

**City of Port Colborne
Public Meeting Agenda**

Date: Tuesday, July 19, 2022
Time: 6:30 pm
Location: Council Chambers, 3rd Floor, City Hall
66 Charlotte Street, Port Colborne

Pages

1. **Call to Order**
2. **Adoption of Agenda**
3. **Disclosures of Interest**
4. **Statutory Public Meetings**

Statutory public meetings are held to present planning applications in a public forum as required by the Planning Act. Requests to delegate, in writing, in-person or virtually, will be accepted until noon the day of the meeting by contacting deputyclerk@portcolborne.ca. Material accepted after this time will be circulated with the minutes and included as public record.

- | | | |
|------|---|---|
| 4.1. | Public Meeting Report for Proposed Zoning By-law Amendment at 409 Davis Street, D14-05-22, 2022-162 | 1 |
| 4.2. | Public Meeting Report for Official Plan and Zoning By-law Amendments to the Mineral Aggregate Operation Policies, Files D09-01-20 and D14-03-20, 2022-157 | 7 |
| 5. | Procedural Motions | |
| 6. | Information Items | |
| 7. | Adjournment | |



**Subject: Public Meeting Report for Proposed Zoning By-law
Amendment at 409 Davis Street, D14-05-22**

To: Council

From: Development and Legislative Services Department

Report Number: 2022-162

Meeting Date: July 19, 2022

Recommendation:

That Planning and Development Report – Planning Division 2022-162 be received for information.

Purpose:

The purpose of this report is to provide Council with information regarding a Zoning By-law Amendment application initiated by the applicant Steven Rivers, on behalf of the owner Jonathan Beam, for the property legally known as Part of Lot 9 on Plan 849, in the City of Port Colborne, Regional Municipality of Niagara, municipally known as 409 Davis Street.

Background:

The application for Zoning By-law Amendment proposes to change the zoning from Second Density Residential (R2) to Fourth Density Residential (R4). The Zoning By-law Amendment is being requested to permit the internal renovation of an existing building into a fourplex dwelling on the subject property. Due to the nature of the existing building, special provisions are being sought to reduce the front yard setback from 9m to 2.26m, the interior side yard setback from 1.2m to 0.69m and the corner side yard setback from 3m to 2.04m. A site plan of the proposed apartment has been attached as Appendix A.

Internal Consultations:

Notice of the Public Meeting was circulated on June 28, 2022, to internal departments and agencies and the following comments have been received as of the time this report was prepared.

Port Colborne Fire Department

No objection to the proposed application.

Drainage Superintendent

No objection to the proposed application.

Public Engagement:

The Notice of Public Meeting is required to be sent to property owners within a 120m radius of the subject property, as per Section 34 (13) of the Planning Act. Notice was circulated on June 28, 2022, and no comments from the public have been received as of the date of preparing this report.

Discussion:

This application will be reviewed with consideration of applicable policies in the *Provincial Policy Statement (2020)*, *A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)*, *the Regional Official Plan*, *the City of Port Colborne Official Plan* and the *City of Port Colborne Comprehensive Zoning By-law 6575/30/18*.

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The subject lands are within a “settlement area” according to the PPS. According to the PPS, settlement areas are to be the focus of growth and development and land use patterns shall be based on densities and a mix of land uses that should efficiently use land and resources.

The Growth Plan also directs development to settlement areas. The subject parcel is located within a settlement area as well as a delineated built-up area, where the Growth Plan states that growth should be focused in “Built-up” areas.

The Regional Official Plan (ROP), designates the subject lands as within the “Urban Area Boundary” and “Built-up Area”. Policies within the ROP generally encourage intensification throughout the Built-up Area. Section 4.A.1 will be used to assess the application when a recommendation report is brought forward at a future date.

City of Port Colborne Official Plan

According to Schedule A: City Wide Land Use, the City of Port Colborne's Official Plan (OP) designates the subject property as **Urban Residential**. Land uses in the Urban Residential designation include, residential uses, neighbourhood commercial uses, cemeteries, parks, schools, community facilities, and institutional uses normally located in residential areas.

Residential land uses, including fourplexes are a permitted land use in the Urban Residential designation. The land use designation is not proposed to be changed as a result of this application.

Sections 2.4.3 and 3.6 of the OP will be used to assess the application when a recommendation report is brought forward at a future date. These sections provide policies on intensification and infill, as well as the general policies of the Urban Residential designation.

City of Port Colborne Zoning By-law 6575/30/18

The subject property is currently zoned Second Density Residential (R2). The applicant is proposing to change the zoning to Fourth Density Residential (R4) which will permit fourplex dwellings. Given the structure is currently existing, the applicant is requesting special provisions to reduce the front yard setback from 9m to 2.26m, the interior side yard setback from 1.2m to 0.69m and the corner side yard setback from 3m to 2.04m.

Fourplex dwellings are required to provide 4 parking spaces per unit, which have been proposed at the rear of the building and can be seen on Appendix A.

Adjacent Zoning and Land Use

The parcels surrounding the subject lands are zoned R2 to the north, east and south, and R2 and Neighbourhood Commercial (NC) to the west. The surrounding uses consist of detached and duplex dwellings to the north, detached dwellings to the east and south and a neighbourhood commercial use and duplexes to the west.

Financial Implications:

There are no financial implications as no decisions are being made on the application.

Conclusion:

Planning Staff are not providing a recommendation on the proposed Zoning By-law Amendment at this time in order to allow all agency, public and Councillor comments to

be received and considered prior to a decision being made. The recommendation report will return to Council at a future meeting.

