

Staff Report 2019-36

Meeting Date: Tuesday, April 23, 2019

Subject: Proposed Town-Wide Zoning By-law Amendment to Permit Cannabis Production Facilities

Submitted By: Stephanie McVittie, Senior Planner, Planning and Development, Community Services

RECOMMENDATION

That, in accordance with Section 34(17) of the *Planning Act*, no further notice is required to be provided on the proposed By-law; and,

That the By-law attached as Schedule "A" to Staff Report 36-2019 be enacted to amend Comprehensive Zoning By-law 2006-50, as amended, to permit and regulate cannabis production facilities in Prestige Industrial (MP) and Service Industrial (MS) zones within the Town of Caledon, by deleting, adding and amending definitions and general provisions to reflect new legislation and requirements and changing the permitted use in the A2-595 zone to permit a cannabis production facility rather than a medical marihuana production facility.

REPORT HIGHLIGHTS

- The Federal government sets out regulations and licensing requirements for cannabis production and allows municipalities to manage this land use through tools such as the Zoning By-law.
- Producers will be required to obtain a licence from Health Canada. Although the producer is required to notify the Town during the licence application process, Health Canada does not require approval from the Town in order to issue a licence. It is up to the producer to ensure that they also meet all applicable requirements of the Town's Zoning By-law. Similar to other users, the Town has the ability to enforce zoning compliance.
- With the exception of medical marihuana production facilities, Comprehensive Zoning By-law 2006-50, as amended does not permit any other form of cannabis production facilities as this is not a use specifically defined in the By-law. Town staff is currently advising proponents that recreational cannabis production facilities are not permitted within the Town.
- As a result of the new Federal legislative changes, interest received from proponents wishing to grow and establish cannabis production facilities as well as the lack of provisions within the By-law, there is a need to consider amending the Zoning By-law to include provisions to regulate these uses.
- Planning staff recommends that Council enact a by-law to amend Zoning By-law 2006-50, as amended to permit cannabis production facilities in the same way as the currently permitted medical marihuana production facilities, to amend definitions and general provisions to reflect current legislation and to permit a

cannabis production facility instead of a medical marihuana production facility on lands zoned A2-595.

DISCUSSION

At the June 26, 2018 Committee of the Whole General meeting, staff provided a Report to Council which set out recommendations to prepare the Town for the legalization of recreational cannabis. As recommended in the report, staff was directed to conduct a Zoning By-law review to investigate if adjustments to the by-law are necessary as a result of the updated cannabis regulations.

The purpose of this Report is to recommend Council enact the proposed Zoning By-law amendment to permit cannabis production facilities within the Town.

