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# HALDIMAND COUNTY

## Report PDD-11-2019 General Zoning By-law Amendment for Cannabis Production Facilities, Haldimand County

For Consideration by Council in Committee on March 26, 2019

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### OBJECTIVE:

To request Council's approval of zoning by-law provisions to regulate and control cannabis production facilities within Haldimand County. The proposed draft zoning provisions will amend all three of the existing zoning by-laws 1-DU-80, 1-H-86, and NE-1-2000, with the amending by-laws defining the use, permitting the use within specific zones and also establishing provisions to regulate these facilities.

### RECOMMENDATIONS:

1. THAT Report PDD-11-2019 General Zoning By-law Amendment for Cannabis Production Facilities, Haldimand County be received;
2. AND THAT application PLZ-HA-2019-021, a proposal to introduce a general amendment to the Town of Dunnville Zoning By-law 1-DU-80, Town of Haldimand Zoning By-law 1-H-86, and the City of Nanticoke Zoning By-law NE-1-2000 By-laws, as amended, to establish a definition and provisions for cannabis production facilities be approved for the reasons outlined within report PDD-11-2019;
3. AND THAT the By-laws attached to Report PDD-11-2019 be presented for enactment;
4. AND THAT the proposed general amendments are considered to be consistent with the Provincial Policy Statement (2014), and the Growth Plan for the Greater Golden Horseshoe.

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**Approved:** Donald G. Boyle, Chief Administrative Officer

### EXECUTIVE SUMMARY:

Cannabis production facilities are relatively new uses on the Haldimand County landscape and are currently permitted and being established in agricultural areas of the County. Since the legalization of recreational cannabis in 2018, there has been an increase in the interest and establishment of cannabis production facilities within Haldimand County. This emerging land use has introduced some land use compatibility challenges which in turn resulted in Council direction to develop zoning provisions for cannabis production facilities to more appropriately regulate the use and mitigate potential for conflicts related to issues such as odour, lighting and activity levels. Currently, cannabis production facilities require a license to be issued by the Federal Government, via Health Canada, as such these uses are regulated and controlled by the Federal Government. The licensing establishes various requirements to be met, including but not limited to: security clearance for various individuals involved in the operation (i.e. directors, partners, the license holder, master grower, head of security, etc.); information regarding

site details and physical security measures (including a security plan); record keeping and reporting; and there are Good Production Practices (GPP) that are to be demonstrated (and can be verified to be in compliance at any time by Health Canada). The GPP include requirements such as specific packaging, labelling, distribution, testing requirements, etc.; pest control; storage conditions; air filtration (including details of system, specification, air filter types, etc.); sanitation; and quality control.

In order to address these issues, and respond to Council's direction, a general Zoning By-law amendment is proposed to be made to the Town of Dunnville Zoning By-law 1-DU-80; the Town of Haldimand Zoning By-law 1-H-86; and the City of Nanticoke Zoning By-law NE-1-2000, that will, among other things, define a 'cannabis production facility' and establish a variety of provisions surrounding where the use is permitted, setback requirements from sensitive land uses and zones that vary relative to the size and scale of the production facility; require new and expanding cannabis production facilities to be subject to site plan control; and will ultimately require all aspects of this use to be located wholly within an enclosed structure. While under Federal law each dwelling is permitted to grow up to four (4) plants for personal use, unlicensed communal production facilities where individuals co-locate to grow their private use plants are not allowed. The intent of this general amendment is to clarify and regulate the permissions for cannabis production facilities and in Planning staff's opinion, this proposal is consistent with and conformity with the Provincial Policy Statement, 2014 and the Provincial Growth Plan, 2017; maintains the intent and purpose of the Haldimand County Official Plan; and ultimately represents clear permissions for this subject use. As such, Planning staff is in support of and recommends the approval of the attached by-law amendments.

## **BACKGROUND:**

On December 11<sup>th</sup> 2018, Council in Committee received an information report (PD-40-2018) which focused on two specific issues—cannabis retail stores and cannabis production facilities. The previous information report also included draft zoning by-law provisions for cannabis production facilities to provide Council with an indication of regulation intent and structure, including how zoning could be used to help mitigate potential land use compatibility issues. These provisions were accepted by Council, in principle, and within the aforementioned report, staff was directed (Recommendation #5, PD-40-2018) to bring back finalized zoning provisions for Council-in-Committee's review to the March 26<sup>th</sup> Council in Committee meeting. The intent of this subject report is to comply with said direction and present updated/final revised provisions with full rationale.