Appendices:

- a. Site Plan

Prepared by,

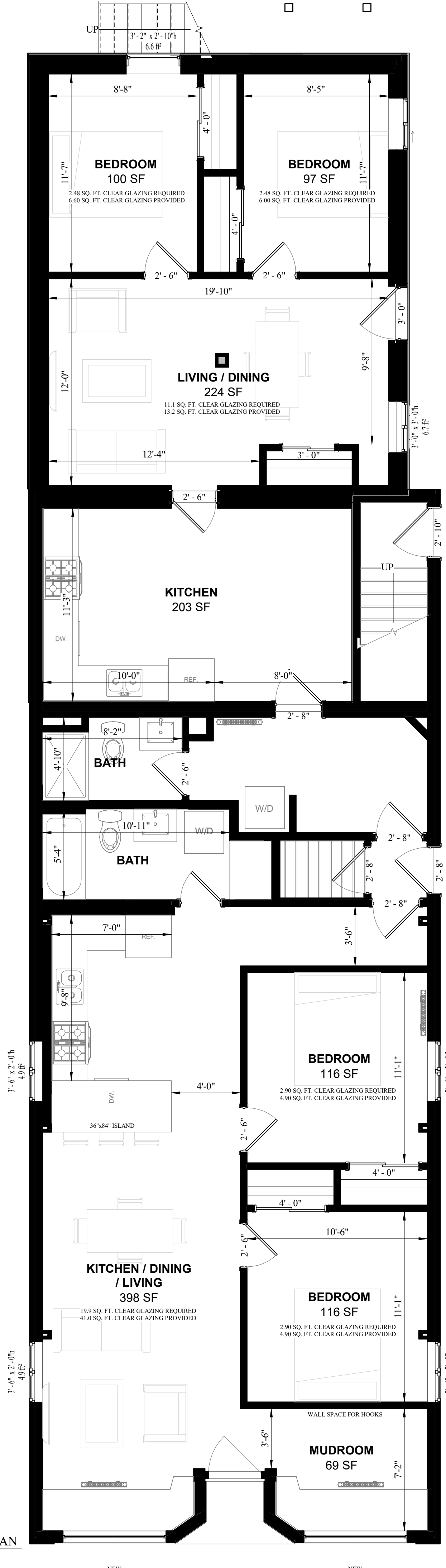
Chris Roome, BURPI
Planner
905-835-2900 ext. 205
Chris.Roome@portcolborne.ca

Respectfully submitted,

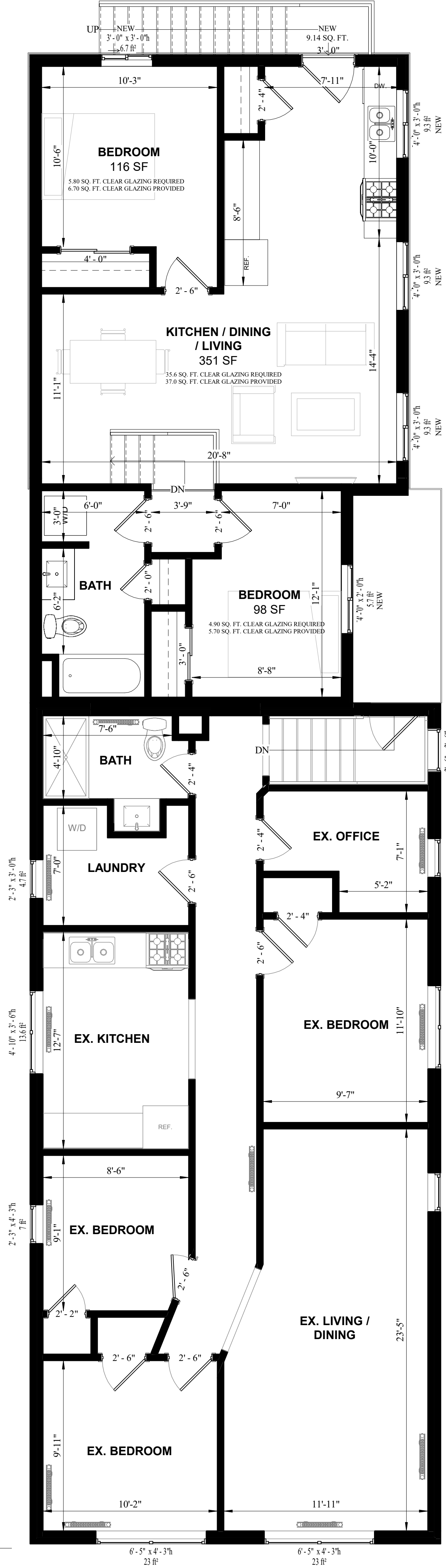
Denise Landry, BURPI, MCIP, RPP
Manager of Planning Services
905-835-2900 ext. 203
Denise.Landry@portcolborne.ca

Report Approval:

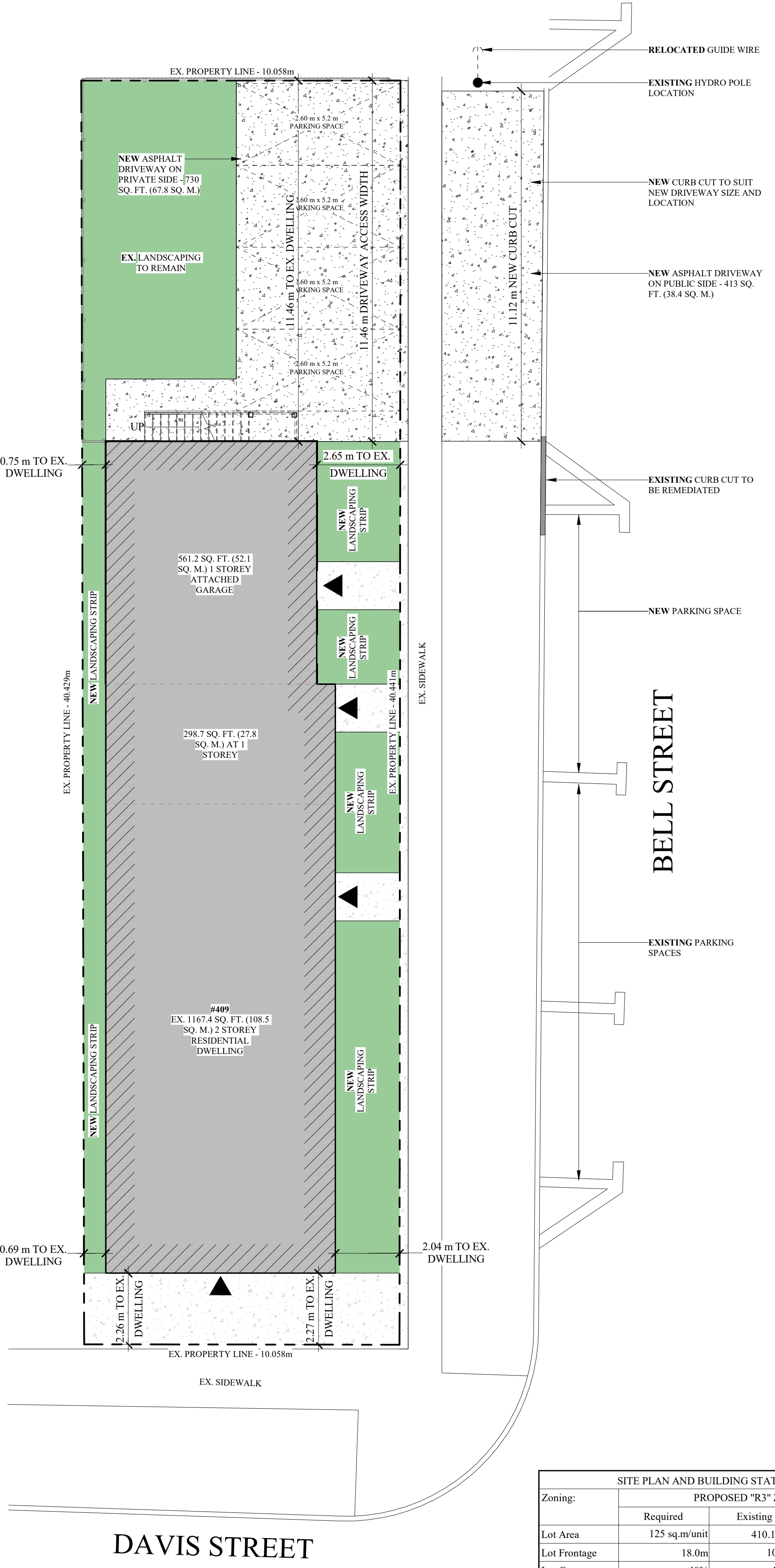
All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.



1 PROPOSED GROUND FLOOR PLAN
1/4" = 1'-0"



2 PROPOSED SECOND FLOOR
1/4" = 1'-0"



3 PROPOSED SITE PLAN
1/8" = 1'-0"

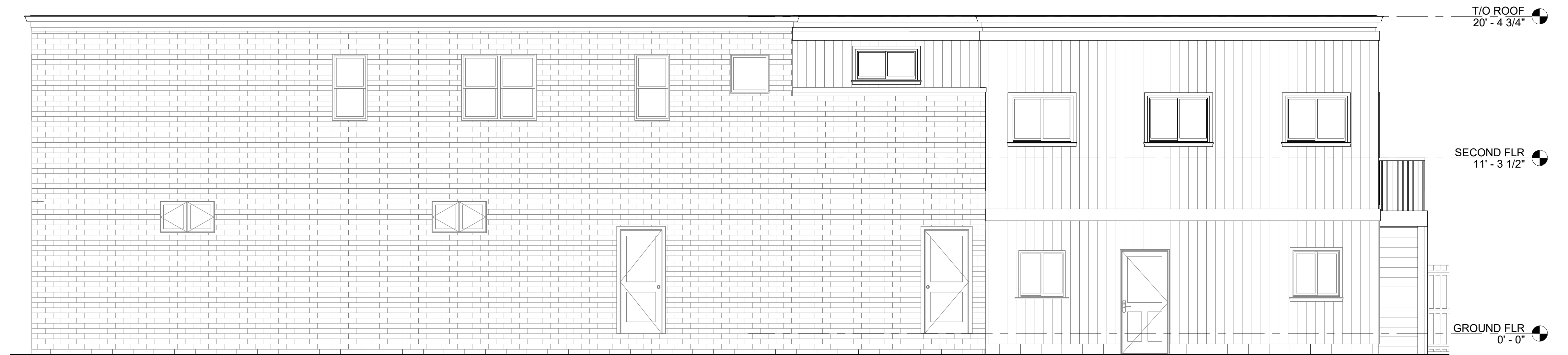
SITE PLAN AND BUILDING STATISTICS				
Zoning:	PROPOSED "R3" ZONING			
	Required	Existing	Proposed	
Lot Area	125 sq.m/unit	410.1 sq.m	AS EXISTING	
Lot Frontage	18.0m	10.11m	AS EXISTING	
Lot Coverage	40%	45.9%	AS EXISTING	
Insulated Areas	n/a	188.3 sq.m	AS EXISTING	
Front Setback	9.0m	2.80m	AS EXISTING	
Rear Setback	6.0m	11.25m	AS EXISTING	
Int.Side Setback	1.2m	1.20m	AS EXISTING	
Ex. Side Setback	3.0m	1.51m	AS EXISTING	
Building Height	11.0m	6.62m	AS EXISTING	
Landscaped	25.0%	27.9%	28.6%	
Parking Requ.d	4	1	4	
Add. Requirements:				



info@jordanstationdesignco.ca
FOUR UNIT DEVELOPMENT
409 Davis Street, Port Colborne, ON
2022-04-30 12:31 AM



