law to extend the ICBL.
- On September 23, 2019, Town Council passed By-Law No. 4159 (2019) to extend the ICBL for an additional nine (9) months to July 15, 2020. During this time, it was intended that the Town would continue its efforts to

develop an approach to regulating cannabis. At a regular meeting of Council held on February 18, 2020, Community Planning & Development staff presented the Cannabis Land Use Report, dated February 2020. The staff report accompanying the Cannabis Land Use Report indicated that the Cannabis Land Use Report served as the statutorily required review and study of land use impacts and it recommended proposed policy changes and a regulatory framework for cannabis production and related land uses in the Town.

- At a regular meeting of Council held on March 23, 2020, the CCC presented a 3rd Draft Recommendation Report on Managing Cannabis Nuisances in the Town (referred to hereinafter as the “CCC Cannabis Report”). The CCC Cannabis Report covered similar topic areas as the staff Cannabis Land Use Report, and included a review of regulatory considerations, public concerns, and a brief overview of the planning context. Other sections of the CCC Cannabis Report also spoke to the Odorous Industries Nuisance By-law (adopted by Council on March 23, 2020), and potential future Noise Nuisance and Light Nuisance By-laws. The primary focus of the CCC Cannabis Report was how the adverse effects of odour from cannabis facilities could be dealt with by the Town.

[16] Mr. McDonald told the Tribunal that, according to the staff Cannabis Land Use Report, there are approximately 1,674 sensitive receptors in the Town’s agricultural areas.

[17] Based on the above chronology, Mr. McDonald advised that he was retained in January 2020 to provide professional planning advice on the planning approach and planning instruments to regulate cannabis within the community.

[18] Mr. McDonald told the Tribunal that a draft OPA and ZBLA dated April 7, 2020 was then posted on the Town’s website and notices were sent out in an appropriate

manner. The Town received 44 comments from the public, comments from the Niagara Escarpment Commission, Niagara Region ("Region") and the cannabis industry, namely Phoenia, Woodstock and Redecan.

[19] In response to feedback and comments received, Mr. McDonald advised the Tribunal that an Addendum Report was prepared dated June 22, 2020 (and revised July 5, 2020) which proposed changes to the OPA and the ZBLA dated June 19, 2020.

[20] After meeting with Town staff, the CCC and the Region, minor editorial revisions were made and a final version of the OPA and the ZBA was posted on July 5, 2020.

[21] Mr. McDonald further advised the Tribunal that the final versions of the planning documents were supported by the Region and therefore exempted from the Region's approval.

OVERVIEW OF THE THREE APPELLANTS

1. Redecan

[22] Redecan first received licensing approval from Health Canada on June 25, 2014, for a medical cannabis production facility to grow cannabis located at 1760 Effingham Road in the Town. The facility is currently in operation and compliant with the requirements of Health Canada, and has carried on business as a federally licensed cannabis cultivator and processor.

[23] Redecan received a second licensing approval from Health Canada on September 29, 2017 for a second farm at 182 Foss Road in the Town. The facility is currently in operation and compliant with the requirements of Health Canada and has carried on business as a federally licensed cannabis cultivator and processor continuously and uninterrupted since receiving licensing approval.

[24] Currently, Redecan employs approximately 500 people; with approximately 250 employees working in Redecan's Pelham facility.

2. Phoena (formerly Canntrust)

[25] Phoena is a federally regulated licensed producer of medical and recreational cannabis, with a head office in the City of Vaughan. Phoena has been in existence since 2013, initially delivering standardized cannabis products to physicians to provide accurate dosage to patients.

[26] All of Phoena's Pelham lands are found outside the urban boundary in the agricultural area.

[27] In 2017, Phoena acquired a greenhouse facility at 1396 Balfour Street in the Town that had previously been used for the cultivation of ornamental flowers. The facility was approved for a licence for processing and cultivation through Health Canada on October 6, 2017. As part of the approval and licensing process, notification was provided to the local municipality, local fire officials and local law enforcement.

[28] On October 10, 2018, the Appellant acquired the adjacent property at 1350 Balfour Street for a planned expansion of its agricultural operations. Parcels 1350 and 1396 have since merged in title.

[29] The licensed Pelham facility constitutes a 450,000 square foot hydroponic perpetual harvest facility and is the first of its kind in Canada, producing 100% pesticide-free cannabis.

[30] In 2019, the Town issued a Building Permit for the construction of an additional 39,760 square metres of greenhouse space. Phoena has applied for and been issued related building permits as Accessory Building(s) to Farm Use. While construction has yet to begin, the Town has renewed these permits on an annual basis.

