



Community Planning and Development Department

Wednesday, July 10, 2024

Subject: Recommendation Report: Cannabis and Industrial Hemp Zoning By-law Amendment

Recommendation:

BE IT RESOLVED THAT Council receive Report #2024-0158 Recommendation Report: Cannabis and Industrial Hemp Zoning By-law Amendment, for information;

AND THAT Council approve, in principal, the proposed Cannabis and Industrial Hemp Zoning By-law Amendment, as presented in Appendix A to this report.

Executive Summary:

The purpose of this report is to provide Council with a recommendation regarding a technical Amendment to Town of Pelham Comprehensive Zoning By-law 4481(2022)("new Zoning By-law (4481)"), to regulate Cannabis and Industrial Hemp cultivation in the Town.

Location:

The proposed Cannabis and Industrial Hemp Zoning By-law Amendment ("Cannabis Amendment") applies specifically to Sections 1.4 (Zones and Symbols), Section 2 (Definitions), Section 4.1 (Parking Space Requirements), and Section 5 (Rural/Agriculture Zones) of the Town's new Zoning By-law (4481). No mapping changes are being considered at this time.

Project Description and Purpose:

The Town's new Zoning By-law (4481) was approved by the Ontario Land Tribunal on April 3, 2023, save and except site specific lands identified on Appendix A of the decision. The proposed amendments to regulate cannabis and industrial hemp cultivation are a result of the OLT interim decision issued on August 23, 2022.

Generally speaking, changes are proposed to:

- Section 2: Definitions
 - Introducing definitions for Cannabis-related use – indoor and outdoor;

- Introducing definitions for Industrial hemp-related use – indoor and outdoor;
- Defining Sensitive Land Use.
- Section 4: Parking Provisions
 - Regulations specific to indoor cannabis and industrial hemp-related uses.
- Section 5: Rural/Agricultural Zones
 - Additional setback requirement of 300m for outdoor cannabis-related and industrial hemp-related uses from a sensitive land use in the Agriculture Zone and Specialty Agriculture Zone.
 - New Section 5.1.A: Agriculture Zone – Cannabis (A-CAN) and specific regulations applicable to indoor cannabis-related and indoor industrial hemp-related uses.
 - New Section 5.2.A: Specialty Agriculture Zone – Cannabis (SA-CAN) and specific regulations applicable to indoor cannabis-related and indoor industrial hemp-related uses.
 - New Section 5.3.A: Rural Employment Zone – Cannabis (RE-CAN) and specific regulations applicable to indoor cannabis-related and indoor industrial hemp-related uses.

Policy Review:

Planning Act

Section 34 of the *Planning Act* enables Council to pass and consider amendments to the Zoning By-law to regulate the use of land and the location, height, bulk, size, floor area, character and use of buildings and structures, as well as parking and loading requirements and lot requirements.

In accordance with Section 24(1), zoning by-laws must also conform to the Official Plan and be consistent with the Provincial Policy Statement (PPS), Provincial Plans, and the Niagara Region Official Plan.

The proposed amendment is in keeping with the legislative requirements of the *Planning Act*.

Provincial Policy Statement

It is required that municipal decisions are consistent with the policies of the Provincial Policy Statement (PPS). The PPS provides policy direction from the province on land use planning and development to promote strong, healthy communities, wise use of management and resources, and the protection of public health and safety.

Section 2.3.3 of the PPS outlines the permitted uses for Agriculture. Specifically, policy 2.3.3.1 states "In prime agricultural areas, permitted uses and activities are: agricultural uses, agricultural-related uses and on-farm diversified uses." Further it states that "Proposed agriculture-related uses and on-farm diversified uses shall be compatible with, and shall not hinder, surrounding agricultural operations. Criterial for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents which achieve the same objectives."

Policy 2.3.3.2 states "In prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.

The Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA) published the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas (Guidelines) with the intent of helping municipalities, decision-makers, farmers and others interpret the policies of the PPS on uses that are permitted in prime agricultural areas.

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

The guidelines state that compatibility with surrounding agricultural uses means ensuring that surrounding agricultural operations can perform agricultural practices without impairment, uses should be appropriate to available rural services, maintain the agricultural/rural character of the area, meet applicable provincial air emission, noise, water and wastewater standards and receive all relevant environmental approvals and the cumulative impact of multiple uses should be limited and not undermine the agricultural nature of the area.

