

**City of Port Colborne  
Council Meeting Addendum**

**Date:** Monday, March 8, 2021  
**Time:** 6:30 pm  
**Location:** Council Chambers, 3rd Floor, City Hall  
66 Charlotte Street, Port Colborne

**Pages**

**5. Disclosures of Interest**

- \*5.1. Councillor E. Beauregard - Nickel Beach and Centennial – Cedar Bay Beach Seasonal Operation Plans 2021, 2021-49
- \*5.2. Councillor E. Beauregard - Memo from Bryan Boles, Director of Corporate Services/Treasurer - Supplemental Information to Council Report 2021-49
- \*5.3. Councillor E. Beauregard - Recommendation Report for Official Plan & Zoning By-law Amendment Applications, File D09-01-20 & D14-03-20 Mineral Aggregate Resources & Operation Zone, 2021-63
- \*5.4. Councillor E. Beauregard - Sale of Land to Greg and Carole Newman, 2021-64
- \*5.5. Councillor E. Beauregard - Planning and Development Department Report 2021-83, Appeal of Committee of Adjustment Decision A07-20-PC
- \*5.6. Councillor E. Beauregard - By-law to Adopt Amendment No. 7 to the Official Plan for the City of Port Colborne
- \*5.7. Councillor E. Beauregard - Being a By-law to Amend Zoning By-law 6575/30/18 Regarding Mineral Aggregate Operation Zone Provisions, Definitions and Uses in the Highly Vulnerable Aquifer
- \*5.8. Councillor E. Beauregard - By-law to Authorize Entering Into an Agreement of Purchase and Sale with Greg and Carole Newman Respecting Part 1 on Plan 59R-16888 and Part 2 on Plan 59R-16565
- \*5.9. Councillor R. Bodner - Town of Niagara-on-the-Lake - Support for Wine Sector

**7. Staff Reports**

7.3. Recommendation Report for Official Plan & Zoning By-law Amendment Applications, File D09-01-20 & D14-03-20 Mineral Aggregate Resources & Operation Zone, 2021-63

Councillor E. Beauregard declared a conflict on this item. (I declare an indirect pecuniary interest as I am employed by Sullivan Mahoney LLP., one of the solicitors for Rankin Construction, the parent company of Port Colborne Quarries Inc. The decision of Council on this item will have a direct impact on Port Colborne Quarries application before Council to rehabilitate some of its pits, which I have also declared a conflict of interest on.)

- \*a. Delegation Material from Port Colborne Quarries

*Jeffrey J. Wilker*  
416-868-3118  
*jwilker@thomsonrogers.com*

**SENT BY EMAIL ONLY**

March 8, 2021

Mayor Steele and Members of City Council  
c/o Mr. Dan Aquilina, Director of Planning & Development  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, Ontario  
L3K 3C8

Dear Mayor Steele and Members of Council:

**Report 2021-63 – Recommendation Report dated March 8, 2021**  
**Proposed Official Plan Amendment No. 7**  
**and Accompanying Zoning By-law Amendment**  
**Mineral Aggregate Resources and Mineral Aggregate Operation Zone**  
**Port Colborne Quarries Inc.**  
**Our File No. 500725**

As the City is aware, we are the solicitors for Port Colborne Quarries Inc.(PCQ) in this matter. We are writing to confirm that PCQ has significant, substantial and fundamental concerns with the City's Proposed Official Plan Amendment No. 7 and accompanying Zoning By-law Amendment as set out in Report 2021-63 (the "March Report"). PCQ registers its objection to the passage of both documents in the form as contained in the March Report.

PCQ owns lands designated Mineral Aggregate Operations and zoned Mineral Aggregate Operations (MAO). It is our understanding that PCQ is the only landowner with such designation and zoning within the boundaries of the City. Moreover, PCQ owns the site at 1937 Ramey Road, being Pit 1, which is zoned MAO-38 (H) which also permits a pre- cast concrete plant.

***City's Improper Governance***

The City failed to provide any notice of the consideration of this March Report to PCQ, its consultants or to my offices. This is astounding, especially given that the City was well

aware of PCQ's concerns. In fact, Mr. Aquilina virtually met with PCQ, its consultants and myself on January 21, 2021. A copy of our confirming letter of February 5, 2021 detailing that meeting is attached for your consideration. Furthermore, when the City was going forward with its December Report, a copy had been previously provided to PCQ.