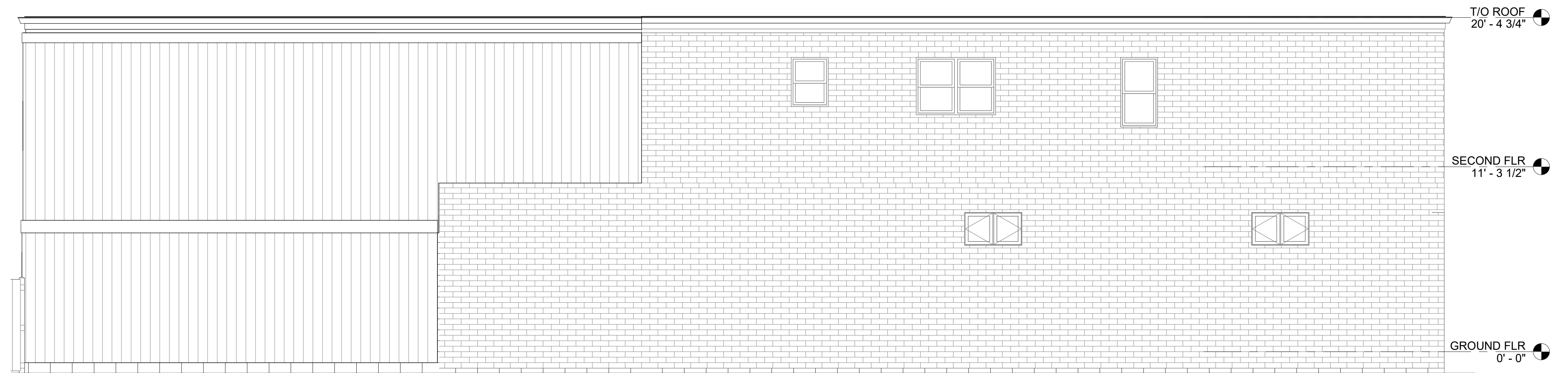
① .FRONT ELEVATION
1/4" = 1'-0"



② .SIDE B ELEVATION
1/4" = 1'-0"



③ .REAR ELEVATION
1/4" = 1'-0"



④ .SIDE A ELEVATION
1/4" = 1'-0"



info@jordanstationdesignco.ca

**FOUR UNIT
DEVELOPMENT**

409 Davis Street, Port Colborne, ON
L3K 1Z7
2022-04-08 10:42:32 AM

Subject: Public Meeting Report for Official Plan and Zoning By-law Amendments to the Mineral Aggregate Operation Policies, Files D09-01-20 and D14-03-20

To: Council - Public Meeting

From: Development and Legislative Services Department

Report Number: 2022-157

Meeting Date: July 19, 2022

Recommendation:

That Development and Legislative Services – Planning Division Report 2022-157 be received for information.

Purpose:

The purpose of this report is to provide Council with information regarding proposed changes to the Mineral Aggregate and Petroleum Resources designation of the Official Plan and changes to Mineral Aggregate regulations under Zoning By-law 6575/30/18. The entire municipal boundary of Port Colborne is subject to the proposed amendments.

Background:

As Council is aware, there has been significant public interest in the Mineral Aggregate Operation Zone of the Zoning By-law in relation to the provisions of asphalt and concrete manufacturing.

In response to Council direction and the public interest, proposed amendments were brought forward to Council in late 2020 and early 2021, however the reports were deferred due to concerns raised by Council and public stakeholders.

In the spring of 2021, the City retained an independent planning firm, NPG Planning Solutions, to research and present a recommended approach to amending the policies and provisions of the Mineral Aggregate sections of the Official Plan and Zoning By-law. It should be noted that staff have been working closely in consultation with NPG to bring

forward these proposed amendments. Proposed amendments were presented to Council through a Public Meeting on January 18, 2022. The Public Meeting allowed NPG, staff, and Council to receive comments and submissions on the amendment presented at the time.

Following the public input, NPG Planning Solutions has presented a revised approach on the proposed amendments. Due to the nature of the changes, it is necessary to hold a subsequent Public Meeting. The revised approach can be summarized as follows:

Changes to the Official Plan:

- Amend Section 10: Mineral Aggregate and Petroleum Resources to require a Zoning By-law Amendment to permit Mineral Aggregate Related Uses such as: Asphalt/Concrete Plants, Aggregate Plants/Depots and Asphalt Recycling when proposed as a principal use.
- New criteria is proposed to be added to the Official Plan that will provide direction on the evaluation of potential site-specific Zoning By-law Amendments for a Mineral Aggregate Related Use such as:
 - The protection of the environment;
 - The protection of ground water; and
 - The separation from sensitive land uses.

Changes to the Zoning By-law:

- Add a new General Provision (subsection 2.27 - Uses Related to Mineral Aggregate Operation) which establishes specific provisions that apply to new stand-alone Mineral Aggregate Related Uses such as:
 - Minimum separation of 300 metres from any residential use;
 - The use shall be enclosed by a security fence or located within a fireproof building; and
 - The use shall be subject to site plan control.
- Amend the existing Mineral Aggregate Operation (MAO) Zone to include a specific list of permitted accessory uses (new subsection 28.4).
- Add definitions for each accessory use.

The specific amendments are explained in further detail through NPG's Update Memo found in Appendix A to this report.

Internal Consultations:

The Notice of Open House and Public Meeting was circulated on June 9, 2022, to internal departments and agencies. As of the date of preparing this report, no comments have been received.

Public Engagement:

A virtual Open House for these proposed amendments was held on June 27, 2022. A presentation was provided by NPG and questions and comments were received from the public. The Open House was attended by roughly a dozen members of the public.