Federal Government Cannabis Act Licensing Requirements

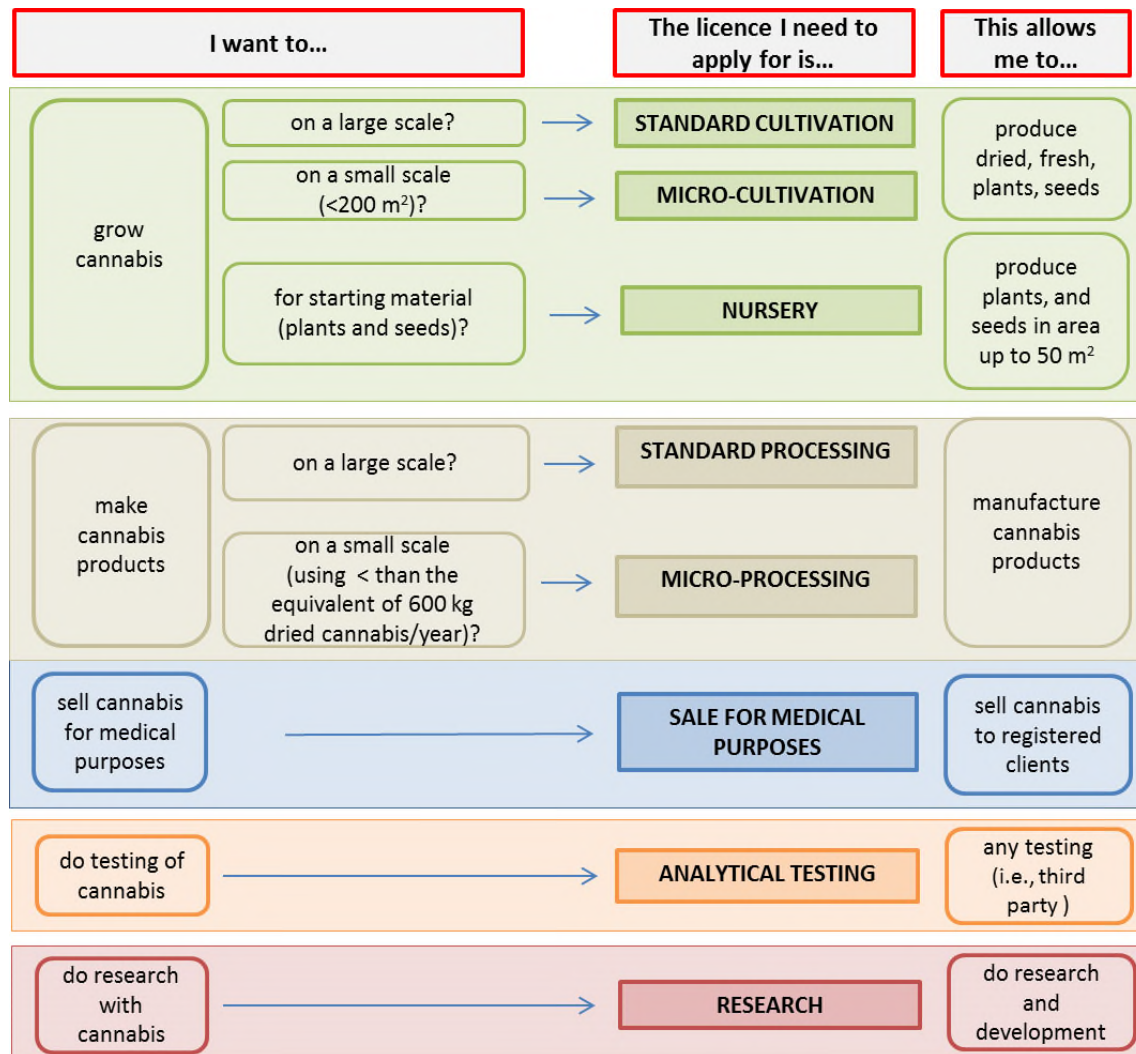
The *Cannabis Act* and its supporting regulations came into force on October 17, 2018. Through this legal framework, Health Canada requires that a licence be obtained to:

- Grow cannabis commercially for sale or produce cannabis products commercially (large or small scale)
- Sell cannabis for medical purposes
- Conduct tests on cannabis
- Conduct research on cannabis

In support of a licence application to Health Canada, the applicant is required to provide written notification to the senior officials of the local government, fire and police authorities advising of their intent to submit a licence application. This is meant to ensure that local authorities are aware of the intent, location and proposed activities and to provide the opportunity for the Town to review the proposal against Town by-laws and provide comments directly to the applicant. Although Health Canada may issue a licence without approval from the Town, it is the responsibility of the applicant to ensure that the proposal conforms to all applicable requirements of the Town's Zoning By-law. The Town has the ability to regulate compliance with the Zoning By-law similar to other uses.

There are various classes and subclasses of licences which may be obtained under the *Cannabis Act* and associated regulations. These are identified in Figure 1: Cannabis Classes and Subclasses of Licences below as created by Health Canada.