To then publish this March Report without providing a copy of the Report to a key stakeholder such as PCQ is astounding, and contravenes the requisite standards of municipal engagement, transparency and openness. In fact, the March Report only came to our attention via a google alert on a newspaper article around 11:00 p.m. last evening, and could only be reviewed with PCQ and its consultants today. With pending deadlines for submission of this letter to the City Clerk, our review cannot be fulsome or comprehensive. The City's actions have highly prejudiced PCQ and are contrary to the principles of good government.

### ***Substantive Concerns***

From a preliminary perspective -- as that is all that is available to PCQ given the constrained timeline -- PCQ's concerns have not been fully addressed. In addition to our letter of February 5, 2021, we direct you to our prior letters of December 11, 2020, November 3, 2020 and Mr. Sisco's letter of October 2, 2020 which detail PCQ's ongoing concerns which are attached.

The documentation referenced in the March Report has not been technically vetted and misuses the Source Protection materials in an improper manner extending them in a way that they were never designed. The draft Official Plan Amendment and Zoning By-law Amendment are ambiguous, uncertain and do not have appropriate regard for section 2(c) of the *Planning Act* with respect to mineral aggregate resources, is not consistent with the Provincial Policy Statement, 2020 especially with respect to mineral aggregate resources, is not in conformity with the Province's Provincial Plans, nor the Region Official Plan and/or the parent Official Plan of the City.

The passage of these documents should be deferred and further work undertaken by the City including retaining technical expertise on hydrogeology.

### ***Conclusions***

Should the City proceed with adopting Proposed Official Plan Amendment No. 7 and passing the accompanying Zoning By-law, we request that the City provide notice in

accordance with the provisions of the *Planning Act* to both myself and Mr. Sisco. Our contact details are listed in the Appendix attached.

We trust that the foregoing is satisfactory.

Yours very truly,



Jeffrey J. Wilker

JJW/jjw

cc: Scott Luey, Chief Administrative Officer  
cc: Dan Aquilina, Director of Planning and Development  
cc: Amber LaPointe, City Clerk  
cc: Client  
cc: David Sisco, IBI Group  
cc: Kevin Fitzpatrick, WSP Canada Inc.

**Appendix: Contact Details**

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**SENT BY EMAIL ONLY**

February 5, 2021

Mr. Dan Aquilina, Director of Planning & Development  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, Ontario  
L3K 3C8

Dear Mr. Aquilina:

**Proposed Official Plan Amendment No. 7  
and Accompanying Zoning By-law Amendment  
Mineral Aggregate Resources and Mineral Aggregate Operation Zone  
Port Colborne Quarries Inc.  
Our File No. 500725**

We are writing to follow up our virtual meeting between yourself, myself, representatives of Port Colborne Quarries Inc.(PCQ) and PCQ consultants on January 21, 2021.

During the meeting we discussed the concerns as set out in my letter to Mayor Steele and Members of Council dated December 11, 2021 arising out of the City's proposed Official Plan Amendment No.7 and Accompanying Zoning By-law Amendment (and the accompanying staff report). Council consideration of those materials was deferred so that further meetings and information could be exchanged

We briefly wish to summarize our understanding of the conclusions of that meeting.

***Existing Permission for Concrete Product Manufacturing***

We concluded from your advice that Special Provision MAO-38(H) shall remain intact, in full force and effect, and is not to be impacted whatsoever by the proposed Official Plan Amendment and/or proposed Zoning By-law Amendment. We request that the forthcoming Planning Report confirm same.

### ***Groundwater Aquifer Planning Policies***

We discussed the direction that City Planning had which was to include a policy regime dealing with the protection of the groundwater aquifer within the City for private wells. From your comments during our meeting, we understand that this new policy regime being proposed is not to apply to Mineral Aggregate operations.

We also discussed the policy framework in greater detail. As we advised the approved NPCA Source Water Protection Plan is focused on the protection of municipal water which is lake/canal based as opposed to groundwater based. We identified to you that there were concerns regarding the foundation of the documentation, the breadth of the extent of the policy framework, and the consequent impacts on landowners, including farmers.