3. Woodstock

[31] The Subject Property is municipally known as 770 Foss Road and is bounded by Foss Road to the north, Church Street to the west, Sumbler Road to the south and a railway to the east in the Town (the "Subject Property"). The Subject Property is irregular in shape, is approximately 12.4 hectares in size and maintains approximately 6.1 metres of frontage along Foss Road per the Survey Sketch prepared by P.D. Reitsma Surveying (2005) Ltd. and dated August 18, 2006.

[32] Access is provided via a private road from Foss Road.

[33] The Subject Property is currently occupied by a greenhouse which was formerly utilized to grow cucumbers. The existing production facility has an approximate ground floor area of 2.42 hectares. A future expansion is contemplated on the Subject Property.

[34] The Subject Property is located within an agricultural area as described below:

- North: A greenhouse is located immediately to the north of the existing facility. A low-rise residential neighbourhood comprised of single detached houses is located on the north side of Foss Road and extending west of Church Street.
- South: The Property has frontage on Sumbler Road to the south, but with a generous setback, containing a portion of a wooded area. A few single detached houses are located along Sumbler Road. There are a number of farms located on the south side of Sumbler Road, opposite of the Property's rear lot line.
- East: A railway is located immediately to the east of the Property. Various farm lots are located east of the railway.

- West: Residential lots containing single detached houses are located along the east side of Church Street.

[35] The Subject Property is located approximately 3.1 kilometres and 4.7 kilometres from the existing Redecan and Phoena Inc. cannabis production facilities which located at 182 Foss Road and 1396 Balfour Street in the Town, respectively, as measured from the current building footprints.

OVERVIEW OF THE OFFICIAL PLAN AMENDMENT

[36] Mr. McDonald told the Tribunal that, as noted in the final version of the OPA dated July 5, 2020, the purpose of the OPA is to establish permissions for indoor cannabis and industrial hemp cultivation and processing in the Town's agricultural area, subject to a zoning by-law amendment, and to establish the criteria to be relied upon when considering applications for these uses. Establishing the need for a zoning by-law amendment is a key foundational component of the OPA, since it triggers a process whereby studies can be asked for and reviewed in an open and transparent process involving members of the public and other stakeholders.

[37] He opined that the OPA recognizes that, because 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 are to be minimized and appropriately mitigated. Determining how the avoidance of adverse effects can be achieved is a key element of the planning process established by the OPA.

[38] In his written and oral testimony, Mr. McDonald told the Tribunal that the OPA also recognizes that the cultivation of cannabis is an agricultural use and is permitted in agricultural areas by the Provincial Policy Statement ("PPS"). However, in the absence of Provincial standards on the adverse effects of odour from indoor cannabis and industrial hemp cultivation facilities, the OPA also recognizes that there is a need to

control the siting of such uses in relation to sensitive uses as a result of the known adverse effects from the cultivation of cannabis.

[39] He advised the Tribunal that the OPA identifies required studies to support the establishment of an indoor cannabis and industrial hemp cultivation facility. These studies include, but are not limited to, an Air Quality Study, a Contingency Odour Mitigation Plan, a Light Mitigation Plan and a Traffic Impact Study. The results of these studies will guide the establishment of minimum setbacks and a maximum size of the facility.

[40] Mr. McDonald opined that, given the known adverse effects from these facilities in the Town, the OPA is an appropriate response to community concerns about this type of use, represents good planning and is in the public interest. He further opined that the OPA conforms with and is consistent with Provincial plans and policies and conforms to the Town's Official Plan ("OP") and the Region's OP. In this regard, the Region agrees by virtue of exempting the OPA from its approval.

OVERVIEW OF THE ZONING BY-LAW AMENDMENT

[41] Mr. McDonald provided an overview of the proposed ZBLA. He explained that the purpose of the ZBLA is to create two new zones that would only be applied in the future to new indoor cannabis and industrial hemp facilities, subject to Council approval in accordance with the process and criteria established by the OPA.

[42] He further explained that these new zones would not be applied to those properties on which there were legally established cannabis operations when the ICBL was passed (Phoena and Redecan), meaning these operations would become legal non-conforming uses in accordance with the *Planning Act* once and if the ZBLA is approved. The Woodstock property was not the site of a legally established cannabis operation at the time the ICBL was passed. The new zones would also not be applied

to lands that are subject to Development Control pursuant to the Niagara Escarpment Plan, such as the lands owned by Redecan at 1760 Effingham Street.