Figure 1: Cannabis Classes and Subclasses of Licences



There are two additional licence types which are not shown in Figure 1 above, but which are explained below:

- **Industrial Hemp Licence:** Under the *Cannabis Act*, the Industrial Hemp Regulations authorize certain activities with industrial hemp which is defined as a cannabis plant (or any part of the plant) in which the concentration of THC (tetrahydrocannabinolic acid) is 0.3% or less in the flowering heads and leaves. The following activities may be permitted by an Industrial Hemp License:
 - Cultivation (including plant breeding/propagation)
 - Sale
 - Importation and Exportation
 - Cleaning
 - Preparing (conditioning)
 - Processing (including rendering non-viable and producing derivatives/products)

- Cannabis License: Under the *Excise Act*, a cannabis licence is required where an applicant is cultivating, producing or packaging cannabis products for the purposes of imposing duties.

Health Canada also allows individuals to produce, store and possess a limited amount of cannabis for their own medical purposes, as authorized by a licenced health care practitioner. Individuals may choose to produce cannabis themselves or may designate an individual to produce it on their behalf. These production facilities are not required to obtain a licence under the *Cannabis Act*, but rather are simply registered with Health Canada. These facilities, like licenced cannabis production facilities, are required to comply with local by-laws, including the Zoning By-law.

Each licence (under the *Cannabis Act*) provides authorization for specific activities, which may include:

- Possessing cannabis
- Obtaining dried or fresh cannabis, cannabis plants or seeds by propagating, cultivating and harvesting
- Altering the chemical or physical properties of cannabis for testing purposes
- Selling and distributing dried or fresh cannabis, cannabis plants or seeds to other licence holders
- Selling, distributing, sending and delivering cannabis products that are plants or seeds to a licence holder that is authorized to sell cannabis for medical purposes
- Conducting ancillary activities such as drying, trimming, milling, etc.
- In the case of a medical sales licence, selling or distributing cannabis products to a client or to a hospital employee

It is important to note that the *Cannabis Act* and associated regulations permit activities to occur either indoor, outdoor or both, depending on the activity and licence type. The Act and regulations do not specify certain setbacks or distances from sensitive land uses.

Current Zoning Provisions

Through Council Report DP-2014-034, staff had undertaken a detailed analysis of marihuana production facilities within the Town. Staff recommended that medical marihuana production facilities be permitted within the Prestige Industrial (MP) and Serviced Industrial (MS) zones, with additional provisions relating to setbacks from sensitive land uses and general operational requirements (i.e. activities being conducted indoors, site plan approval, etc.). The *Cannabis Act* has replaced the previous Federal legislation on which the Town's original by-law was based on. In order to address matters covered in the current legislation, changes are required to the Town's Zoning By-law.

With the exception of medical marihuana, Zoning By-law 2006-50, as amended, does not contain provisions to permit or prohibit cannabis production facilities (i.e. producing, packaging, distributing, etc.). Therefore, the interpretation, consistent with other zoning matters, is that the uses are not permitted within the Town.

Medical marihuana production facilities are currently permitted within Prestige Industrial (MP) and Serviced Industrial (MS) zones, provided that:

- The facility is authorized by a licence issued by the Federal Minister of Health
- The use is located entirely indoors
- Only one facility is located on the lot
- The facility is at least 150 m away from:
 - A lot in a residential or institutional zone
 - A lot within the lands identified as Villages, Hamlets and the Palgrave Estate Residential Community (as per the Town's Official Plan)
 - A lot containing a school, day nursery, community centre or training facility aimed primarily at children less than 16 years of age
- There is no outdoor signage or advertising
- There is no accessory open storage
- The loading and delivery spaces are located within either the rear yard or enclosed within the building
- Site Plan Approval has been granted and a development agreement has been entered into with the Town
- The facility complies with all applicable zone standards

Medical marihuana production facilities are not permitted on lands which are not zoned MP or MS, such as agricultural lands. Should an applicant wish to establish a medical marihuana production facility within the agricultural area, an Official Plan Amendment and Zoning By-law Amendment for site specific permissions are required.