Subsequent to our meeting, PCQ advisors and myself further considered policy regimes elsewhere where the supply of water to residents is from the groundwater. Even in those municipalities where there are detailed policies protecting the municipal wellfields those policies do not extend to private well protection. We have not been able to locate any policies elsewhere in keeping with those proposed by the City. As well, during our meeting we did suggest on a factual level that for private residents the most proximate pollutant source to the private well would be the private septic system.

### ***Site Alteration***

As the City is aware, PCQ initiated a request for a Site Alteration Permit in July 2018, for its Pit 1 lands and the matter has yet to be returned to Council for final consideration. As PCQ representatives advised during our meeting, PCQ intends to request that this matter be returned to Council for final consideration in the near future. We will follow up on this subsequently.

### ***Definitions***

We discussed the difficulty with the definitions being proposed. In the prior City documentation, Pit 1 was intended to fall under the “dry pit” category. We note that Pit 1 is historic nomenclature – in fact it is not a pit but a quarry.

With respect to the definitions of “wet pit” and “dry pit” we suggested that recourse to the *Aggregate Resources Act* regime which has approval processes for above and below water table pits and quarries.

We acknowledge receipt from you of the Region proposed revisions to the definitions which read as follows:

Wet Pit: Means a man made open depression in the earth's surface that will retain water to the natural ground water table if not artificially kept dewatered.

Dry Pit: Means a man made open depression in the earth's surface that is above the natural ground water table that does not retain water or have to be artificially dewatered.

With respect, those definitions are equally troublesome, and do not provide the requisite certainty required in planning documents. On a go forward basis, when the matter is ready to go to City Council for its consideration, PCQ, as an aggregate stakeholder potentially impacted by the planning regime, must be able to ascertain exactly how the documentation affects and impacts it. Certainty and clarity is required.

### *Conclusions*

We trust that this letter accurately reflects the contents of our meeting. We thank you for meeting with us as we found the exchange of information to be helpful and productive.

We reserve the right to provide further comments as this matter proceeds through the planning processes. We trust that the foregoing is satisfactory.

Yours very truly,



Jeffrey J. Wilker

JJW/jjw

cc: Client  
cc: David Sisco, IBI Group  
cc: Kevin Fitzpatrick, WSP Canada Inc.



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**SENT BY EMAIL ONLY**

December 11, 2020

Mayor Steele and Members of City Council  
c/o Mr. Dan Aquiliana, Director of Planning & Development  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, Ontario  
L3K 3C8

Dear Mayor Steele and Members of Council:

**Report 2020-124 – Recommendation Report dated December 3, 2020  
Proposed Official Plan Amendment No. 7  
and Accompanying Zoning By-law Amendment  
Mineral Aggregate Resources and Mineral Aggregate Operation Zone  
Port Colborne Quarries Inc.  
Our File No. 500725**

We have been retained by Port Colborne Quarries Inc.(PCQ) in this matter. We are writing to confirm that PCQ has significant, substantial and fundamental concerns with the City's Proposed Official Plan Amendment No. 7 and accompanying Zoning By-law Amendment as set out in Report 2020-124. PCQ registers its objection to the passage of both documents in the form as contained in Report 2020-124.

PCQ owns lands designated Mineral Aggregate Operations and zoned Mineral Aggregate Operations (MAO). It is our understanding that PCQ is the only landowner with such designation and zoning within the boundaries of the City. Moreover, PCQ owns the site at 1937 Ramey Road, being Pit 1, which is zoned MAO-38 (H) which also permits a concrete batching plant. Notwithstanding this fact, PCQ is not even referenced by name in Report 2020-124.

Both myself and my client's consulting planner had previously written to Mr. Aquiliana advising of PCQ's concerns regarding this City initiated proposal, see our attached correspondence dated October 2, 2020 (from Mr. Sisco) and from myself dated November

3, 2020. We received responding correspondence from Mr. Aquiliana on November 20, 2020, copy also attached. We request that this package of materials, including this letter, be provided to City Council for consideration as part of its deliberations.

In the prior correspondence to the City, we identified the significant concern that we have that the City had not consulted or entered into any meaningful dialogue with PCQ notwithstanding its position as a stakeholder with lands so designated and zoned. We request that City Council defer the consideration of this matter and direct City staff to enter into meaningful discussions with PCQ prior to the adoption of proposed Official Plan Amendment No. 7 and the accompanying Zoning By-law Amendment.