To be clear, the subject report is focused solely on cannabis production facilities and introducing the (finalized) draft zoning provisions for production facilities that intended to work with Federal licensing requirements. It does not address retail sales (addressed previously by Council) or consumption (addressed by other levels of government). It is intended that the draft by-laws attached (Attachment 3, 4, and 5) will amend all three of the existing zoning by-laws—the Town of Dunnville Zoning By-law 1-DU-80; the Town of Haldimand Zoning By-laws 1-H-86; and the City of Nanticoke Zoning By-law NE-1-2000—by introducing provisions within each 'General Provision' section of the aforementioned by-laws. The proposed provisions will define 'Cannabis Production Facility', permit the uses within specific zones, establish requirements for site plan control, and also establish additional provisions to address land use compatibility issues that are currently being experienced within the County.

## **ANALYSIS:**

Planning Staff have identified the following key planning issues through the review of this proposal:

### **1. *Provincial Policy***

## ***Provincial Policy Statement (2014)***

The Province establishes a policy foundation, through the Provincial Policy Statement, 2014 (PPS), that specifically guides land use development within the Province of Ontario. Through this framework, the Province determines that building strong communities is a provincial interest which is to be addressed, in part, through promoting efficient land use and development patterns that support strong, livable and healthy communities, protecting the environment and public health and safety, promoting economic growth and competitiveness by providing opportunities for a diversified economic base and a mixture of uses to meet future needs, and the wise use and management of resources. The subject proposal is to amend the County's Zoning By-laws to permit, define and regulate cannabis production facilities within the agricultural and industrial zones of Haldimand County, which will effectively address this emerging land use issue within the community. This proposal, in staff's opinion, is consistent with the PPS as the amendments will regulate an existing use that is generally considered to be agriculture in nature, will direct the proposed use to locations that are appropriate and also have existing infrastructure (i.e. urban industrial areas) and will further open up potential economic benefits within Haldimand County, including job creation. Therefore, Planning staff is of the opinion that this subject proposal is consistent with the Provincial Policy Statement, 2014.

## ***Provincial Growth Plan for the Greater Golden Horseshoe (2017)***

The Growth Plan for the Greater Golden Horseshoe is a framework for implementing the Government of Ontario's vision for building stronger, prosperous and complete communities by controlling growth until 2041. This framework builds on and works with the Provincial Policy Statement, 2014 to direct and guide appropriate growth and development. The Growth Plan provides high level policy direction relating to economic prosperity which includes transportation, infrastructure planning, land use planning, urban form, housing, natural heritage and resource protection and further provides direction on where growth is to occur, including establishing intensification targets, and protecting agricultural areas. Similar to the Provincial Policy Statement, 2014, the Growth Plan does not specifically speak to zoning by-law amendments or general by-laws amendments; however, Planning staff have reviewed this proposal in relation to the Growth Plan policies and have concluded that the proposed amendments are in conformity as this proposal is directing a specific use to appropriate locations, will help enhance opportunities and flexibility within the agriculture and industrial areas of the County, and has an economic benefit to the community. Overall, this proposal, in staff's opinion, does not offend the intent and purpose of Growth Plan.

## **2. Local Policy**

### ***Haldimand County Official Plan***

The intent of the subject application is to establish a general amendment to all three of the existing by-laws to add general permissions for 'Cannabis Production Facilities' which will allow these uses to take place within certain zones (i.e. the Agriculture (A) Zone and the various industrial Zones). Due to this proposal being a general amendment, the subject lands being impacted are various lands throughout Haldimand County that are currently in an 'A' zone or an industrial zone.

Generally speaking, most lands that contain the existing zoning will have the appropriate land use designation already in place, with 'A' zones being located on lands that are primarily designated as Agriculture, and industrial lands being located within the various industrial designations.

Within the Agriculture designation, all forms of farming are permitted including the growing of crops, processing/packaging/distribution of crops and produce, market and nursery gardening, etc. This designation is intended to be flexible and allow all forms of agricultural uses and normal farming practices to be permitted. The cultivation and growing (including associated processing, packaging, etc.) of cannabis is an agricultural use that is akin to farms utilizing greenhouses (i.e. floral

production industry) and tobacco (where a significant amount of other on-site processes take place to render a final, saleable product). The additional permissions for a cannabis production facility on lands within an Agricultural designation will not negatively impact the preservation and protection of this specific resource.