There are medical marihuana production facilities which have been established in the Town in accordance with the current zoning provisions (described above). One facility, located within an MS zone, received approval from the Committee of Adjustment ('A' 010-18) to reduce the setback from a training facility aimed primarily at children less than 16 years of age, from a school and from a day nursery. Another facility received approval of site-specific Official Plan and Zoning By-law Amendments to permit a medical marihuana production facility outside of the MP or MS zones within a rural area of Caledon on Hurontario Street. The property is now zoned Rural Exception 595 (A2-595).

There are also a number of cannabis production facilities for personal medical use, registered with Health Canada, which exist within the Town. These facilities are located throughout the Town.

Proposed Zoning By-law

The Zoning By-law Amendment, attached as Schedule "A" to this report, proposes to permit cannabis production facilities in the same manner as currently permitted medical marihuana production facilities, deleting, adding and amending definitions and general provisions to reflect new legislation and requirements. This change will also include changing the permitted use in the A2-595 zone to permit a cannabis production facility rather than a medical marihuana production facility, and also recognize the minor variance which was approved for the facility in Bolton. The proposed Zoning By-law amendment is intended to include cannabis production facilities for personal medical use in the same manner as all other cannabis production facilities.

If approved, the proposed by-law amendment will continue to not permit cannabis production facilities within the agricultural area. Should an applicant wish to establish a cannabis production facility within the agricultural area, an Official Plan Amendment and Zoning By-law Amendment for site specific permissions would be required.

Planning Review

Documents that have been considered by the Town in its initiation of the proposed Zoning By-law Amendment include the Provincial Policy Statement, 2014, the Places to Grow: Growth Plan for the Greater Golden Horseshoe, the Region of Peel Official Plan and Town of Caledon Official Plan.

Provincial Policy Statement, 2014 (PPS, 2014)

The PPS, 2014 contains policy direction to the efficient use of land to support sustainable, strong, livable, healthy and resilient communities while protecting the environment, public health and safety and facilitating growth. The PPS, 2014 directs growth and development to settlement areas. Furthermore, the PPS, 2014 indicates that planning authorities shall promote economic development by providing for an appropriate mix and range of employment uses to meet long-term need and ensuring the necessary infrastructure is provided to support current and projected needs. The proposed by-law intends to permit cannabis production facilities within certain industrial areas/zones and is consistent with the Provincial Policy Statement, 2014.

Growth Plan for the Greater Golden Horseshoe

The Growth Plan contains policies to provide flexibility to capitalize on new economic and employment opportunities as they emerge (Section 1.2.1). The Plan looks to create complete communities by providing convenient access to an appropriate mix of jobs, local services, public service facilities and a range of housing by directing growth to settlement areas. Section 2.2.5.1 of the Plan discusses promoting economic development and competitiveness by making more efficient use of existing employment area and vacant and underutilized employment lands and increasing employment densities and ensuring the availability of sufficient land, in appropriate locations, for a variety of employment to accommodate the forecasted employment growth. The amendment proposes to create opportunities for cannabis production facilities on lands zoned Prestige Industrial (MP) and Serviced Industrial (MS) within existing settlement areas, which conforms to the Growth Plan.

Region of Peel Official Plan

The policies of the Region of Peel Official Plan indicate that employment areas are key centres of economic activity in the area municipal official plans. The policies look to attract and retain a range of employment types and to plan for, protect and preserve employment areas for employment uses. The amendment proposes to create opportunities for cannabis production facilities on lands zoned Prestige Industrial (MP)

and Serviced Industrial (MS) within existing settlement areas. The Region of Peel has advised that there are no concerns with the proposed amendment, and therefore it conforms to the Regional Official Plan.

Town of Caledon Official Plan

Council Report DP-2014-034, which recommended enactment of the by-law amendment to permit medical marihuana production facilities, provides discussion on the nature of the use and the question as to whether these facilities should be considered as an agricultural use or an industrial use. The activities associated with medical marihuana production facilities are the same or very similar to the activities associated with cannabis production facilities. The conclusion of the review in Council Report DP-2014-034 was that the facilities were considered as industrial uses which remains unchanged at this time.