The cultivation of cannabis (indoor and outdoor) is considered an agricultural use in the PPS while the processing and testing of the product can be considered an agriculture-related use, both of which are permitted in agricultural areas. The proposed amendment creates reasonable land use regulations and in Staff's opinion, is in keeping with the purpose and intent of the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020)

It is required that municipal decisions affecting planning matters should be consistent with the principles and policies of the Growth Plan for the Greater Golden Horseshoe (Growth Plan). Schedule 2 of the Growth Plan designates the Town as being within the 'Greater Golden Horseshoe Growth Area' and portions of the Town are designated as being within the 'Greenbelt Area'. Permitted uses and regulations for development are to conform to the Growth Plan.

The definition of the agricultural uses in the Growth Plan is consistent with the definition in the PPS and therefore, the cultivation of cannabis is considered an agricultural use in the context of the Plan.

Policy 4.2.6.3 indicates that “where agricultural and non-agricultural uses interface outside the settlement areas, land use compatibility will be achieved by avoiding or where avoidance is not possible, minimizing and mitigating adverse impacts on the Agricultural System. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed. Where appropriate, this should be based on an agricultural impact assessment.”

In Staff’s opinion, the proposed amendment creates reasonable land use regulations and is in keeping with the purpose and intent of the Growth Plan.

Greenbelt Plan (2017)

The intent of the Province’s Greenbelt Plan is to protect against the loss and fragmentation of agricultural land uses, protect natural heritage and water resources and support agriculture as the predominant land uses. A significant portion of the lands within the Town of Pelham are subject to the policies contained within the Greenbelt Plan, which establishes the limits of the Region’s urban structure, identifies where urbanization should not occur and extends permanent protection to agricultural lands and environmental lands that contain ecological and hydrological features.

The Greenbelt Plan designates four major land use types in Pelham: Niagara Peninsula Tender Fruit and Grape Area and Natural Heritage System within the Protected Countryside, Town/Villages and Hamlets. Permitted uses and regulations for development are to conform to the policies of the Greenbelt Plan.

Policy 3.1.2.1 indicates that “All types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected, and a full range of agricultural, agriculture-related uses and on-farm diversified uses are permitted based on the provincial Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas. Proposed agriculture-related uses and on-farm diversified uses shall be compatible with and shall not hinder surrounding agricultural operations.”

Further, policy 3.1.2.5 states “where agricultural and non-agricultural uses interface outside the 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.

The proposed amendment is in keeping with the policies of the Greenbelt Plan.

Niagara Escarpment Plan (2017)

The Niagara Escarpment Plan protects ecological and historical areas, ensuring the compatibility of new development with escarpment features and maintaining the open landscape character of the Escarpment area through agriculture, forestry, and preservation of natural scenery. That area of the Town that is under the jurisdiction of the Niagara Escarpment Plan area is also under development permit control. The Niagara Escarpment Plan identifies multiple land use designations in Pelham including the Escarpment Protection Area, Escarpment Rural Area, and Escarpment Natural Area.

Municipal zoning by-laws and their provisions do not apply to lands that are under the development permit control area within the Niagara Escarpment Plan area.

Farming and Food Production Act, 1998

The *Farming and Food Production Act* serves to protect the agricultural use of land. Under the Act, the term “agricultural operation” is defined to include “the production of agricultural crops, greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any additional agricultural crops prescribed by the Minister,” and “the processing by a farmer of the products produced primarily from the farmer’s agricultural operation.

Under Section 6 of the Act, “No municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation.” Accordingly, any restriction on the cultivation of cannabis may need to stand up to the test of whether “normal farm practices” have been restricted. The Act defines “normal farm practice” as a practice that “is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances,” or “makes use of innovative technology in a manner consistent with proper advanced farm management practices;...”

From the definitions, the cultivation of cannabis and industrial hemp, whether it be indoor or outdoor, as well as the processing of the same, where legal through the licensing process, appears to be captured in the definition of agricultural operation.