[43] Under cross examination, Mr. McDonald remained steadfast in his professional opinion that the three key studies identified in the OPA, namely the Air Quality Study, the Light Mitigation Study and the Traffic Impact Study should be undertaken at the ZBLA stage in order to determine feasibility. To undertake these key studies at the Site Plan stage assumes that the use is already permitted.

EVIDENCE OF PHILIP GIRARD REGARDING ODOUR CONTROL AND MITIGATION

[44] Mr. Girard advised the Tribunal that he has been providing advice to the Town and its CCC, as an odour consultant, since June 2019 and has provided guidance and input into the OPA and the ZBLA, which are the subject of this Hearing.

[45] Mr. Girard provided the Tribunal with a thorough and comprehensive overview with respect to air quality controls, atmospheric dispersion modelling and general industry best practices with respect to odour control and odour mitigation plans.

[46] Mr. Girard reminded the Tribunal that the Town and its residents have experienced odour problems related to the existing cannabis facilities. He further stated that the community has clearly and emphatically provided input to the planning process as a result of historical concerns.

[47] He explained that the use of atmospheric dispersion modelling would identify releases in advance, thus allowing Town staff to work with the proponent in assessing risk. This would be a useful tool for the Town to have at its disposal.

[48] Mr. Girard also explained that there are no provincial permitting requirements for cannabis facilities, therefore the Town needs to develop its own assessment tools.

[49] Mr. Girard told the Tribunal that this approach to cannabis facilities is not unique to the Town and explained that this approach has also been adopted by many other municipalities in the immediate area in response to resident concerns.

THE WOODSTOCK APPEAL

[50] Mr. Bechard advised that Woodstock are predominantly within the Prime Agricultural Area, with a small portion of the noted private road being within Settlement Areas.

[51] By way of chronological context, he explained that Leviathan Cannabis Group, the parent company of Woodstock, submitted an application in December 2018 to amend the ICBL and permit a cannabis production facility consisting of: a retrofitted 8,361.3 square metre greenhouse for the purpose of cannabis cultivation, a retrofitted 2,787.1 square metre headhouse with a 929 square metre addition for the purpose of cannabis harvesting and utility infrastructure, and a 464.5 square metre office accessory to the cannabis production facility.

[52] He further advised that Town Planning Staff prepared a Recommendation Report regarding the proposed amendment dated April 15, 2019, which recommended its approval to Council. The Report also recommended that the proposed facility be subject to Site Plan Control and that the Site Plan Control By-Law No. 1118 (1987) be amended to require greenhouses to be subject to Site Plan Control. Staff believed the compatibility concerns expressed by residents, including those at the February 25, 2019 public meeting, could be addressed satisfactorily through a Site Plan Agreement requiring measures such as odour and light mitigation plans. The Region Planning Staff had previously noted no objections to the proposed amendment or to the Town's opinion that the compatibility concerns could be addressed through a Site Plan Agreement in its commenting letter dated January 31, 2019.

[53] The proposed amendment to the ICBL was not passed by Council. The By-Law was later extended until July 15, 2020. OPA No. 9 and ZBLA 4252 were enacted on July 13, 2020 to establish permissions and provisions for indoor cannabis and industrial hemp cultivation.

[54] At the beginning of his oral testimony, Mr. Bechard stated that the outstanding issues were fewer than before as a result of the recent revisions identified by Mr. McDonald to the OPA during his oral testimony. He also stated that the Cannabis Land Use Report prepared by staff was thorough and well prepared.

[55] Mr. Bechard told the Tribunal that Woodstock has been engaged with the Town for the past four years, but it fails to be recognized as an existing cannabis facility in the same fashion as Redecan and Phoena.

[56] Mr. Bechard also reminded the Tribunal that no industry representatives were appointed to the CCC, despite the staff recommendation as to the proposed make-up of this body.

[57] Under cross-examination, Mr. Bechard admitted that there was no application filed by Woodstock for a cannabis operation at the time that the ICBL was enacted by Council.

[58] He also agreed, under cross-examination, that the revised OPA is a good planning instrument and can be approved. As mentioned earlier, his only concern was that Woodstock should be included as a site-specific exception.

THE PHASE 2 HEARING

[59] The Hearing of Phase 2 of this Appeal took place on July 25, 2022.

[60] In advance of this Hearing, the Tribunal was advised by correspondence dated July 22, 2022, that Phoena was formerly withdrawing its appeal of the OPA 9 and the ZBLA.