In terms of the Industrial designations, these lands will be primarily located in the County's urban areas (i.e. Caledonia, Cayuga, Hagersville, Dunnville, Jarvis, Townsend), and will also be located within the Lake Erie Industrial Park and Hagersville Business Park. These designations tend to be established in areas that are already separated from potential incompatible land uses (i.e. residential/institutional uses) due to the nature of the use to be potential obnoxious by way of odour, noise, dust, particulate matter, etc. Although the cultivation and production of cannabis is considered to be an agricultural use, there are components of the use that could also fit within an industrial classification such as storage, packaging and shipping products.

Within the Haldimand County Official Plan, there are four (4) different types of industrial designations—Major Industrial; Industrial; Urban Business Park; and Rural Industrial—with each type focused on different forms of industrial uses. More specifically, the Major Industrial designation is intended for the heavy industrial uses such as steel and metal production, with the Industrial designation focusing on general manufacturing and processing; warehousing and storage; and generally, uses that are compatible with or supportive to the Major Industrial designated lands. Further, the Urban Business Park designation focuses on light industrial uses that are less obnoxious, and some uses that support the permitted industrial uses (i.e. industrial related-commercial uses such as industrial offices, service stations, etc.). Finally, the Rural Industrial designation identifies historical uses that are limited to dry industrial operations (i.e. limited to no water or wastewater requirements). Planning staff is of the opinion that permitted cannabis production facilities within these specific designations will be appropriate as these uses are not sensitive in nature and these locations are specifically designed for and encourage uses that need to be close to other supporting, industrial operations; need to be separated from sensitive land uses; and close to key transportation routes to and from the County.

Finally, it's important for staff to highlight that the Haldimand County Official Plan has six specific themes that establish a strategic direction and guidance for development within Haldimand County. The six themes focus on—environment; economy; growth management; community building; leisure; culture and heritage; and health and social services. Overall, the introduction of provisions for cannabis production facilities will, in Planning staff's opinion, maintain the intent, purpose, direction and vision of the Official Plan as the subject amendment will introduce and regulate a new economic driver within the community; will direct these uses to appropriate locations; and at the same time will allow cannabis production to continue to provide a legal product, service, and jobs to local, provincial and Canadian residents.

### ***Zoning By-law–1-DU-80; 1-H-86 and NE-1-2000***

On October 17, 2018, cannabis was legalized for recreational use and production; however, medical cannabis has been legalized for production and sale since 2014 via Health Canada's *Marihuana for Medical Purposes Regulations*, which was later updated and replaced in 2016 with the *Access to Cannabis for Medical Purposes Regulations*. It was through these Federal updates and changes that cannabis production facilities (for medical production only) were first permitted and the production and sale of medical cannabis was (and continues to be) licensed and controlled by the Federal Government.

When this initial legislative changes occurred (2014), Haldimand County, and other municipalities, interpreted this use (i.e. the growing and production of cannabis) as an agricultural use and operation. Generally speaking, agricultural uses are intensive uses with off-site impacts (i.e. in terms of odour, noise, dust) that can vary in intensity and frequency (i.e. evening, weekends, statutory

holidays), on a seasonal bases, and on a livestock type basis. As such, staff considers cannabis production facilities to be an agricultural use with similar potential off-site impacts that ultimately is permitted as of right in the 'Agriculture (A)' Zones throughout the municipality. Therefore, these uses are currently subject to the 'A' Zone provisions in terms of setbacks, building heights, minimum lot area, etc. Further, these uses, as well as other agricultural uses, are not subject to site plan control. This approach has been applied by the County and will continue to be applied until such time that the subject proposed zoning provisions are approved by Council and in legal force and effect.

Facilities for both medical and recreational cannabis production are regulated federally through a licensing system that is operated by Health Canada. The aforementioned licensing process established through the Federal Government includes details regarding security; production practices (including odour control); packaging, labelling and distribution; and client registration and transactions, etc. As the licensing process is entirely through upper levels of government, the role of a municipality in relation to cannabis production facilities is limited to: (i) where a facility can be located (i.e. land use designation and zone), (ii) site layout (i.e. setbacks, site design via site plan control), and (iii) the permitting process through the Ontario Building Code.

With the full legalization of cannabis and the permissions for production now in place for both recreational and medical cannabis, there has been an uptake in production facilities within the County. At the time of writing this report, there have been a total of approximately seven (7) permits issued for production facilities in Haldimand County, with two (2) being issued prior to the legalization of cannabis for recreational use. In response to growing public concern around the increase in this new type of land use and its potential for compatibility issues, primarily odour and lighting, Council directed staff to investigate and develop draft zoning provisions.