While the Town has the authority to regulate cannabis and industrial hemp-related activities through the Zoning By-law, it must be careful not to excessively regulate these uses or impose land use requirements that effectively prohibit their operation. The regulations proposed were approved by the OLT through the interim order issued on August 23, 2022. Staff do not anticipate any conflict between the proposed regulations and policies of the *Farming and Food Protection Act*.

Region of Niagara Official Plan (2022)

It is required that the municipality ensure that municipal decisions conform to the Regional Official Plan (ROP). Policies in the ROP focus on managing growth and providing appropriate density and intensification targets for new growth, growth of the economy, protecting the environment and agricultural lands, providing

infrastructure, and guidance for the development of lower tier municipal Official Plans.

Section 4.1 of the ROP includes a number of objectives for the agricultural and rural areas in the Region. These objectives generally support the preservation of agricultural land, support uses that enable farming and encourage a wide range of farm diversification.

Agricultural uses are identified in Table 4-1 as the growing of crops or raising of livestock; raising of other animals for food, fur or fibre; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures. Examples of these uses include, but are not limited to cropland, pastureland, barns and other associated buildings and structures. Additionally, agriculture-related uses are identified in the same table as uses which may or may not be on a farm; farm related commercial or industrial use; compatible with surrounding agricultural operations; directly related to farms in the area; supports agriculture; provides products or services to farms; benefits from proximity to farms. Examples of these uses include but are not limited to: processing of agricultural products; farm equipment repair shop; and agriculture research centre.

The cultivation of cannabis (indoor and outdoor) is considered an agricultural use in the ROP while the processing and testing of the product can be considered an agriculture-related use, both of which are permitted in agricultural areas. The proposed amendment is in keeping with the purpose and intent of the ROP.

Town of Pelham Official Plan (2014)

The Town's Official Plan outlines the goals and objectives for the community and identifies land use policies to help guide and direct growth and development over the next 20 years. The OLT interim order issued on August 23, 2022, put policies into place to permit and regulate cannabis and industrial hemp production in the Town's Good General Agriculture and Specialty Agriculture designations.

Section B2.1.5.1 specifically outlines the need for an implementing zoning by-law amendment, site plan control approval and provides specific development criteria that address building siting, the need for mitigation measures to address noise, odour, dust and light as required; protection of sensitive surface water features; parking; servicing and stormwater management; waste disposal and setbacks.

Section B2.1.5.2 outlines the specific study requirements that shall be required to satisfy the development criteria set out in the Section noted above including: an Air Quality Study; Light Mitigation Plan; and Traffic Impact Study.

In addition to permitting the use, the policies provide guidance in terms of mitigating potential compatibility issues, site plan control, specific study requirements, and general setback requirements. The proposed zoning by-law amendment is consistent with the policies of the Town's Official Plan.

Town of Pelham Zoning By-law (4481-2022)

As noted, the Town's Zoning By-law was approved by the Ontario Land Tribunal on April 3, 2023. In order to incorporate the OLT-approved zoning changes into the new Zoning By-law (4481) and bring it into alignment with the Town's Official Plan, it is necessary to undertake a technical process to amend the new Zoning By-law (4481).

The following outlines the specific changes that are being proposed through this technical amendment:

Section 1: Interpretation and Administration

- Section 1.4 is amended to add the Agriculture Zone – Cannabis (A-CAN), Specialty Agriculture Zone – Cannabis (SA-CAN) and Rural Employment Zone – Cannabis (RE-CAN) to the chart for Rural and Agricultural Zones.

Section 2: Definitions

- Section 2 is amended to include new definitions for Cannabis-Related Use – Indoor, Cannabis-Related Use – Outdoor, Industrial Hemp-Related Use – Indoor, Industrial Hemp-Related Use – Outdoor and Sensitive Land Use.

Section 4: Parking

- Section 4.1.1 a) is amended to include minimum parking requirements for Cannabis-Related Uses – Indoor and Industrial Hemp-Related Uses – Indoor.