***Existing Permission for Concrete Product Manufacturing***

In our letter of November 3, 2020, we reminded the City that the site specific Zoning By-law amendment which permitted the addition of the concrete batching plant use at 1937 Ramey Road was passed by the City in 2013, appealed to the Ontario Municipal Board, as it then was, and affirmed by the Board in its Decision/Order of October 22, 2014. The issues surrounding the concrete batching plant use at this site were fully addressed by the Board in its Decision/Order, including the evidence provided by City Planning, in support of that Zoning By-law Amendment.

PCQ does not agree in any way to have the rights it obtained in the prior litigation before the Ontario Municipal Board restricted, constrained or amended in anyway.

In his responding correspondence of November 20, 2020, Mr. Aquiliana confirmed:

the proposed amendment does not consider removing the previous 2013 approval of concrete manufacturing.

Report 2020-124 states:

Concrete manufacturing was approved by the City in 2013 under By-law 6007/113/13 that site specifically zoned the property EI-373(H). The H holding provision is to be removed subject to site plan control. This approval was upheld by the Ontario Municipal Board and has been carried forward in the new Zoning By-law as MAO-38(H). This location would now be in a dry pit as new definitions were requested for a wet and dry pit.

PCQ is relying on this foregoing advice and analysis. PCQ specifically concludes from the City's advice, that Special Provision MAO-38(H) satisfies the site specific Zoning By-law Amendment required under Proposed Official Plan Amendment No. 7, being the Additional Policies, Section 10.1.1 d). Further Special Provision: MAO-38 (H) remains in place in the Comprehensive Zoning By-law and by its wording notwithstanding any amendment to the Comprehensive Zoning by-law including the proposed Zoning By-law Amendment. In other words Special Provision: MAO-38-H remains intact, in full force and effect, and is not impacted whatsoever by the proposed Official Plan Amendment and/or proposed Zoning By-law Amendment. The City is duly bound and obligated to advise prior to adopting and/or passing the planning documentation if it takes a contrary position.

### ***Source Water Protection***

The Niagara Peninsula Source Protection Plan was approved on December 17, 2013. The City's Official Plan provides an existing policy framework implementing components of that Plan into its planning framework.

The proposed Official Plan Amendment No. 7 endeavours to add an additional policy framework to deal with source protection. In our view, the proposed framework does not conform with the Niagara Peninsula Source Protection Plan and its Approved Assessment Report.

The proposed policies are overly broad and do not provide the requisite analysis required to justify such policies. For instance, Schedule B3 of the City's Official Plan visually identifies the Highly Vulnerable Aquifer, which includes most of the land mass of the City and impacts business owners and land owners who likely have no knowledge of the impact on them of the policies as drafted.

Proposed Policy 8.3.2 c) dealing with applications outside the Urban Service Area dogmatically determines that defined applications for development "are not supported." Notwithstanding that the Official Plan consolidation on the City's website does not include the referenced uses, i.e. there is no 4.1.3.1 (b) etc. – and it is impossible from the drafting to determine which are the referenced uses -- such a broad brush policy illegally fetters Council's discretion. Instead, language should have been drafted dealing with the assessment of the threats, and how those threats may or may not be addressed – for instance, inclusion of snow salting and sanding protocols within site plan agreements. Further, Proposed Policy 8.3.2 e) provides no guidance to which existing land use are

becoming legal non-conforming. Certainty should be provided in the planning documents so that landowners have clarity on the impact of the documents.

Section 2 of the Proposed Zoning By-law Amendment incorporates Schedule A10 Highly Vulnerable Aquifer mapping from the existing Official Plan into the Zoning By-law. Section 2.3.1 of the Proposed Zoning By-law Amendment then prohibits enumerated uses. Again, the Highly Vulnerable Aquifer mapping covers much of the City's land mass. For instance, on a read of the drafting, business owners may run into a difficulty in dealing with the list of prohibitions set out in Section 3 of the Proposed Zoning By-law Amendment. Many of the enumerated prohibitions are likely contrary to site plan agreements that the City has entered into with landowners and/or normal farm practices.

### ***Site Alteration***

As the City is aware, PCQ initiated a request for a Site Alteration Permit in July 2018, for its Pit 1 lands and the matter has yet to be returned to Council for final consideration. We note that it is our position that PCQ has crystallized its rights under the existing site alteration regime. Based on PCQ's ongoing active participation in this matter, and given the filed permit request, PCQ anticipates and reiterates its request that the City include PCQ in all future discussions regarding any changes to the City's Site Alteration By-law.