The draft provisions take the approach of mitigating land use concerns through (mainly) the establishment of setbacks and site plan control. This is the most common method of regulation across the Province as evidenced through the municipal scan of fourteen (14) jurisdictions and through the work that the County's zoning by-law update consultant (WSP Inc.) has undertaken/completed. While the draft provisions lay out setbacks that are influenced by the provision of air treatment systems (i.e. odour control system), the regulations do not define technical specifications of such systems nor is there any recommendation for any type of municipal odour control regulation (e.g. an odour control by-law). This approach has only been taken by two municipalities that staff are aware of—Niagara-on-the-Lake and Norfolk County. Staff have reviewed this approach with the County's solicitor who has advised that such provisions/approaches are ultra vires (outside of the jurisdiction of the municipality) on the basis that there is a federal license requirement for such installations; odour regulation is not a land use planning matter; and the enforceability of odour control by-laws would be challenging given the County does not have the expertise to enforce a by-law of this nature. As an alternative, the County is proposing separation setbacks that increase based on the size of the production facility and that an applicant only need to demonstrate they have an odour control technology approved through the Federal license.

The preliminary, draft provisions (presented to and accepted in principle by Council at the December 11, 2018 Council in Committee meeting) were originally developed in connection with the County's consultant on the comprehensive zoning by-law project (WSP Inc.) and are informed by the land use planning issues in other municipal jurisdictions. Those provisions have since been amended to better reflect best practices and reflect the feedback received from the public and legal advice from the County's solicitor. Attachment 2 includes a table that outlines the original, draft provisions, the finalized draft provisions, and the rationale for revision. The key areas of focus of the provisions are included below, with a brief description of the approach and the intended result.

1. **Defining the use and location**—As part of the proposed by-laws, staff is introducing a definition of 'Cannabis Production Facility', which reads as follows:

*Cannabis Production Facility*—shall mean any *building* or *structure* licensed and authorized by Health Canada to ship, deliver, transport, destroy, grow, dry, export and/or import *cannabis* for medical or non-medical purposes, including related research as defined in applicable Federal Regulation, as amended from time to time.

The proposed definition is intended to make it clear that permitted operations would be limited to those that are *licensed* and authorized by the Federal Government to grow cannabis. This ensures that the only permitted facilities would be those that fall under the Health Canada regulations, which includes stringent requirements for odour control. This definition is further intended to clarify that ‘alternative producers (AP)’ (i.e. the concept of multiple people coming together to grow for personal use but together in one facility) and outdoor cultivation would not be permitted. This is due to the challenges in controlling odour for these approaches to growing.

2. **Establishing specific zones/location**—The by-laws are proposing that these operations be limited to specific zones (i.e. Agricultural and Industrial zones). The full list of applicable zones per by-laws is noted below:

<b><i>By-law 1-DU-80</i></b>	<b><i>By-law 1-H-86</i></b>	<b><i>By-law NE-1-2000</i></b>
‘Agriculture (A)’		
‘General Industrial (MG)’		
‘Rural Industrial (IR)’		
‘Disposal Industrial (MD)’		
‘Extractive Industrial (MX)’		
‘Light Industrial (ML)’	‘Light Industrial (ML)’	‘Heavy Industrial (MH)’
‘Marine Industrial (MM)’	-	‘Prestige Industrial (MP)’
‘Special Industrial (MS)’	-	-

The intent is to direct these uses to areas where normal farm practices take place and where there are not (typically) high potential for sensitive land uses (i.e. residential, institutional, etc.). This is an additional mechanism to establish these uses in locations that are best suited to accommodate cannabis production facilities due to potential to accommodate land use separations and the existence of similar types of uses.

3. **Odour Issues**—this particular issue is primarily regulated via the license requirements with the Federal Government (Health Canada) as noted above in this report. While there is a role for municipalities to play as well, it is limited. Zoning regulation most appropriately addresses the issue via increased setbacks from sensitive uses and zones. The draft provisions prepared by staff propose to utilize a sliding scale approach that links amount of setback to the size of the facility. This differs from the original draft provisions, but staff believe it better responds to the potential for impacts of facilities as they increase in size and is consistent with how other intensive agricultural uses are addressed through Minimum Distance Separation and how industry is addressed through Ministry of Environment, Conservation and Parks (MECP) guidelines (including significant odour emitters which require 300 metres setbacks). The setbacks proposed range in size from 150 metres–300 metres (depending on the size of the facility and existence of air filtration control system) from the following:

- Residential, Commercial, Institutional, and Open Space Zones;

- The following land uses located on a separate lot: dwelling\*, dwelling house\*, dwelling unit\*, day nursery, school, community centre, place of entertainment, place of assembly, place of worship, long term care home, retirement home, campground, tent and trailer park or cultural facility; and

*\*Note: this definition would include a dwelling that is located on a farm:*

- A settlement area boundary.