[61] The Tribunal was also advised, on July 15, 2022, that the Town had reached a settlement with Redecan and Redecan Pharm on a set of site-specific zoning exceptions.

[62] Fully executed Minutes of Settlement (“MOS”) between the Town and Redecan were submitted to the Tribunal’s Case Coordinator in advance of the Hearing.

THE REDECAN SETTLEMENT

[63] Mr. Harrington submitted that the MOS primarily deal with Redecan’s ongoing commitment to odour management, complaint tracking and associated actions for mitigation of substantiated odour complaints.

[64] Messrs. McDonald and Girard were called as a panel to provide the Tribunal with an overview of the proposed settlement.

[65] Mr. McDonald made reference to his previous planning evidence and spoke to the planning merits of the Redecan-related portions of the ZBLA.

[66] He explained that the last section of the revised ZBLA provides for a site-specific regulation for the provision of an office building and warehouse with an associated standard for parking spaces that has been agreed to by Redecan.

[67] Mr. McDonald concluded by opining that, in his professional opinion, the ZBLA, as amended, conforms with the Town’s OP and the OPA, conforms to the Region’s OP, conforms to the PPS, represents good planning and is in the public interest.

[68] Mr. Girard made reference to his previous comprehensive evidence with respect to odour control and mitigation and took the Tribunal through the relevant sections of the MOS, which provided a roadmap and action plan for odour mitigation.

[69] He explained that a Community Liaison Committee ("CLC") would be created for the Redecan site, consisting of invited landowners within a one-kilometre perimeter of the site, as well as a representative from Redecan to act as liaison and an appointee from the Town, who will be a qualified professional engineer with experience in the measurement and quantifying of air contaminant and odour emissions.

[70] He advised that the CLC will meet quarterly unless otherwise determined by the CLC and the Parties acting reasonably, and Minutes of each CLC meeting shall be distributed to each of the Parties and the attendees.

[71] Mr. Girard concluded that the MOS represented a solid foundation for the ongoing commitment to odour management by Redecan and was satisfied, in his professional opinion, that the Town and Redecan had bargained in good faith.

ANALYSYS AND FINDINGS

1. The Redecan Settlement

[72] The Tribunal has had the benefit of a thorough and comprehensive overview of the proposed OPA and ZBLA, both orally and in written submissions, by the Town's expert witnesses during Phase 1 of this Hearing.

[73] After careful consideration of the earlier evidence presented, and the more recent overview of the MOS and the revised ZBLA, the Tribunal finds that the proposed settlement between the Town and Redecan conforms to the PPS, conforms to the Town's OP and the OPA, conforms to the Region's OP, represents good planning and is in the public interest.

2. The Woodstock Appeal

[74] Woodstock is predominantly within the Prime Agricultural Area.

[75] Mr. Russell re-iterated that an application was made by his clients in December 2018 to amend the ICBL and permit a cannabis production facility.

[76] Mr. Russell further explained that Town Planning Staff prepared a report to Council on April 15, 2019, recommending its approval, subject to Site Plan Control. However, this was not passed by Council.

[77] Mr. Russell insisted that the Woodstock facility should be recognized as an existing cannabis facility in the same fashion as Redecan and Phoenia. This was supported by the testimony provided to the Tribunal by Mr. Bechard, Woodstock's expert witness, during Phase 1 of this Hearing.

[78] He explained that Town staff had originally been supportive of Woodstock's request, and, on the basis of this support, Woodstock had retained experts and expended significant time and resources to move the process forward.

[79] Mr. Russell made reference to a case law, *Richmond Hill (Town) v. Miller Paving Ltd.* 1978 CarswellOnt 741, where a municipality passed a by-law restricting certain uses in the midst of an ongoing approval process by the proponent. In particular, he pointed to paragraphs 13 and 14 of this prior decision, where it was deemed that "intention" is a factor to be taken into consideration.

[80] Notwithstanding the above, the Tribunal notes that Woodstock's expert witness, Mr. Bechard, agreed under cross-examination that the revised OPA is a good planning instrument and can be approved. His only concern was that Woodstock should be included as a site-specific exception.

[81] The Tribunal notes that the OPA and the ZBLA, as presented during the four days of the Phase 1 Hearing, was a product of thorough analysis, studies and public input. The OPA and the ZBLA was not opposed by the major players, and it was approved by Town Council.

[82] Mr. Russell admitted that the exception to the ICBL requested by his client was denied by Council, and that Woodstock has never formally filed an application. This was also confirmed during Mr. Bechard's testimony.