Further, as PCQ holds the only MNR license (under the *Aggregate Resources Act*) within the entire City, and therefore is the only applicable aggregate industry stakeholder locally, it continues to take the position that the City should be engaging in direct discussions with PCQ so as to maximize and leverage their technical knowledge on such specific land use and policy matters.

Report 2020-124 states: "Staff acknowledge that many comments received were in regard to the City's Site Alteration By-law, a By-law that is under review by staff for Council's consideration in the near future."

Notwithstanding this acknowledgement, Proposed Official Plan Amendment 7 purports to introduce new policies which may or may not impact the rights of stakeholders including PCQ. It is unfair and inequitable for the City to proceed with such policy amendments in absence of the delivery of a revised Site Alteration By-law in order that the entirety of the regulatory regime may be considered and understood.

In our view, the site alteration policies as drafted are not appropriate planning policies, nor do they consider adequately the regulatory regime. For instance, proposed Policy 8.3.2 d)

deals with site alteration. It declares that such “site alteration shall be restricted when not related to a Building Permit or Planning Act application in the vulnerable aquifer and when applicable, subject to the requirements of O. Reg 406/19 under the Environmental Protection Act.”

The interface between this “planning” policy and the authorizing provisions under section 142 of the *Municipal Act* for site alteration by-laws are not explained and appear inconsistent. Any such drafting would have to be in keeping with the statutory exemptions of section 142, which amongst other matters, reference site plan approvals and *Aggregate Resource Act* licences. Again, this is overly broad language, and provides no guidance as to what the restrictions would be, or how they would be imposed.

Schedule B3 of the City’s Official Plan visually identifies the Highly Vulnerable Aquifer, but its mere identification does not in any manner provide determination of existing or future groundwater quality nor the impact of any existing or future land use activity or events. Moreover Policy 8.3.2 d) expands the site alteration provision to deal with not only Highly Vulnerable Aquifer, but presumably something broader being a “vulnerable aquifer” as the policy does not include the qualifier of “highly”.

### ***Definitions***

Much of the difficulty with the Proposed Official Plan Amendment No. 7 and accompanying Zoning By-law Amendment is the lack of clarity and certainty within the documents. This is evident by an examination of the definitions in section 5 of the Proposed Zoning By-law Amendment:

*Highly Vulnerable Aquifer:* It is not clear from the definition as to how or what “*and determines how its quality may be negatively impacted by activities or events*” means nor how it relates to the definition. Schedule B3 of the City’s Official Plan visually identifies the Highly Vulnerable Aquifer, but its mere identification is not in a manner that provides any determination of existing or future groundwater quality nor any existing or future land use activity nor events. No guidance is given to landowners from this definition.

*Dry quarry pit* is defined as: “an excavation that is open to the air and that was operated for the purpose of extracting gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, or other material that predates license approval under the *Mineral [sic] Aggregate Resources Act* however holds dewatering approval under the *Clean Water Act*.”

*Wet quarry pit* is defined as: “an excavation that is open to the air and that was operated for the purpose of extracting gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, or other material under the *Aggregate Resources Act* or successors thereto that has allowed the aquifer water level to rise under a licensed rehabilitation plan.”

To be clear, PCQ has quarries, not pits, and the reference to PCQ pits is based on historic nomenclature for its lands. The terms as defined in the Proposed Zoning By-law are not industry standard and are confusing.

Pits and Quarries are different. A pit is defined as being unconsolidated rock, (sand and gravel traditionally extracted by a front-end loader). Licensing of these lands would necessitate an *Aggregate Resources Act* License Category 1 or 3, being a pit below water or pit above water respectively. Conversely, a quarry is defined being consolidated rock. Licensing of these lands would necessitate an *Aggregate Resources Act* License Category 2 or 4, being a quarry below water or quarry above water respectively.

It appears that the intent is that a Dry Quarry Pit is a reference to PCQ’s Pit 1 as it is the only location in the City that could fulfill the criteria of being extracted prior to the *Pits & Quarries Control Act* and the *Aggregate Resources Act* and which continues to hold dewatering approval. It would be simpler to identify the property by its municipal address of 1937 Ramey Road.