The Prestige Industrial (MP) and Serviced Industrial (MS) zones generally align with the Prestige Industrial and General Industrial designations contained within the Town's Official Plan. These designations apply to lands within settlement areas with full municipal water and sewer facilities and permit uses such as manufacturing/producing, packaging, processing, research and development, laboratory/testing, distribution and shipping. Cannabis production facilities are very similar to other pharmaceutical facilities which are considered as industrial uses. These types of facilities utilize the full municipal services available and, in reviewing the activities permitted through the licences, align with these permitted uses. This is also support by Building staff in administering the Ontario Building Code. The proposed amendment conforms to the Town's Official Plan.

Consultation

Agency and Department Review

The proposed by-law amendment was circulated to external agencies and internal departments for review and comment. Comments are attached to this report as Appendix 'B' – Agency and Department Comment Sheet. No objections were received.

There was a question as to how any proposed amendments to the *Cannabis Act* to include edibles would be managed. At this time, the amendments have not been communicated from the Federal and Provincial governments, and as a result, staff cannot determine how those amendments may or may not be accommodated within the Town. Similarly to how the Town addressed medical marihuana and recreational cannabis, once the new Federal and Provincial edible cannabis framework is finalized, Planning staff will undertake a review to determine how the legislation may impact land uses within the Town.

Public Meeting

A combined Notice of Application and Public Meeting was placed in the Caledon Enterprise, Brampton Guardian, Erin Advocate and Georgetown Independence on February 21, 2019 and the Caledon Citizen on February 28, 2019. A copy of the notice was also sent to the landowner of the existing medical marihuana production facility on Hurontario Street and those stakeholders which had expressed interest in establishing cannabis production facilities within the Town. In addition, given that this application involves a Town-wide amendment to the By-law, the notice was also sent to all adjacent municipalities.

A statutory Public Meeting was held on March 18, 2019 in accordance with the requirements of the *Planning Act*. The following questions and comments were raised at the Public Meeting and/or received during the processing of this proposed amendment:

Question: How will the Town address permissions for cannabis production facilities and related activities within the agricultural area?

Response: If approved, the proposed by-law amendment will not permit cannabis production facilities within the agricultural area. Should an applicant wish to establish a cannabis production facility within the agricultural area, an Official Plan Amendment and Zoning By-law Amendment for site specific permissions would be required.

Question: Will the Town be looking to implement similar permissions for cannabis as currently exist with cideries and wineries within the agricultural area?

Response: There are policies in the Town's Official Plan which relate specifically to wineries and cideries established in the agricultural area. These policies were introduced in the Official Plan through a Town-initiated Official Plan Amendment. As part of the Town's current Official Plan review, Policy staff can review the policies to address these permissions.

Question: Council asked staff to confirm that the provisions/permissions of the medical marihuana production facilities will remain intact and not be altered if the by-law is amended to include cannabis production facilities.

Response: The proposed by-law essentially replaces the words "medical marihuana" with "cannabis" and that the same permissions/setbacks will apply.

No Further Notice (Section 34(17) of the *Planning Act*)

Since the Public Meeting, staff has worked with agencies and departments to refine the by-law to provide for further clarity and consistency with the *Cannabis Act*. A new provision was also added to the By-law to recognize the continued applicability of minor variances which were approved through application 'A' 010-18, as discussed above.

Staff is of the opinion that the clarifications are minor and therefore request that Council confirm that no further notice is required as per Section 34(17) of the *Planning Act*.

FINANCIAL IMPLICATIONS

Any properties developed for the purposes of Cannabis production will have their assessed value, as determined by the Municipal Property Assessment Corporation (MPAC) changed to reflect the developments that would have taken place.

The development charge treatment of Cannabis-related facilities is proposed to be clarified in the 2019 Development Charge Background Study and By-law to be passed by Council in May 2019. Currently, future developments would be subject to the Town of Caledon development charges By-law No, 2014-054, or as amended, and is currently at \$40.89 per m² of added industrial space.

Any development would also be subject to Region of Peel development charges, currently \$222.51 for non-residential – other properties or \$149.28 for non-residential – industrial properties. Also applicable would be development charges for Education, currently \$10.87 per m² of added non-residential space.