The specific provisions are set out in the table included as Attachment 2. The 150 metres setback is a typical approach applied by other municipalities in Ontario that have regulations in place or are in the process of preparing regulations. In several cases, there are municipalities that apply a setback as large as 300 metres (where there is no air treatment control system in place) or as small as 70 metres. The overall suite of setbacks proposed by staff would place the County at the high end of the spectrum (i.e. amongst the most restrictive). Given the emerging nature of this land use and the need to monitor its longer term potential for land use impacts/conflict, staff are of the view the more restrictive approach is advisable. Examples of approaches taken by other municipalities is included in a detailed chart available within Attachment 1.

The setbacks proposed by staff have also been assessed relative to other types of agricultural operations, in particular livestock operations. Staff have completed a series of Minimum Distance Separation (MDS) calculations for various types of facilities to determine the relevance and effectiveness of this degree of separation. MDS calculations are land use planning tools that determine setback **distances** between livestock barns, manure storages or anaerobic digesters and surrounding sensitive land uses. Thus they serve as another tool to gauge effectiveness of setbacks to mitigate odour. The below analysis is based on newly built, modern facilities (including concrete pit/covered manure storage) and constitutes what are considered large sized operations.

- 150 dairy cows = setback of 59 metres to nearest dwelling;
- 20,000 chickens (broilers) = setback of 70 metres to nearest dwelling;
- 2,000 swine (feeders) = 231 metres to nearest dwelling.

It should be noted that the setbacks established via MDS are from the closest point of the livestock facility or manure storage to the closest point of the dwelling. The setback guidelines established by the MECP for industrial uses are calculated in a similar fashion. Staff proposes that the setbacks for cannabis production facilities follow a similar approach and be measured between actual buildings to ensure a consistent approach is taken as it relates to uses that generate the same types of land use impacts (e.g. odour, light, etc.).

Since the preparation of the draft zoning provisions, Planning staff have proposed a change that will introduce a setback of facilities from sensitive land uses, zones, and settlement area boundaries that is based on size of the cannabis production structure (i.e. a sliding scale). The details of this sliding scale can be seen in Attachment 2. More specifically, the sliding scale is introducing setbacks based on:

- Three size limits: 6,967 square metres (75,000 sq. ft.) or less; greater than 6,967 square metres (75,000 sq. ft.), but less than 9,290 square metres (100,000 sq. ft.); and, greater than 9,290 square metres (100,000 sq. ft.); and
- Whether or not air treatment control systems are utilized: if for any reason a facility is licensed by Health Canada and is exempted from the requirement to install a system, then such operation is required to provide a 300 metre setback to the uses/zones/settlements as described above. This also sets an obligation on the developer to submit proof of an air

filtration control system at the time of a building permit application and ultimately provides the County with absolute clarity of whether or not a system is being installed and what type of system.

Staff have also consulted with the County's solicitor regarding regulations specific to odour and odour control by-laws which have been implemented in some municipalities (e.g. Norfolk County and Niagara-on-the-Lake). Based on the legal advice received by staff, it is clear that such provisions/by-laws are outside of the jurisdiction of the municipality given they are regulated via the federal license requirements. Further, odour regulation is not a land use planning matter but a provincial environmental matter falling under the jurisdiction of other levels of government. In staff's opinion, the most appropriate way to address odour issues is through increased setback requirements and the proper usage of site plan control (e.g. to orient buildings such that venting is away from sensitive uses) which is the focus of this report.