With respect to the Wet Quarry Pit it is unclear to which properties that this definition is referencing since PCQ Pit 2 and 3 lands continue to be licensed and operated and both continue to hold dewatering approval and therefore the aquifer is not rising. Further how much rising of the aquifer water level is required to engage the definition -- when there are pockets of shallow groundwater on the quarry floor or when there is 12.0 m of water? Additionally, what if the quarry were to still be operated with water in the quarry? The definition makes reference to ‘was operated’.

### ***Conclusions***

It is our view that Proposed Official Plan Amendment No. 7 and the accompanying Zoning By-law Amendment does not have appropriate regard for section 2(c) of the *Planning Act* with respect to mineral aggregate resources, is not consistent with the Provincial Policy Statement, 2020 especially with respect to mineral aggregate resources, is not in conformity with the Province’s Provincial Plans, nor the Region Official Plan and/or the parent Official Plan of the City. It is our view that significant work remains to finalize

these documents. We request that City Council defer consideration of Report 2020-124 and direct that City Planning Staff meet with PCQ to discuss and resolve these concerns.

Should the City proceed with adopting Proposed Official Plan Amendment No. 7 and passing the accompanying Zoning By-law, we request that the City provide notice in accordance with the provisions of the *Planning Act* to both myself and Mr. Sisco. Our contact details are listed in the Appendix attached.

We trust that the foregoing is satisfactory.

Yours very truly,



Jeffrey J. Wilker

JJW/jjw

cc: Scott Luey, Chief Administrative Officer  
cc: Dan Aquiliana, Director of Planning and Development  
cc: Amber LaPointe, City Clerk  
cc: Client  
cc: David Sisco, IBI Group  
cc: Kevin Fitzpatrick, WSP Canada Inc.

**Appendix: Contact Details**

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## CITY OF PORT COLBORNE

Municipal Offices  
66 Charlotte Street  
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L3K 3C8  
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### PLANNING AND DEVELOPMENT DEPARTMENT

November 20, 2020

Jeffrey J. Wilker  
Thomson, Rogers Lawyers  
Suite 3100, 390 Bay Street  
Toronto, ON M5H 1W2

Dear Mr. Wilker:

**RE: Report 2020-13 – Public Meeting Report dated September 28, 2020  
Official Plan Amendment No. 7 and Zoning By-law Amendment  
Mineral Aggregate Resources Property at rear of 207 Killaly St. West**

This letter is in response to your November 2, 2020 letter regarding the above referenced matter. So you are aware, the proposed amendment does not consider removing the previous 2013 approval of concrete manufacturing. The following remains in Zoning By-law 6575/30/18:

**“Special Provision: MAO-38-H Formerly: EI-373(H) By-law No.: 6007/113/13**

*Notwithstanding the provisions of the Mineral Aggregate Operation (MAO) Zone, the use of this land shall include concrete product manufacturing and uses, buildings and structures accessory thereto and the following regulations shall apply:*

a) Maximum Building Height 11 metres

*The Holding Provision is to be removed once a new or revised site plan agreement between the City of Port Colborne and Port Colborne Quarries is executed.”*

The proposed amendment also does not specifically address your client's site alteration permit application however provide the following policy that enables its continued consideration:

"d) *Site alteration shall be restricted when not related to a Building Permit or Planning Act application in the vulnerable aquifer and when applicable, subject to the requirements of O. Reg 406/19 made under the Environmental Protection Act.*"

Staff is in the process of completing the recommendation report following the September 28, 2020 public meeting. Staff's intent is that City Council will consider the report on December 14, 2020.

Yours truly,



Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development

*Jeffrey J. Wilker*  
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**SENT BY EMAIL ONLY**

November 3, 2020

Mr. Dan Aquiliana  
Director of Planning & Development  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, Ontario  
L3K 3C8

Dear Mr. Aquiliana:

**Report 2020-13 – Public Meeting Report dated September 28, 2020**  
**Official Plan Amendment No. 7 and Zoning By-law Amendment**  
**Mineral Aggregate Resources and Mineral Aggregate Operation Zone**  
**Port Colborne Quarries Inc.**  
**Our File No. 500725**

We have been retained by Port Colborne Quarries Inc.(PCQ) in this matter. We are writing to advise regarding our client's significant, substantial and fundamental concerns with the City's proposed Official Plan Amendment (No. 7) and accompanying Zoning By-law Amendment ("the proposal").