The Development Charges comments and estimates above are as the date of this report and are indexed twice a year. Development Charges are calculated and payable at the time of building permit issuance. Development Charge By-laws and rates are subject to change. Any estimates provided will be updated based on the Development Charges By-law and rates in effect at the time of building permit, and actual information related to the construction as provided in the building permit application. Please note that the Town's current Development Charge By-law will be updated in 2019 and Development Charge rates are anticipated to change as a result.

COUNCIL WORK PLAN

N/A

ATTACHMENTS

Schedule A – Draft Zoning By-law Amendment

Schedule B – Agency and Department Comment Sheet

THE CORPORATION OF THE TOWN OF CALEDON
BY-LAW NO. [By-law Number Inserted by Town]

Being a by-law to amend Comprehensive Zoning By-law 2006-50, as amended, to reflect changes to the Cannabis Act and permit cannabis production facilities.

WHEREAS Section 34 of the Planning Act, as amended, permits the councils of local municipalities to pass zoning by-laws for prohibiting the use of land or the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law;

AND WHEREAS the Council of The Corporation of the Town of Caledon considers it desirable to pass a zoning by-law to permit cannabis production facilities within the Town of Caledon, Regional Municipality of Peel in accordance with recent amendments to the Cannabis Act.

NOW THEREFORE the Council of The Corporation of the Town of Caledon enacts that By-law 2006-50 as amended, being the Comprehensive Zoning By-law for the Town of Caledon, shall be and is hereby amended as follows:

1. The following definitions are deleted from Section 3, Definitions:

Cannabis
Marihuana
Medical Marihuana Production Facility
2. The following definitions are added to Section 3, Definitions in alphabetical order:

Cannabis means “cannabis” as defined in Section 2(1) of the *Cannabis Act*, S.C. 2018, c. 16, as amended.

Cannabis Production Facility means a *building* or portion thereof used for growing, processing, producing, packaging, researching, testing, destroying, storing or distributing *cannabis*, or selling *cannabis* for medical purposes, and authorized pursuant to the *Cannabis Act*, S.C. 2018, c. 16, as amended, by a license or registration number issued by the federal Minister of Health. For clarity, no part of this *use*, whether accessory or not, may be located outside.
3. All references to “*Medical Marihuana Production Facility*” throughout the By-law are deleted and replaced with “*Cannabis Production Facility*”.
4. Section 4.20.1 is deleted and replaced with “A copy of a current and valid production licence or registration number and certificate issued by the federal Minister of Health shall be provided to the Town of Caledon.”
5. Section 4.20.2 is amended to replace “erection of a residential or institution use” with “erection of a residential or institutional use”.
6. Section 4.20.7 is amended to replace “Marihuana for Medical Purposes Regulations, SOR/2013-119.” with “*Cannabis Act*, S.C. 2018, c. 16, as amended.”
7. The following is added to Section 4 General Provisions:

Section 4.20.8 Whereas the Committee of Adjustment of the Town of Caledon has authorized Minor Variance application ‘A’ 010-18 and the decision of which has become final and binding, the provisions of this By-law, as they apply to such land, *building* or *structure*, shall be deemed to be modified to the extent necessary to give effect to such Minor Variance and the land, *building* or *structure* shall be deemed to comply with this By-law in so far as it relates to the approved variance.

8. The following rows are added to Table 8.1 in Section 8, Industrial Zones:

	ZONES					
USE	MP	MS	MU	MA	MX	MD
<i>Cannabis Production Facility</i>	■ (3)	■ (3)				

9. The following text is added as a Footnote for Table 8.1:

(3) Must comply with Section 4.20 Cannabis Production Facility.

Read three times and finally
passed in open Council on the
30th day of April, 2019.