4. **Parking Requirements**—the proposing zoning by-law amendment also seeks to establish a minimum parking requirement of one (1) parking stall per 100 square metres of gross floor area. This requirement is a standard applied to manufacturing and industrial uses that typically employ large numbers of people. Given that production facilities have the potential to employ large numbers of people, it is critical to ensure that an appropriate amount of parking is provided in an orderly manner and location on the site. The minimum space requirement will ensure supply is addressed. In terms of parking lot location and impacts, all three (3) of the County zoning by-laws speak to a minimum requirement of a 4.5 metre (14.7 feet) setback from a parking area to a residentially zoned (interior) lot line. This setback, coupled with the site plan control process, will assist as buffering this component of the cannabis production facility from a residential receptor.
5. **Layout and function on the property**—addressed via specific property line setbacks (i.e. a minimum of 30 metres from property lines of non-sensitive abutting uses, and 150 metres to 300 metres from sensitive uses/zones/settlement boundaries); the requirement to meet all zone provisions within the applicable zone; the use being required to be located wholly within an enclosed building and restrictions on outdoor storage; and
6. **Site Plan Control**—Under the current interpretation and application of the zoning by-laws in relation to cannabis production facilities, these uses are permitted as of right within the 'Agriculture (A)' Zone. However, the 'A' zone is not subject to site plan control, nor are standard farming operations, structures, etc. The draft provisions identify that all cannabis production facilities (new and future expansions) would be subject to site plan control. Site plan control is a common mechanism used by a municipality to ensure the proper design and functionality of a use and also serves as a key tool for land use compatibility. This would provide the County with regulatory authority relating to the siting of all aspects of a development, including but not limited to: building orientation/location; where ventilation systems are located and how they are positioned; parking and loading locations and function; review of photometric (lighting) plans, grading/drainage, entrance locations and any buffering requirements (visual—berms or fences or otherwise). Overall, the site plan control review and approval process will be able to assist in addressing issues related to odour and noise emissions and also introduce screening and buffering to further assist in mitigating impacts of the location of this use (i.e. lighting, parking locations, overall site operation, etc.).

A complete list of all the proposed zoning provisions and the rationale for said provisions can be seen in Attachment 2 and the detailed amending by-laws applicable to each existing by-law can be seen in Attachments 3, 4, and 5.

The basis of the proposed zoning framework is to try to ensure that in the agricultural areas cannabis production facilities are treated in a manner consistent with other intensive uses, such as livestock



operations, and in recognition that normal farm activities such as manure spreading, harvesting, and spraying also are typical in agricultural areas. This is in recognition that the use is legal and that facilitating agricultural operations is the primary objective of the municipality's Official Plan in these areas.

### ***Effects of the Zoning Provisions***

If approved by Council, the provisions being proposed by staff will be applied to (i) new construction/operations and (ii) expansion of existing operations. The provisions cannot be retroactively applied to existing operations (see more information on this in the section titled County solicitor review below) as they would be 'grand-fathered' (or, legal non-conforming) and allowed to operate as/where constructed. Based on staff's review of the existing permits issued for cannabis production facilities (as of December 2018), of the seven (7) permits issued, only one (1) of the existing operations would likely meet all of the proposed zone provisions. This then means that six (6) operations would be considered to be legally non-conforming.

Given the propensity of operators to purchase existing greenhouse facilities and convert them for use, staff completed an aerial map review of some existing greenhouse operations (specifically in the Geographic Township of Moulton where a large number presently exist) to determine impact of the proposed regulations. Staff have determined that many of the existing operations would likely not comply with the zone provisions proposed should a conversion proposal come forward. Any conversion proposal in these circumstances would require a zoning amendment or minor variance before a use could be considered. Given the challenges that existing operations could pose (from a compliance standpoint), there could be greater focus on new/custom built operations.

### ***Other Communities and Cannabis Production Facilities***

As part of staff's preparation of the subject report and finalized zone provisions, staff has researched a variety of different municipalities within the Province of Ontario to assess approaches being applied to cannabis production facility regulations. These municipalities include: Brant County, Norfolk County, City of Hamilton, Town of Lincoln, Niagara-on-the-Lake, Town of Pelham, King Township, Municipality of Tweed, Township of South Stormont, City of Oshawa, Chatham-Kent, City of Burlington, and City of Toronto. A detailed list and information collected from other municipalities can be seen in Attachment 1. Overall, it was evident that most municipalities utilized very similar zone provisions such as:

- **Setbacks:** the setbacks utilized in other municipalities appears to be fairly consistent, with a 150 metres setback being the most common distance being required from either a sensitive zone or from sensitive land uses (e.g. dwelling, school). It was also evident that in some locations a lesser setback is employed (e.g. 70 metres), with this typically being applied to industrial zones. Several communities also establish setbacks that increase if there is no air filtration system installed (up to 300 metres). Staff are recommending an approach in line with the more restrictive provisions researched.
- **Zones:** the location of cannabis production facilities in other municipalities is also a consistent theme identified through staff's municipal scan. Most municipalities permitted these uses in both the 'Agriculture' and 'Industrial' Zones. Planning staff are also proposing that within Haldimand County that these uses be permitted in both agriculture and industrial zones.
- **Odour:** of the communities investigated, only two (2) communities have utilized a definition of 'air treatment control' and/or enacted an odour control by-law. Although staff is proposing to introduce a definition of 'air treatment control system', the definition has no technical requirements and is intended to provide clarity. To reiterate, Planning staff are not proposing that Haldimand County take an approach that seeks to regulate or control these air treatment systems or odours due to the legal advice obtained from the County's solicitor (i.e. outside of municipal jurisdiction, not land use planning issue, and not enforceable). However, staff is proposing to establish setbacks that are

influenced by the provision of air treatment control system (i.e. greater setback required if no system provided).

Overall, Planning staff is of the opinion that the introduction of the proposed zoning provisions to the three by-laws will help to mitigate land use compatibility issues; will treat production facilities within the agricultural area similar to normal, farm operations and livestock operations; will treat production facilities within the industrial area in a manner similar to other industrial uses; and will provide more review and control via the site plan control process and allow staff to consider case by case enhancements (beyond Federal requirements) to further help address land use compatibility uses. The subject amendments are appropriate for the use, are consistent with other municipal approaches, and maintains the intent, purpose, and direction of existing local policies.

### **County Solicitor Review**

As part of the initial presentation of the draft provisions at the December 11<sup>th</sup> Council in Committee meeting, Council raised a number of questions that staff felt would benefit from review/response by the County's solicitor. The questions and responses are included below:

- Q: Once the County puts regulations in place, can we enforce those regulations on existing producers (both licensed and alternative producers) and make them comply with setbacks, etc.?

A: No. These regulations are being put in a Zoning By-law under Section 34 of the *Planning Act*. Therefore, producers in existence prior to that date would have legal non-conforming use rights under the *Planning Act* and the County would not be able to enforce the By-law against them.

- Q: As it relates to alternative producers that existed prior to the passing of regulations, what can be done to make them 'step up' and improve their operations from an air quality/odour reduction standpoint?

A: Municipalities, while they can, to some degree, regulate nuisances, do not have the jurisdiction (nor the enforcement abilities) to regulate odour. Issues with respect to odour emissions are best dealt with by the provincial Ministry of the Environment and Climate Change (MOECC).

- Q: Can we stop any of the proposals "in the pipeline" and delay them until we have the zoning regulations in place?

A: No. The use is permitted in the 'Agricultural (A)' Zone and provided that all other applicable laws are met and there is a complete application, a building permit can be issued. If it is not, then the applicant would have recourse under Section 25 of the *Building Code Act* and would be able to apply to a Superior Court Judge to force the issuance of the building permit. If that happens, the County could be responsible for legal fees of a successful applicant having.

- Q: What can be done to restrict "alternative producers" moving forward (in particular, the concept of multiple people coming together to grow for personal use but together in one facility)?

A: The proposed definition for a 'cannabis production facility (CPF)' put forward by staff would have the effect of not permitting such use given it requires any CPF to be licensed by Health Canada.

### **PUBLIC ENGAGEMENT:**

In order to inform and engage the public on the proposed general amendments to introduce this specific use, staff have taken several different approaches:

- A notice ran for multiple weeks in the County's ad space notifying the public of the future public meeting and requesting input;

- A web page was designed to direct members of the public to the previous information report (PD-40-2018) and to the proposed draft provisions and also identified when the public meeting was taking place and how to get in contact with planning to provide input; and
- The County utilized social media (i.e. the County's Facebook and Twitter accounts) to provide the community with information and where to go to comment on this matter.

Despite this, limited contact by the public was made directly to Planning staff. A summary of the input received as part of this engagement approach is as follows:

- Increase of setback of 150 metres to 250 metres from residential use; and
- General concerns regarding odour

In terms of the setbacks, staff is still maintaining that 150 metres be a minimum setback from sensitive uses (i.e. measured to closest point of use), sensitive zones, and settlement area boundaries; however, staff is proposing a sliding scale of setbacks based on the size of a proposed cannabis production facility and inclusion of air treatment control systems. This has the effect of increasing setbacks up to 300 metres. Further, the Federal Government is the licensing authority for this use and the license process requires that operators install filtration systems to address odour concerns. Any odour complaints received by the Ministry of Environment, Conservation and Parks are directed to the Office of Medical Cannabis (at Health Canada) and any nuisance or odour complaints in the agricultural areas will continue to be addressed through the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) dispute resolution process through the Normal Farm Practices Protection Board (NFPPB).