The Notice of Open House and Public Meeting was provided in the Niagara This Week newspaper on June 9, 2022, as well as circulated to all members of the public that have commented or provided submission on these files thus far. Also, copies of the proposed amendments and NPG's Update Memo have been available for public review on the City's website under "Current Applications" since June 9, 2022. As of the date of preparing this report, the following new comments have been received by members of the public. It is noted that the comments received previously and the responses to them can be found in NPG's Update Memo-Appendix A.

Barb and Larry Butters – 1152 Weaver Road

- Concerns with the protection of the aquifer.
- The lens of protection of the important source of water should always be looked through first and this should be reflected in the proposed amendments.

Thomson Rogers Lawyers on behalf of Port Colborne Quarries

- Requests some updated wording in the proposed amendments regarding the D6 guideline minimum setbacks.
- Requests rewording the definition for Mineral Aggregate Related Use

Jack Hellinga – 770 Highway 3

- Would like the City and NPG to be aware of a reference under Ontario Regulation 466/20 under the Aggregate Resources Act, restricting recyclable asphalt from being stored within 30m of a body of water, or within two metres of the groundwater table.

A summary of the new concerns raised at the Open House, in addition to the above comments in full, have been provided in Appendix D. As mentioned above, comments received on the January 2022 rendition of the amendments along with responses can be found in NPG's Update Memo-Appendix A.

Discussion:

Planning Documents

This application will be reviewed under the consideration of several publications of planning legislation and policy including the *Planning Act*, R.S.O., 1990, as amended, the *Provincial Policy Statement (2020)*, *A Place to Grow: Growth Plan for the Greater*

Golden Horseshoe (2019), the Regional Official Plan, the City of Port Colborne Official Plan and the City of Port Colborne Comprehensive Zoning By-law 6575/30/18.

Planning Act

Section 2 of the *Planning Act* outlines matters of provincial interest.

Section 3 of the Act requires that, in exercising any authority that affects a planning matter, planning authorities “shall be consistent with the policy statements” issued under the Act and “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be”.

Section 21 of the Act allows for the consideration of an Official Plan Amendment (OPA).

Section 34 of the Act allows for the consideration of a Zoning By-law Amendment (ZBA).

Provincial Policy Statement (2020)

The *Provincial Policy Statement* (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS provides for the long-term protection of mineral aggregate and petroleum resources and limits what can and cannot be done in areas with known resources. It is important to note to Council that the following definition for a Mineral Aggregate Operation is provided as follows:

Mineral Aggregate Operation: means

- a) lands under license or permit, other than for wayside pits and quarries, issued in accordance with the Aggregate Resources Act;*
- b) for lands not designated under the Aggregate Resources Act, established pits and quarries that are not in contravention of municipal zoning by-laws and including adjacent land under agreement with or owned by the operator, to permit continuation of the operation; and*
- c) associated facilities used in extraction, transport, beneficiation, processing or recycling of mineral aggregate resources and derived products such as asphalt and concrete, or the production of secondary related products.*

This definition allows for associated facilities used in extraction, transport, beneficiation, processing or recycling of mineral aggregate resources including the production of asphalt and concrete. These associated uses alongside a mineral aggregate operation are permitted under the current Provincial policy direction. The amendments proposed are only proposed to amend the requirements for associated facilities when they are proposed as a principle use on a site.

These proposed amendments will be further evaluated under section 2.5 of the PPS through the formal recommendation report.

Growth Plan for the Greater Golden Horseshoe (2019)

Much like the PPS, the Growth Plan directs municipalities to develop and implement policies and other strategies to conserve mineral aggregate resources. These proposed amendments will be evaluated under section 4.2.8 of the Growth Plan through the formal recommendation report.

Niagara Region Official Plan

Chapter 6 of the current in-force Niagara Region Official Plan (ROP) provides further policy direction to implement Provincial objectives for Mineral Aggregate Operations. It is also noted that Schedules D1, D2, and D3 of the ROP identify potential resource areas across the Region and local municipal official plans are required to conform to the schedules and policies of the ROP. City Planning staff will look to formal comments provided by Regional Planning staff on these proposed amendments to comment on conformity to the ROP. These formal comments will be included as part of the future recommendation report and will represent an important piece of staff's recommendation on these amendments. City staff will also review and analyze the relevant policies to ensure conformity to the ROP in the future recommendation report.

City of Port Colborne Official Plan

The proposed amendment to the Official Plan proposes to require site-specific Zoning By-law Amendments when a Mineral Aggregate Related Use is proposed as a principle use on a site and not proposed alongside a mineral aggregate operation. Stand-alone associated facilities subject to a site-specific Zoning By-law Amendment would be evaluated against new criteria established in the Official Plan and be directed to the City's existing Industrial Areas. The proposed amendment in full can be found in Appendix B. The proposed amendment does not change the City's current policies for Mineral Aggregate Operations, as defined, which under Provincial policy direction allows associated facilities such as asphalt and concrete processing for example, when established alongside a mineral aggregate operation.

City of Port Colborne Zoning By-law 6575/30/18

The proposed amendment adds a new General Provision (subsection 2.27 - Uses Related to Mineral Aggregate Operation) which establishes specific provisions that apply to new stand-alone Mineral Aggregate Related Uses. These represent the base general provisions which would apply to a new principal use, permitted by site-specific Zoning By-law Amendment, in an Industrial Zone category. The proposed amendment in full can be found in Appendix C.

Financial Implications:

There are no financial implications.

Strategic Plan Alignment:

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
 - Governance: Communications, Engagement, and Decision-Making
-

Conclusion:

Planning staff are not providing a recommendation on the proposed Official Plan and Zoning By-law Amendments at this time in order to allow all agency, public and Councillor comments to be received and considered prior to a decision being made. The recommendation report will return to a future regular meeting of Council.