[83] In this instance, the task of the Tribunal is to rule on the merits of the OPA and the ZBLA, as well as the proposed settlement between the Town and Redecan. The determination of whether Woodstock is a legal non-conforming use is not within authority of the Tribunal to determine.

[84] The Tribunal finds that Woodstock still has the opportunity to initiate an approval process with the Town, which would result in reports to Council and a public process guided by the OPA. The Tribunal feels that the process described above is the appropriate vehicle to pursue approvals through the "front door".

[85] On the basis of the written and oral testimony considered during the course of this two-phase Hearing, the Tribunal finds that the appeal by Woodstock is not justifiable and should be denied.

INTERIM ORDER

[86] The Tribunal Orders that the appeal against Official Plan Amendment No. 9 by Woodstock BioMed Inc. is dismissed.

[87] The Tribunal Orders that the appeal against the proposed Zoning By-Law Amendment No. 4252 by Woodstock BioMed Inc. is dismissed.

[88] The Tribunal confirms the withdrawal of the appeal by Phoena Inc. (formerly CannTrust Inc.) as of July 22, 2022.

[89] The Tribunal grants in part the appeals filed by Redecan & Redecan Pharm and approves the following:

- (a) the version of Official Plan Amendment No. 9 attached as Schedule 1 to this Decision; and
- (b) the version of Zoning By-Law Amendment No. 4252 (2020) attached as Schedule 2 to this Decision.

[90] The Tribunal confirms that the approval of Official Plan Amendment No. 9 and Zoning By-Law Amendment No. 4252 (2020) as it relates to the Redecan Site is based on the duly executed Minutes of Settlement between the Town of Pelham and Redecan & Redecan Pharm.

[91] The Tribunal Orders that Official Plan Amendment No. 9 shall come into immediate force and effect within the Town of Pelham.

[92] The Tribunal's Final Order approving the portion of the Settlement Zoning By-Law Amendment containing the site-specific exceptions for the Redecan Site, attached as Schedule 2 to this Decision, shall be withheld until the Town of Pelham advises the Tribunal in writing that the requirements of Section "D" of the Minutes of Settlement have been satisfied, as follows:

- Redecan & Redecan Pharm shall provide the following to the satisfaction of the Town of Pelham in respect of the Redecan Site before the Town of Pelham will issue its letter authorizing release of the Final Order:
 - (a) a description of the current odour control and management systems being employed;

- (b) a site plan drawing showing the location of existing buildings, building heights and emission sources including identification; and
- (c) a Contingency Odour Management Plan.

[93] In the event that there are any difficulties implementing the above, the Tribunal may be spoken to.

"T. Prevedel"

T. PREVEDEL
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

OLT-22-001930 – Schedule 1

AMENDMENT NO. 09

TO THE OFFICIAL PLAN (2014)

FOR THE

CORPORATION FOR THE TOWN OF PELHAM

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PART “A” – THE PREAMBLE

SECTION 1 – TITLE AND COMPONENTS

This document was approved in accordance with sections 17 and 21 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended and shall be known as Amendment No. 09 to the Official Plan adopted by By-law No. 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014, for the Town of Pelham Planning Area.

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

Part “B”, the Amendment, consisting of the following text constitutes Amendment No. 09 to the Official Plan adopted by By-law 3259 (2012) and confirmed by the Ontario Municipal Board decision of July 18, 2014 for the Town of Pelham Planning Area.

SECTION 2 – PURPOSE OF THIS AMENDMENT

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

SECTION 3 – LOCATION OF THE AMENDMENT

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

SECTION 4 – BASIS OF THE AMENDMENT

On April 13, 2017, the Government of Canada introduced Bill C-45 (the *Cannabis Act*) in the House of Commons. Based in large part on the advice provided by the Task Force on Cannabis Legalization and Regulation, Bill C-45 proposed to create the foundation for a comprehensive national framework to provide restricted access to regulated cannabis, and to control its production, distribution, sale, importation, exportation, and possession. Following parliamentary review, the *Cannabis Act* received royal assent on June 21, 2018 and it became law on October 17, 2018.

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

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

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

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

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

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

However, the MDS2 guidelines do not apply to cannabis and in the absence of Provincial guidance on this matter, it is up to local municipalities to establish a policy framework to avoid adverse effects, and if avoidance is not possible, to minimize and mitigate adverse effects through setbacks for indoor cannabis and industrial hemp cultivation from sensitive uses.