## **NEXT STEPS:**

In terms of what happens next, depends on Council's decision regarding the draft by-laws. Outcomes are as follows:

- If Council is satisfied with the draft provisions as proposed within the subject report and laid out in the attached by-laws (Attachments 3, 4 and 5), then the by-laws would be presented for enactment at Council; or
- If Council is not satisfied with the draft provisions and requests that staff partake in additional analysis or modifications to the draft by-laws, then staff would proceed as directed and return the matter to the earliest available public meeting.

Once the by-laws are approved by Council, the next steps, as dictated by the *Planning Act*, is for the County to issue a Notice of Decision which will initiate the twenty (20) day appeal period that is allotted to any decision made by Council (or a Committee) on a public, *Planning Act* application. If no appeals are received, then the County would issue a Declaration, which signifies that no appeals were received and the approved by-laws are now legally binding. The final step would be to make the necessary changes to the by-laws.

## **FINANCIAL/LEGAL IMPLICATIONS:**

As per Haldimand County By-law 1441/14, as amended, the following applies:

“farm building” means that part of a bona fide farm operation encompassing barns, silos, and other ancillary development to an agricultural use, but excluding a residential, commercial, and industrial use;

The County has a non-statutory exemption for farm operations constructed for bona fide farm uses. A cannabis production facility being constructed in an Agricultural zone that is determined to be a bona fide farm operation under the Farmland tax class would be exempt from Development Charges. As

such, the proponent would be required to sign an acknowledgement that, if the development is determined to be commercial or industrial in the future, they will agree to pay the development charges that would have been applicable. A cannabis production facility being constructed in an Industrial zone would be subject to Development Charges in effect at the time of building permit issuance.

## **STAKEHOLDER IMPACTS:**

### ***External Stakeholders:***

**Grand River Conservation Authority (GRCA):** No objections. The proposed facilities would continue to be subject to standard setbacks. Please note that any future development or other alteration within regulated areas on the subject lands will require prior written approval from GRCA in the form of a permit pursuant to Ontario Regulation 150/06.

**Long Point Region Conservation Authority:** No comments received.

**Niagara Region Conservation Authority:** No comments received.

**Ministry of Municipal Affairs and Housing:** No comments received.

**Ministry of Environment, Conservation and Parks:** The following points are meant to provide you with information as to what the ministry role will be as it relates to this type of facility.

- There is no exemption for agriculture in the Ontario Water Resource Act (OWRA). So if a facility is looking to locate within an area without municipal services, and if water demand is expected to exceed 50,000 L/day, a Permit to take Water (PTTW) will be required as it currently is for irrigation purposes. Similarly, any wastewater resulting from this type of operation will be expected to meet all legislative requirements for stormwater management and sewage discharges.
- Regarding odour, if the facility is licensed by Health Canada then we would refer the complaint to the Office of Medical Cannabis.
- We have not changed our approach to odour from agricultural operations. Noise, odour, dust and flies are nuisance impacts from agriculture. In the event of these types of complaints, we would likely refer the incident to Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) dispute resolution process.
- As the facility will be growing a crop/commodity, we would likely consider the structure to be a thing used in agriculture. As such it would be exempt from section 9 of the *Environmental Protection Act* (EPA) and would not require an approval to discharge odour to the air. The County may want to consider additional requirements to control odours.

**Ministry of Agriculture, Food and Rural Affairs:** No comments received.

**Hydro One:** No objections.

### ***Internal Stakeholders:***

**Building and Municipal Enforcement Services:** No major objections. Suggestions provided regarding changes to definition wording and clarity requested about how the amendments will be introduced in the by-law (i.e. General Provisions or within each zone).

**Water and Wastewater:** No objections.

**Development and Design Technologists:** No objections.

**Emergency Services:** No comments received.

**Waste Management:** No comments received.

**Roads Operations:** Roads Operations has reviewed the proposed general amendment to amend the three existing zoning by-laws laws to incorporate specific provisions/regulations for cannabis production facilities and has no comments or objections.

## **REPORT IMPACTS:**

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

## **ATTACHMENTS:**

1. Review of Other Communities (Chart).
2. Proposed Zoning Provisions Rationale (Table).
3. Draft Zoning By-law for 1-DU-80 (Dunnville).
4. Draft Zoning By-law for 1-H-86 (Haldimand).
5. Draft Zoning By-law for NE-1-2000 (Nanticoke).