Appendices:

- a. NPG Planning Solutions – Project Update Memo and Previous Public Comments
- b. Draft Official Plan Amendment
- c. Draft Zoning By-law Amendment
- d. New Public Comments

Prepared by,

David Schulz, BURPI, MCIP, RPP
Senior Planner
(905) 835-2900 x202
david.schulz@portcolborne.ca

Respectfully submitted,

Denise Landry, MCIP, RPP
Manager of Planning Services
(905) 835-2900 x203
denise.landry@portcolborne.ca

Report Approval:

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.



MEMO TO: David Schulz, BURPI, MCIP, RPP - Senior Planner
City of Port Colborne

FROM: Mary Lou Tanner, FCIP, RPP - Principal Planner
Aaron Butler, MCIP, RPP - Development Principal
NPG Planning Solutions

SUBJECT: **Project Update Memo - City of Port Colborne Official Plan and
Zoning By-law Amendments, Mineral Aggregate Operations
June 2022 Draft Amendments**

Background

At the January 18, 2022 Council Meeting, [Planning and Development Report 2022-09](#) (Public Meeting Report for OPA and ZBA to the Mineral Aggregate Policies and Zone, File D09-01-20 and D14-03-20) was received for information. A Public Meeting was held on the matter and several oral and written delegations were made to Council.

The Draft Official Plan Amendment (Appendix 1) and Draft Zoning By-law Amendment (Appendix 2) have been revised to address comments from Council, members of the public, and stakeholders. NPG Planning Solutions Inc. has prepared this Project Update Memo to accompany the revised Draft Amendments, in advance of an additional Open House and additional Public Meeting on the matter.

Summary of Issues

Port Colborne City Council has received delegations to Council on issues related to Mineral Aggregate Operations and environmental concerns regarding protecting the aquifer known as the “South Niagara aquifer” in 2020. This discussion and community engagement resulted in Port Colborne Council directing that updates be prepared to the City’s Official Plan and Zoning By-law regarding Mineral Aggregate Operations and policies/zoning relating to the protection of the South Niagara aquifer. The feedback and concerns from the community were related to the potential impact of elements of Mineral Aggregate Operations on the South Niagara Aquifer.

Through the community discussions, several issues have arisen. It is important to understand the issues and the planning policies/zoning related to the issues. In some instances, the community issues are beyond the jurisdiction of Port Colborne City Council. The following description of each issue provides additional context to the overall response to the community and stakeholder feedback.

Issue 1: [Protection of the South Niagara Aquifer](#)

Feedback from community members has, in part, focused on protection of this aquifer. Protecting the aquifer is a multi-layered approach – through natural heritage planning by both the City and the Region and through the work of the Niagara Source Protection Committee to identify the aquifer. Part of the feedback included addressing protection of the aquifer through policies such as those used to protect the Intake Protection Zone for the Port Colborne Water Treatment Plant.

The Niagara Source Protection Plan is intended to protect municipally provided sources of drinking water. This is consistent with and conforms to the requirements of the *Clean Water Act* which prescribes the authority for Source Protection Plans. Applying the same approach to private sources of drinking water is beyond the scope of the *Clean Water Act* and the *Planning Act*. Port Colborne City Council does not have the jurisdiction to require the provisions of the Source Protection Plan to apply to anything beyond what is in the Niagara Source Protection Plan. That is, the Source Protection Plan only applies to municipally provided drinking water and there is no ability to extend the provisions/policies to anything beyond the municipally provided drinking water sources.

There are approaches through the forthcoming new Regional Official Plan that the Region is proposing to protect the aquifer. Although this does not address the drinking water source protection policies, the Region's proposed plan, as identified in the Region's February 17, 2021 report (PDS 9-2021) confirms the Region will be providing policy direction for protection of the aquifer as a natural heritage feature.

Issue 2: [Aggregate Resources Act/Planning Act and Aggregate Resources](#)

Both the *Aggregate Resources Act* and the *Planning Act* provide direction on the protection of aggregates in Ontario. Aggregates are a resource that is of provincial interest. The provincial interest has been identified in the legislation as well as the Provincial Policy Statement (PPS - 2020) through both policies and definitions of what constitutes a Mineral Aggregate Operation.

Updates to the City's Official Plan and Zoning By-law must address the PPS as well as the legislation. This does not mean that the City has no ability to address aggregates and their extraction; however, the City's policies/zoning must conform to the legislation, the PPS, and the Region's Official Plan. The proposed amendments appended to this memo conform to the PPS. The PPS does, however, require municipalities to protect aggregate resources and provide the opportunity for mineral aggregate extraction. The criteria to

exclude protection/extraction are highly limited and this has been reviewed as part of the revisions proposed.

Issue 3: Soil Management and Site Alteration

Issues related to how sites are managed outside of an active extraction process or a development process are matters that are typically addressed through a Site Alteration By-law. This type of By-law allows the City to establish requirements for sites – ensuring soil is appropriately managed, drainage issues are addressed, and that neighbours are not impacted by earth movement/placement. Site Alteration By-laws can be applied to other circumstances in the municipality as well.

Issue 4: Complexity

Planning for and managing aggregate sites/resources is one of the most complex areas of planning in Ontario. There is significant provincial interest in protecting aggregates and this has been established through both legislation and policy.

A second component of complexity is that the nature of aggregates, water resources, soil management, and the policy regime can appear to be so complex that community concerns are not able to be resolved. That is not the case. However, there are limits to what any municipality can do given the legislative framework in Ontario and the priority placed on aggregates. While the above has identified the limits of the authority for the City, it is important to note that the City can:

1. Support the protection of the South Niagara Aquifer through the Regional Official Plan (new).
2. Address the appropriate location for mineral aggregate operations and uses, including standards of development.
3. Ensure a robust planning process for aggregate uses with broad based community feedback.