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

Given the above, this Amendment does the following:

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

In this regard, required studies include an Air Quality Study, 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 or which may be required to support an application to expand a legal non-conforming indoor cannabis cultivation facility.

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.

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

PART B – THE AMENDMENT

All of this Part of the document entitled Part B - The Amendment consisting of the following text constitutes Amendment No. 09 to the Official Plan of the Town of Pelham.

Details of the Amendment

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

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

B2.1.5 Indoor Cannabis and Industrial Hemp Cultivation**B2.1.5.1 Development Criteria**

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

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

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

B2.1.5.2 Specific Required Studies

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

a) Air Quality Study

- i) At no cost to the Town, the proponent will submit an Air Quality Study (AQS) that is prepared by a Licensed Engineering Practitioner (which means that they must be licensed by Professional Engineers Ontario). The AQS will document the emission sources at the facility and quantify the emission rates of air contaminants including odour, chemicals and particulate matter.
- ii) The AQS shall detail the proposed air filtration and odour control systems and other mitigation measures that will be used to manage odour. The AQS shall include atmospheric dispersion modelling predictions that show odour and contaminant concentration predictions along the property line and extend outward 5 kilometres from the facility into the surrounding community. The AQS shall include a review of the impacts of other cannabis and industrial hemp facilities within the area to determine the extent of the potential cumulative adverse effects.
- iii) In addition to sub-section ii) above, and to minimize the likelihood of adverse effects, the AQS should target a sensitive receptor impact of two odour units, however the Town will consider other odour impact predictions. An electronic copy of the atmospheric dispersion model files used in the AQS shall be included with the submission.
- iv) In addition to the above, the proponent of the proposed facility will submit a Contingency Odour Mitigation Plan, prepared by a Licensed Engineering Practitioner that considers additional air filtration systems or other mitigation measures for use in the event of substantiated future complaints after the use has been established. Agreement on the appropriate triggers for additional mitigation will be made in advance.

b) Light Mitigation Plan

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

c) Traffic Impact Study

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

B2.1.5.3 Scope of Required Studies

In accordance with Section E3.1 of this Plan, the Town will determine what supporting information (i.e. reports and studies) are required as part of the complete application submission involving a re-zoning and inform the proponent of these requirements, following the holding of a pre-consultation meeting. If an application is proposed to be submitted to the Committee of Adjustment to expand a legal non-conforming indoor cannabis cultivation facility, the proponent is encouraged to consult with the Town to determine study requirements.

B2.1.5.4 Need for Setbacks

- a) In recognition of the known adverse effects of odour, the avoidance of adverse effects shall be a first principle. If adverse effects cannot be avoided, the minimization and mitigation of adverse effects has to be considered. One of the ways to avoid, minimize and mitigate adverse effects is through the separation of incompatible uses through the use of setbacks.

- b) The setbacks that are derived as a result of the review of an application to amend the zoning by-law or to expand a legal non-conforming indoor cannabis cultivation facility will depend on:
 - i) Whether the facility is a greenhouse or an industrial-type building and if a greenhouse is proposed, whether the proposed greenhouse is purpose built for cannabis or industrial hemp or already exists;
 - ii) The size and scale of the proposed facility;
 - iii) The proximity and number of sensitive uses in the area including the potential for additional sensitive uses on vacant lots that are zoned to permit a sensitive use;
 - iv) The location of the proposed facility in relation to prevailing winds;
 - v) The nature of the adverse effects that exist at the time in relation to existing indoor cannabis cultivation facilities; and
 - vi) The impact of topography on the dispersion of odour.

B2.1.5.5 Implementing Zoning By-law

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

- 3. That Section B2.2.2 (**Permitted Uses - Specialty Agricultural Designation**) be amended to include a new sub-section k) as follows:
 - k) Indoor cannabis and industrial hemp cultivation in accordance with Section B2.2.9.
- 3. That Section B2.2 – (**Specialty Agricultural Designation**), be amended by including a new Section B2.2.9 and re-numbering the remaining sections accordingly:

B2.2.9 Indoor Cannabis and Industrial Hemp Cultivation

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

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

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

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

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

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

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

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

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

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

OLT-22-001930 – Schedule 2**THE CORPORATION OF THE
TOWN OF PELHAM
By-law Number XXXX (2022)**

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

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

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

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

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

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

Zone	Symbol
Agricultural - Cannabis	A – CAN
General Industrial - Cannabis	M2 – CAN

2. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of definitions in Section 5.0, as follows:
- i) "Cannabis-related use - indoor" means those activities authorized in accordance with the Federal Cannabis Regulation SOR-2018-144 as amended that are carried out within an enclosed building or structure.
 - ii) "Cannabis-related use - outdoor" means those activities authorized in accordance with the Federal Cannabis Regulation SOR-2018-144 as amended that only involve the growing and harvesting of cannabis outdoors.
 - iii) "Industrial hemp-related use - indoor" means those activities authorized in accordance with the Federal Industrial Hemp Regulation SOR-2018-145 as amended that are carried out within an enclosed building or structure.
 - iv) "Industrial hemp-related use - outdoor" means those activities authorized in accordance with the Federal Industrial Hemp Regulation SOR-2018-145 as amended that only involve the growing and harvesting of hemp outdoors.
 - v) "Sensitive land use" means school, day care, playground, sporting venue, park, recreational area, residence, place of worship, community centre or any other place where people regularly gather or sleep.
3. **THAT** By-law 1136 (1987), as amended, is amended by the addition of parking requirements in Section 6.16 (a), as follows:
- "Cannabis-related uses - indoor and industrial hemp-related uses - indoor - 1 parking space per 100 m² (1076.39 ft²) of gross floor area"
4. **THAT** By-law 1136 (1987), as amended, is hereby amended by the addition of a new subsection 7.2 (h):
- "(h) Minimum setback for a cannabis-related use - outdoor and an industrial hemp-related use - outdoor from a sensitive land use - 300 metres (984 feet)."

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

"SECTION 7A – AGRICULTURAL CANNABIS - A-CAN ZONE

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

7A.1 PERMITTED USES

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

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

- (a) A retail store is not permitted as an accessory use to any of the permitted uses listed in Subsection 7A.1.
- (b) Minimum Lot Frontage for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 100 metres.
- (c) Minimum Lot Frontage for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 200 metres.
- (d) Minimum Lot Frontage for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 200 metres.
- (e) Minimum Lot Area for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 3 hectares.
- (f) Minimum Lot Area for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 10 hectares.

- (g) Minimum Lot Area for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 10 hectares.
- (h) Maximum Lot Coverage - 30 percent.
- (i) Minimum Front Yard for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 20 metres.
- (j) Minimum Front Yard for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 80 metres.
- (k) Minimum Front Yard for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 80 metres.
- (l) Minimum Side Yard or Rear Yard for micro-processing and micro cultivation uses as defined by the Federal Cannabis Regulation SOR-2018-144 - 15 metres, except where ventilating fans in a wall exhaust into the respective side or rear yard, the minimum yards shall be 25 metres.
- (m) Minimum Side Yard or Rear Yard for standard processing and standard cultivation uses as defined by the Federal Cannabis Regulation SOR-2018-144 - 40 metres, except where ventilating fans in a wall exhaust into the respective side or rear yard, the minimum yards shall be 60 metres.
- (n) Minimum Side Yard or Rear Yard for industrial hemp-related uses as defined by the Federal Industrial Hemp Regulation SOR-2018-145 - 40 metres, except where ventilating fans in a wall exhaust into the respective side or rear yard, the minimum yards shall be 60 metres.
- (o) Minimum Exterior Side Yard for micro-processing and micro-cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 20.5 metres.

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

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

SECTION 23A – GENERAL INDUSTRIAL - M2-CAN ZONE

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

23A.1 PERMITTED USES

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

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

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

7. **THAT** Schedule 'A' to Zoning By-law No. 1136 (1987), as amended, is hereby amended by changing the zoning of lands known municipally as 182 Foss Road and shown on Schedule 'A' attached hereto and forming part of this By-law, from the Agricultural (A) Zone to the Agricultural 'A-CAN-319' Zone.