Section 5: Rural/Agricultural Zones

- Section 5 is amended by adding the following zoning categories and their permitted uses:

| Zone | Permitted Uses |
|--|--|
| Agricultural Zone – Cannabis (A-CAN) | <ul style="list-style-type: none">• Cannabis-Related Use – Indoor; and• Industrial Hemp-Related Use – Indoor. |
| Specialty Agriculture Zone – Cannabis (SA-CAN) | <ul style="list-style-type: none">• Cannabis-Related Use – Indoor; and• Industrial Hemp-Related Use – Indoor. |
| Rural Employment Zone – Cannabis (RE-CAN) | <ul style="list-style-type: none">• Cannabis-Related Use – Indoor; and• Industrial Hemp-Related Use – Indoor. |

- Sections 5.1.2 and 5.2.2 are amended to include a minimum 300.0m setback from sensitive land uses from Cannabis-Related Use – Outdoor and Industrial Hemp-Related Use – Outdoor
- Section 5 is amended to add Section 5.1.A: Agriculture Zone - Cannabis (A-CAN) and associated permitted uses, regulations and setback requirements.

- Section 5 is amended to add Section 5.2.A: Specialty Agriculture Zone – Cannabis (SA-CAN) and associated permitted uses, regulations and setback requirements.
- Section 5 is amended to add Section 5.3.A: Rural Employment Zone – Cannabis (RE-CAN) and associated permitted uses, regulations and setback requirements.

The draft amending By-law is attached as Appendix A to this report and provides the detailed setback requirements for each zone category being proposed.

Agency Comments:

Staff have circulated the draft changes to all required agencies and reviewed the document internally with various departments. As of the date of writing this report, no agency comments have been received.

Public Comments:

The Town hosted a public meeting for this file on June 26, 2024. Notice of this Statutory Public Meeting was posted on the Town's website and social media platforms, on the Cannabis Zoning Amendment project page at www.engagingpelham.ca and posted digitally at the pelhamtoday.ca. Additionally, a copy of the notice was emailed out to the members of the former Cannabis Control Committee (CCC) and to the landowners of the three cannabis operations located within the Town.

The public meeting was held on June 26, 2024 and had approximately 80 people in attendance. In addition, as of the date of the writing of this report, Staff have received written correspondence from 10 members of the public. Key comments from both the public meeting and written correspondence are summarized below and a more detailed chart of comments from individual members of the public is attached as Appendix B to this report:

Odour and Air Quality

The primary concern expressed at the public meeting was the nuisance odour emitted by existing cannabis producers in the town. Specific complaints included:

- Allergies and health issues caused by the odour;
- Restrictions on the ability to enjoy properties, particularly outdoors;
- Decrease in home values;
- General objection to the odor from these facilities.

Lighting/Light Pollution

There were concerns raised about the level of light pollution emitted by existing cannabis facilities and inquiries into how this can be effectively regulated.

Setbacks

Several members of the public had questions about the proposed setback requirements, seeking clarification on the distinctions between setback requirements for sensitive land uses and general setbacks for land development (side and rear yard setbacks for buildings and structures).

Expansion of Existing Facilities

Members of the public sought clarification regarding permissions for existing cannabis operations to expand their facilities.

Building Permits

There were comments regarding the status of building permit applications at existing cannabis production sites, questioning whether these permits were still active and if any inspections had been conducted at these locations.

These comments have been reviewed and considered in the writing of this report.

Staff Comments

This amendment has been prepared as per the Ontario Land Tribunal's interim decision issued on August 23, 2022, which was based on the Town's former Zoning By-law (1136). The requirements from the interim decision have been reformatted to reflect the existing layout and formatting of the Town's new Zoning By-law (4481). The Cannabis Amendment has been prepared in accordance with Provincial, Regional and local Town policy documents.

A concordance chart has been prepared and is attached as Appendix C which highlights the appropriate section of the OLT decision, the location of the amendment in relation to the previous Zoning By-law (1136), the location in the new Zoning By-law (4481) and the specific page number where the amendments can be found within the redlined version of the new Zoning By-law (4481). As noted, Staff have reviewed the comments from the public meeting and through written correspondence and offer the following for Council's consideration with respect to these comments:

Odour and Air Quality

The most common land use impact that was raised at the public meeting and through correspondence was the issue of odour and air quality. The amendment proposes a 300 metre setback for new indoor and outdoor cannabis-related and industrial hemp-related uses from sensitive land uses. Additionally, side and rear yard setbacks have been identified with an increased setback where ventilating fans exhaust into the respective side or rear yard.