Aggregate resources are needed for Ontario's growth including new housing, transportation resources, and more. Ultimately, however, aggregate resources and their extraction are uses that have the potential for impacts. There is a robust process to assess these impacts including potential impacts on neighbouring properties. Establishing clear and updated policy expectations within the framework of the legislation and the PPS is where some solutions can be found. However, not all community requests and issues can be incorporated into the recommendations due to the nature of the legislation and the PPS.

Draft Official Plan and Zoning By-law Amendments

January 2022

As per [Planning and Development Report 2022-09](#), the January 2022 Draft Official Plan Amendment proposed to introduce new policies to Section 10: Mineral Aggregate and Petroleum Resources for the purpose of facilitating site-specific Zoning By-law Amendments for ancillary uses such as: asphalt plants, cement/concrete plants, and aggregate depots that blend and stockpile aggregate materials with salt and aggregate transfer, except where otherwise prohibited by the policies of the Official Plan. The January 2022 Draft Official Plan Amendment is attached to Report 2022-09 as Appendix A.

The January 2022 Draft Zoning By-law Amendment, attached to Report 2022-09 as Appendix B, proposed a new zone known as the Mineral Aggregate Ancillary Use (MAAU) Zone; properties wishing to utilize this Zone were proposed to be subject to site-specific Zoning By-law Amendments. Additionally, the definition for Mineral Aggregate Operation use was proposed to be amended to exclude accessory uses/facilities used in processing or recycling of mineral aggregate resources and derived products such as asphalt and concrete, or the production of secondary related aggregate products. Lastly, the January 2022 Amendment proposed to add new definitions for “Aggregate Depot”, “Asphalt Plant, Permanent”, “Asphalt Plant, Portable”, and “Cement Concrete Plant”.

June 2022

A Comments and Response Table has been prepared to track and address comments received as part of the January 28, 2022 Public Meeting (attached to this Memo as Appendix 3). The comments and responses have informed the June 2022 Draft Amendments, as summarized below.

Official Plan Amendment

The June 2022 Draft Official Plan Amendment (attached as Appendix 1 to this Memo) does not include the previously proposed policy which required a site-specific Zoning By-law Amendment to permit accessory uses to a Mineral Aggregate Operation. The definition of ‘Mineral Aggregate Operation’ found in the Provincial Policy Statement (PPS) includes associated facilities used in extraction, transport, beneficiation, processing or recycling of mineral aggregate resources and derived products such as asphalt and concrete or the production of secondary related Products. Provincial policy permits these types of accessory uses as part of Mineral Aggregate Operations, therefore the City’s Official Plan should not require a site-specific amendment to permit them.

The June 2022 Draft Official Plan Amendment proposes to require site-specific Zoning By-law Amendments to permit these types of uses only as a principal use of a property and does not change the City’s current policies for Mineral Aggregate Operations. The

Amendment defines this category of use and directs the use to the City's existing Industrial Areas. A site-specific Zoning By-law Amendment would be evaluated against new criteria established in the Official Plan, including the protection of the environment, ground water, and separation from sensitive land uses.

Zoning By-law Amendment

The June 2022 Draft Zoning By-law Amendment (attached as Appendix 2 to this Memo) does not include the previously proposed 'Mineral Aggregate Ancillary Use' (MAAU) Zone, since these uses are to be permitted as accessory uses to a Mineral Aggregate Operation. Instead, the June 2022 Amendment proposes to amend the existing Mineral Aggregate Operation (MAO) Zone to include a specific list of accessory uses (new subsection 28.4). The Amendment also amends and adds definitions for each accessory use.

The June 2022 Amendment also adds a new General Provision (subsection 2.27 - Uses Related to Mineral Aggregate Operation) to incorporate provisions which apply to this category of uses as a principal use of a property. These represent the base general provisions which would apply to a new principal use, permitted by site-specific Zoning By-law Amendment, in an Industrial Zone category.

Further Consultation

The June 2022 Draft Amendments are available for review and comment by members of the public, stakeholders, agencies, and Council. It is anticipated that the City will host a subsequent Open House and Public Meeting to solicit feedback. Comments received at that time will be incorporated into a final version for Council's ultimate consideration.

Respectfully submitted:



Mary Lou Tanner, FCIP, RPP
Principal Planner



Aaron Butler, MCIP, RPP
Development Principal

Appendix 1 - DRAFT OPA Redline Version June 2022

Please refer to Appendix B of Development and Legislative Services Report 2022-157.

Appendix 2 - DRAFT ZBA Redline Version June 2022

Please refer to Appendix C of Development and Legislative Services Report 2022-157.