Allan Thompson, Mayor

Carey Herd, Clerk



AGENCY & DEPARTMENT COMMENT SHEET

Prepared: April 9, 2019
Lead Planner: Stephanie McVittie

Proposed Zoning By-law Amendment Application Proposed Town-Wide Zoning By-law Amendment to Permit Cannabis Production Facilities File Numbers: RZ 19-01

The following comments were received regarding the above-noted Zoning By-law Amendment application.

EXTERNAL AGENCY COMMENTS

The following agencies have no concerns with the amendment:

- Canada Post – March 19, 2019
- City of Vaughan – March 18, 2019
- Credit Valley Conservation – March 11, 2019
- Dufferin-Peel Catholic District School Board – March 11, 2019
- Peel District School Board – March 19, 2019
- Region of Peel – February 20, 2019
- Town of Orangeville - February 22, 2019
- Toronto Region Conservation Authority – March 7, 2019
- York Region – March 18, 2019

County of Dufferin – March 8, 2019

Comments:

- The County does not have any comments at this time.
- Should the Town-wide Zoning By-law Amendment be approved, the County wishes to be circulated on any development application for Cannabis Production Facilities proposed in the Town of Caledon that are within 150 m of the County of Dufferin border as they may have land use implications on future decisions made within our County.

Ministry of Transportation (Permitting) – March 8, 2019

Comments:

- Any proposed cannabis production facility within MTO permit control will be subject to MTO review and approval for permits. The commercial MTO Building and Land Use and Entrance permit fees would apply.
- Not all sites on MTO highways may qualify for a new commercial entrance, therefore the Town might want to consider some sort of qualified for sites fronting on Provincial Highways.

The following agencies were also circulated (comments have not been received):

- Bell Canada
- Township of Adjala-Tosorontio
- City of Brampton
- Canadian Pacific Railway



- Township of East Garafraxa
- Enbridge
- Town of Erin
- GO Transit
- Hydro One
- Lake Simcoe Conservation Authority
- Town of Mono
- Municipal Property Assessment Corp.
- Town of New Tecumseth
- Niagara Escarpment Commission
- Nottawasaga Valley Conservation Authority
- Ontario Provincial Police – Caledon Detachment
- Rogers Communications
- Simcoe County
- County of Wellington

TOWN OF CALEDON – DEPARTMENT COMMENTS

The following departments have no concerns with the amendment:

- Community Services, Heritage – March 9, 2019
- Community Services, Landscape – March 19, 2019
- Community Services, Urban Design – March 10, 2019
- Community Services, Zoning – March 26, 2019
- Corporate Services, Regulatory Services – April 8, 2019
- Finance and Infrastructure Services, Facilities – February 22, 2019
- Finance and Infrastructure Services, Finance – March 18, 2019
- Finance and Infrastructure Services, Transportation – March 18, 2019
- Strategic Initiatives, Economic Development – February 26, 2019

Community Services, Building – March 18, 2019

Comments:

- A cannabis production facility would be classified as an industrial occupancy under the Ontario Building Code. The proposed amendment would complement the regulation.
- In addition to Fire, and Electrical Safety Authority (ESA) approvals, Building division approval is required prior to occupancy and use of a building proposed to be utilized as a cannabis production facility.

Community Services, Development Engineering – March 18, 2019

Comments:

- No objections to the proposed amendment.
- Through the required Site Plan Approval process, a review of the treatment of wastewater will be completed. It should be noted that the wastewater exiting these facilities can potentially be rich in nutrients and should be considered industrial waste and not be permitted to enter the stormwater network. Additionally, should a storm pond be constructed that has the capacity to treat over 10,000 L/day than Environmental Compliance Approval (ECA) would be required as per Section 53 of the Ontario Water Resource Act.



Corporate Services, Legislative Services (Accessibility)– March 25, 2019

Comments:

- There are no objections to the proposed amendment.
- Through the Site Plan Approval and Building Permit applications, the applicant will be required to comply with the Ontario Building Code for the design of interior spaces and the Design of Public Spaces requirements for the exterior of the building.

The following departments were also circulated (comments have not been received):

- Community Services, Fire and Emergency Services
- Community Services, Policy and Sustainability
- Corporate Services, Legal Services