8. **THAT** By-law 1136 (1987), as amended, is hereby amended by the

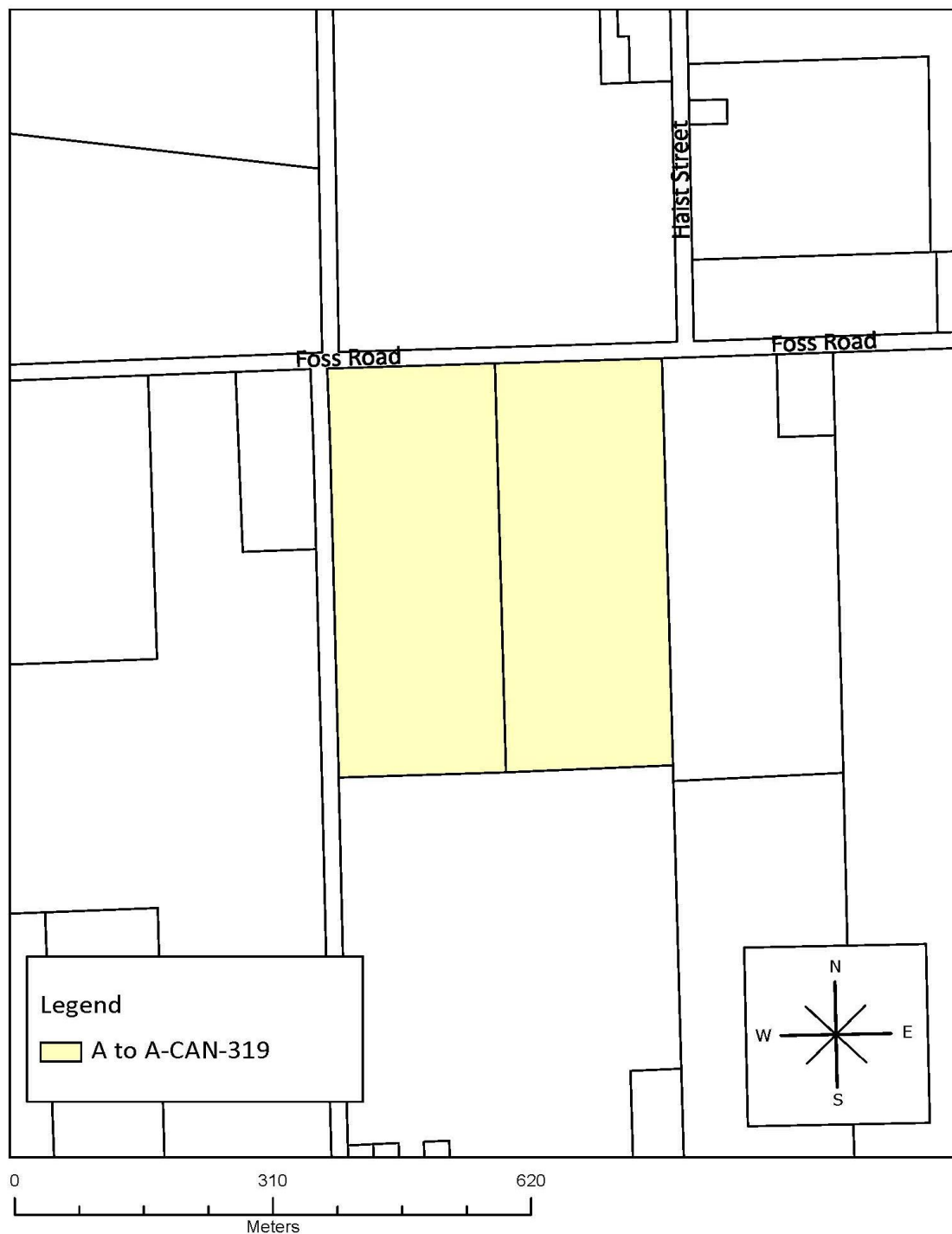
addition of a new Section A-CAN-319 (182 Foss Road) to Section 30 as set out below:

A-CAN-319 Notwithstanding the regulations of the Agricultural Cannabis (A-CAN) zone, the following site-specific regulations also apply:

- a) Maximum gross floor area of greenhouses associated with cannabis-related use - indoor - 31,600 m²
- b) Minimum Front Yard for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018-144 - 70 metres.
- c) Minimum Side Yard or Rear Yard for standard processing and standard cultivation as defined by the Federal Cannabis Regulation SOR-2018 -144 - 37 metres
- d) Parking spaces for all uses - 1 parking space per 80 m² of gross floor area to a maximum of 469 total parking spaces
- e) An office building that is accessory to the cannabis related use - indoor is permitted provided it has a gross floor area of less than 1,000 square metres
- f) A warehouse is permitted provided that it
 - (i) has a gross floor area of less than 11,200 square metres;
 - (ii) is accessory to the cannabis related use - indoor use that is permitted on the site; and
 - (iii) is not used for cultivation associated with any cannabis-related or hemp-related uses.

By-law approved by the Ontario Land Tribunal this _____ day of _____, 2022.

Schedule 'A'



This is Schedule 'A' to By-law No. _____ (2022) approved by the Ontario Land Tribunal the _____ day of _____, 2022.