PCQ owns lands designated Mineral Aggregate Operations and zoned Mineral Aggregate Operations (MOA). It is our understanding that PCQ is the only landowner with such designation and zoning within the boundaries of the City. Moreover, PCQ owns the site at 1937 Ramey Road, being Pit 1, which is zoned MOA-38-H which also permits a concrete batching plant.

Notwithstanding those facts, we understand that City Planning did not identify PCQ as a stakeholder and undertake meaningful discussions or dialogue regarding the proposal with our client or its planning consultant, Mr. Sisco. Instead, City Planning advised that the proposal was merely a housekeeping matter -- which clearly it is not. The principles of good planning require transparency, openness, and meaningful dialogue with impacted

stakeholders, such as PCQ. Given the process that City Planning has followed to date, the public process has become a post facto rationalization of a prohibition agenda.

We remind the City that the site specific Zoning By-law amendment which permitted the addition of the concrete batching plant use at 1937 Ramey Road was passed by the City in 2013, appealed to the Ontario Municipal Board, as it then was, and affirmed by the Board in its Decision/Order of October 22, 2014. The issues surrounding the concrete batching plant use at this site were fully addressed by the Board in its Decision/Order, including the evidence provided by City Planning, i.e. yourself, in support of that Zoning By-law Amendment.

There has been no material change in the planning circumstances that would permit the City to overturn the findings of the Board that permitted the addition of the concrete batching plant use to the zoning permissions at 1937 Ramey Road.

PCQ objects to the proposal -- being proposed OPA No. 7 and its accompanying Zoning By-law Amendment. Any reduction or prohibition of existing rights and approvals on the lands owned by PCQ, including the permission for a concrete batching plant on the lands subject to MOA-38-H, is objected to by our client. We trust that the City will abandon such an approach and not adopt or pass such fundamentally flawed planning instruments.

We request that both our offices and our client's consulting planner, Mr. David Sisco, receive all documentation with respect to the City's proposal, and further we specifically request that we both be notified of any adoption and/or approval of the proposed Official Plan Amendment (No. 7) and any passage of the Zoning By-law Amendment in accordance with the provisions of the *Planning Act*. Contact details are appended to this letter for your ease of reference.

Further, PCQ has an interest in the City's site alteration by-law regime. Should the City be considering any revision to its site alteration by-law, such amendments need to be consistent with the Provincial legislation including *O. Reg. 406/19 On-Site and Excess Soil Management*. Please ensure that PCQ is consulted on any proposed amendments to same, and we further request notice of any such proposal be given to both our offices and to our client's consulting planner, Mr. Sisco.

We trust that the foregoing is satisfactory.

Yours very truly,



Jeffrey J. Wilker

JJW/jjw

cc: Client

cc: David Sisco, IBI Group

**Appendix: Contact Details**

Jeffrey J. Wilker  
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October 2, 2020

Mr. Dan Aquilina, MCIP, RPP  
Director of Planning & Development  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8

Dear Mr. Aquilina:

**PORT COLBORNE QUARRIES INC. – PIT 3 EXTENSION (PROPOSED QUARRY)  
PROPOSED OFFICIAL PLAN AND ZONING BY-LAW AMENDMENT  
CITY OF PORT COLBORNE**

On behalf of Port Colborne Quarries Inc., we wish to raise concerns of how the City initiated Proposed Official Plan Amendment regarding Mineral Aggregate and Petroleum Resources and the Proposed Zoning By-Law Amendment regarding Mineral Aggregate Operation (MAO) was presented at the Public Meeting on September 28, 2020.

As you are aware, we spoke on September 8, 2020. At that time you advised that the above noted actions were being carried out simply as housekeeping matters to ensure the Official Plan supported and allowed asphalt plants and concrete manufacturing, but that such land uses needed to be specifically identified as ancillary uses and therefore, site specific zoning was required and thus the need to also amend Zoning By-Law 6575/30/18. As part of our discussion, I highlighted that Port Colborne Quarries Inc. (PCQ) is the only landowner in the City with lands designated Mineral Aggregate Operations and zoned Mineral Aggregate Operations (MOA), and more specifically, they hold the only site specifically zoned MOA-38-H which allows for a concrete batching plant. You advised that because the focus of the City's actions was broad-based, a determination was made that PCQ was not deemed a stakeholder and therefore not included in preliminary discussions or advised specifically of the pending Open House and Public Meeting.