These setback requirements, based on best practices, were approved through the interim OLT decision and are considered appropriate. Other odour mitigation

measures may be identified and required to be implemented through study requirements in the Town's Official Plan.

Lighting/Light Pollution

Light pollution resulting from greenhouse operations was a significant land use conflict that was identified through the public meeting process. Any new cannabis-related or industrial-hemp related use would be subject to site plan control. Site plan control provides the Town with control over items such as:

- Access for pedestrians and vehicles;
- Walkways;
- Lighting;
- Waste facilities;
- Landscaping;
- Drainage; and
- Exterior design

This control over detailed, site-specific matters ensures that a development proposal is well designed, fits in with the surrounding uses and minimizes any negative impacts.

While lighting is not something that can be addressed through the zoning by-law, the use of site plan control coupled with the requirement for specific studies outlined in the Town's Official Plan can mitigate the potential conflict. Through the Official Plan and site plan, the Town can request that light mitigation systems be installed and operated to reduce off-property impacts and that a light control maintenance, monitoring and contingency plan be prepared where supplemental lighting is proposed.

Setbacks to Sensitive Land Uses

Concerns were raised about the proposed setbacks and there was some confusion with respect to setbacks to sensitive land uses and the side and rear yard setbacks. Any new application for a cannabis or industrial hemp production facility would first be required to meet the proposed 300m setback to a sensitive land use (defined as "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").

If an application can meet this setback requirement, they would then be subject to the side and rear yard setbacks as detailed in the proposed amendment. These setbacks are dealing with the siting of any proposed buildings for site function.

Expansion of Existing Facilities

The new zone categories proposed would not be applied to the existing facilities meaning they would become legal non-conforming uses in accordance with the *Planning Act*. In this regard, it is noted that Section E2 of the Town's current

Official Plan provides some direction on non-conforming uses. In particular Section E2.2 indicates that the Committee of Adjustment may allow for extensions to a non-conforming use with consideration given to:

- The size of the extension in relation to the existing operation;
- Whether the proposed extension is compatible with the character of the surrounding area;
- The characteristics of the existing use in relation to noise, vibration, fumes, dust, smoke, odours, lighting and traffic generation and the degree to which any of these factors may be increased or decreased by the extension; and,
- The possibilities of reducing the nuisances through buffering, building setbacks, site plan control and other means to improve the existing situation, as well as minimizing the problems from extension.

Outstanding Building Permits

Specific concerns were raised regarding outstanding building permits where the work has not yet been completed. The issuance of building permits falls under the *Building Code Act*, which is administered by the Town's Chief Building Official. Any comments or concerns regarding building permits are therefore outside the scope of the proposed amendment and this report.

Conclusion

Generally speaking, the bulk of the concerns that have been raised at the public meeting and through written correspondence are issues that fall outside of the purview of this zoning amendment. The standards proposed for new indoor cannabis and industrial hemp cultivation facilities are appropriate and provide reasonable setback requirements to mitigate potential land use conflicts.

This proposed Cannabis Zoning By-law Amendment is a technical amendment that implements the OLT interim order issued on August 22, 2023 and it is Staff's opinion that the proposed amendment is in keeping with all applicable Provincial, Regional and Town Policy documents, represent good planning principals and therefore should be approved.

Alternatives:

Council could choose not to approve the Cannabis Zoning By-law Amendment or Council could choose to approve the Cannabis Zoning By-law Amendment with modifications.

Neither of these options is recommended by Staff. The Ontario Land Tribunal issued its interim order which outlined specific definitions, permitted uses and zone regulations applicable to new cannabis or industrial hemp-related uses. This order was agreed to by all interested parties. The proposed amendment before Council today is simply a technical process to include the approved regulations in the new Zoning By-law (4481) and ensure conformity with the Town's Official Plan.

Strategic Plan Relationship: Community Development and Growth

Appropriate zoning regulations for cannabis and industrial hemp cultivation benefits the community.

Attachments and Other Pertinent Reports:

Appendix A – Draft Zoning By-law Amendment

Appendix B – Public Meeting Comments

Appendix C – Chart of Concordance

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