As you are also aware, myself and representatives from Port Colborne Quarries Inc. attended the virtual 'Zoom' Open House on September 10, 2020 where you similarly presented the above noted actions as being a housekeeping matter specifically to address the need to clarify that asphalt plants and concrete manufacturing were ancillary uses and that their use would necessitate site specific zoning.

In watching the Public Meeting held on September 28, 2020, PCQ has serious concerns including:

- a) The comments received by the public and summarized in your Power Point presentation which repeatedly raised the issue (not being supportive) of back-fill within 'wet pits' with one resident specifically highlighting a concern over the pending request by PCQ for a Fill Permit for their Pit 1 lands.

At no time did City Planning staff advise Council and the public that the submitted comments by the public regarding backfill and more specifically the pending planning applications by PCQ were significantly beyond the focus of the current Amendment which is simply a housekeeping matter to address asphalt plants and concrete manufacturing as ancillary uses.

Furthermore, and practically, the issue of the importation of clean inert fill is regulated under O.Reg 406/19: On-Site and Excess Soil Management (<https://www.ontario.ca/laws/regulation/r19406>) and as such, falls under the mandate of MECP. Based on this, any future (and pending) applications in the City for the importation of clean inert fill need to proceed through the existing

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and prescribed planning processes for which MECP comments are included. This was demonstrated through the PCQ – Pit 1 Fill Permit Application where Council Minutes document their repeated request for a sign-off by MECP.

- b) Notwithstanding the underlying purpose of the Amendment to be City-wide, as part of the PowerPoint presentation, you provided an overview of Official Plan - Schedule C [Mineral Aggregate and Petroleum] and specifically identified the PCQ designated lands.

At no time did City Planning staff advise Council of the purpose of highlighting the PCQ lands, nor did you clarify that a portion of those lands are in fact legally zoned with site specific zoning to permit a concrete batching plant.

- c) The proposed Zoning By-Law recommends that the uses prohibited are to include 'cement manufacturing'.

Although we remain unsure, we anticipate you mean 'concrete manufacturing'. Please note that the definition of cement, and more specifically 'Portland Cement' is as follows:

*It is a fine powder, produced by heating limestone and clay minerals in a kiln to form clinker, grinding the clinker, and adding 2 to 3% of gypsum. Several types of Portland cement are available. The most common, called ordinary Portland cement (OPC), is grey, but white Portland cement is also available. Its name is derived from its resemblance to Portland stone which was quarried on the Isle of Portland in Dorset, England.*



Example of a  
Cement Kiln

Cement is further defined as:

*Cement is a binder, a substance used for construction that sets, hardens, and adheres to other materials to bind them together. Cement is seldom used on its own, but rather to bind sand and gravel (aggregate) together. Cement mixed with fine aggregate produces mortar for masonry, or with sand and gravel, produces concrete. Concrete is the most widely used material in existence and is only behind water as the planet's most-consumed resource.*

Based on the above, PCQ anticipates that the land use which the City intends to restrict as an ancillary use except through site specific zoning is for 'concrete manufacturing', as is the wording found under Special Provision MOA-38-H of your Zoning By-Law. Such misunderstandings could have been addressed by meeting with the PCQ as an industry stakeholder.

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- d) The draft Official Plan Amendment cites land uses in addition to asphalt plants and cement/concrete manufacturing, including:
- aggregate depots that blend and stockpile aggregate materials with salt,
  - aggregate transfer.

No definition is provided as to what an 'aggregate transfer' means.

Why does the draft Zoning By-Law Amendment also list these land uses as prohibited if that is the intent.

In summary, although PCQ does not object to the land uses of 'asphalt plants' and 'concrete manufacturing' being deemed ancillary uses with such uses only being permitted through site specific zoning, they do have concerns with any further broadening of the Official Plan Amendment and Zoning By-Law Amendment. Furthermore, myself and PCQ would request being kept abreast of all future notices and staff reports regarding this matter.

If you have any questions, please do not hesitate to call.

Yours truly

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David R. Sisco, BA, MCIP, RPP  
Senior Planner

DRS/baw

cc: Shawn Tylee, Port Colborne Quarries Inc.  
John MacLellan, Port Colborne Quarries Inc.