Appendix 3 - Comment and Response Table

PORT COLBORNE MINERAL AGGREGATE OFFICIAL PLAN AMENDMENT AND ZONING BY-LAW AMENDMENT

COMMENTS AND RESPONSES TABLE – JANUARY 18, 2022 PUBLIC MEETING AND WRITTEN SUBMISSIONS

COMMENT FROM	DETAILS	RESPONSE
Councillor Wells	Why are cement and concrete facilities grouped?	The next version of the Zoning By-law addresses this.
Councillor Desmarais	Will there be a response to the community comments?	Yes – the detailed comments and responses are in this document.
Councillor Bagu #1	Would this OPA and ZBA impact existing approvals?	No.
Councillor Bagu #2	The 500 m separation distance when the Region says 300 m.	The next version of the OPA will use 300 m to be consistent with the D-6 guidelines for heavy industry in Ontario.
Councillor Bagu #3	What does Port Colborne Quarries want? Can there be discussion with them.	Thomson Rogers submitted a letter and responses are in this table. There can be further discussion with them.
Councillor Bodner #1	Can there be another public meeting?	Yes another public meeting will be held.
Councillor Bodner #2	Can there be more explanation about the buffer?	Please see the response under Councillor Bagu #2.
Gary Gaverluk - #1	Source Water Protection and Municipal Use – Concerns regarding protection of the Intake in the Welland Canal for Port Colborne's drinking water from potential impacts of shipping, spills, and adverse events	<p>Protection of the intake for the Port Colborne Water Treatment Plant is through the Niagara Source Protection Plan.</p> <p>In 2013 the Source Protection Plan was updated to add transportation sources as well as policies relating to potential spills of fuel in the Welland Canal.</p> <p>A risk assessment review is completed for proposed land uses in the Intake Protection Zones for Port Colborne as part of the planning and building process.</p> <p>Niagara Region manages the risk assessment related to transportation/fuel spills through its Water and Wastewater Department. This issue is outside the scope of the OPA and ZBA related to Mineral Aggregates.</p> <p>No changes were made to the draft OPA and ZBA to address this comment as there are existing processes that address this comment.</p>
Gary Gaverluk - #2	Blue Green Algae Blooms in Lake Erie and the potential impact on the Port Colborne Water Treatment Plan Intake.	This issue is outside the scope of the OPA and ZBA related to Mineral Aggregates. Please contact Niagara Region Water and Wastewater for information on how the Region is monitoring/addressing this issue.
Gary Gaverluk - #3	Onondaga Aquifer – this is a water source and is not being recognized for protection. The aquifer could be	The current responsibility for Source Water Protection is only applicable to municipal drinking water sources

COMMENT FROM	DETAILS	RESPONSE
	a municipal drinking water source for back up to the Port Colborne Water Supply from the Welland Canal.	<p>– those supplied by a municipality. The aquifer is not a municipal drinking water source.</p> <p>The aquifer is identified in the Niagara Region Official Plan through mapping and policies to protect the aquifer. This includes how proposed land uses must address the protection of the aquifer.</p>
Gary Gaverluk - #4	There is no definition of the term Ancillary Use related to Mineral Aggregate Ancillary Use.	<p>This term has been removed from the updated version of the OPA and By-law as the term is included in the definition of Mineral Aggregate Operations.</p> <p>The individual uses (asphalt plant, concrete plant, aggregate depot, mineral aggregate resource conservation use) are now included as accessory uses. As stand-alone uses, these individual uses would be subject to a site-specific Zoning By-law amendment. These uses would not be permitted outside the urban area as primary uses.</p>
Gary Gaverluk - #5a)	Change references to Prohibited Uses from Permitted Uses	<p>The requirements for the City and for all municipalities is to identify where land uses are permitted and under what circumstances and regulations.</p> <p>Municipalities in Ontario cannot prohibit any land use either explicitly or making the regulations so onerous that the use could not exist anywhere in the municipality.</p>
Gary Gaverluk - #5b)	For various uses listed in the comment document, prohibit within 30 m of a surface water body and 2 m of a water table.	These types of standards were not included in the OPA or draft ZBA because the approach is premised on the need for location specific studies to determine potential impact and appropriate mitigation.
Gary Gaverluk #6	Permitted uses – how and where will they be applied	<p>The permitted uses can only be considered by the City in the following areas: Mineral Aggregate Operations (MAO), Rural (RU), Gateway Industrial (GI) and/or Heavy Industrial (HI) zones (see Section 29.3 of the Draft Zoning By-law).</p> <p>Any application for a permitted use must be located in one of these zones or it cannot be approved.</p>
Gary Gaverluk #7	Provide an explanation of “except where prohibited elsewhere”.	This phrase was used so that other provisions of the Zoning By-law would apply – for example, the proposed uses are not permitted in commercial or residential areas. Also, should there be future changes related to aggregate accessory uses by the Province, this phrase would likely capture those changes.

COMMENT FROM	DETAILS	RESPONSE
Gary Gaverluk #8	There is no definition or timeline for rehabilitation process included in the By-law.	Rehabilitation processes for pits and quarries are dealt with through the licensing process under the Aggregate Resources Act in Ontario for pits and quarries. Typically this also includes Region and Local Official Plan Amendments and Zoning By-law Amendments where these matters are addressed. For the accessory uses in this By-law, each would require a future Zoning By-law Amendment. As these uses would be permitted uses, there is not an expectation that the use would cease at some point in the future.
Gary Gaverluk #9	There is no definition or process for excess soil importation or management.	The City has a Site Alteration By-law that addresses this issue. Please also see comment from EAC (#5) regarding proposed changes to the Aggregate Act regarding this issue. The issue is outside the scope of the OPA and ZBA but is addressed through other means.
Cindy Mitchell #1	Protection of the Onondaga Aquifer is a primary concern.	Please refer to the response to Gary Gaverluk (#3).
Cindy Mitchell #2	Protection of the Port Colborne Water Treatment Plant Intake from transportation spills and Blue Green Algae. There should be a back up well in case of an incident in the canal.	Please refer to the response to Gary Gaverluk (#1 and #2). The back up well is a City and Region matter outside this OPA and ZBA
Cindy Mitchell #3	The OPA and ZBA should speak to where asphalt recycling and concrete recycling occur.	This is in the current version of the ZBA.
Cindy Mitchell #4	There should be no importation of material to below the water table quarrying.	The PPS (2020) allows extraction below the water table and accessory uses. This proposal would not conform to the PPS.
Cindy Mitchell #5	What is a Mineral Aggregate Ancillary Use (MAAU) zone that can be “permitted via subsequent site-specific zoning by-law amendment application”?	The MAUA Zone has been removed from the proposed By-law Amendment.
Cindy Mitchell #6	Would the site-specific zoning requirements include a public meeting?	Yes, for a public meeting is required for any Zoning By-law Amendment.
Cindy Mitchell #7	It is not clear as to exactly what the prohibited uses or not permitted uses are within this draft zoning by-law amendment and official plan amendment.	Please see the response to Gary Gaverluk (#5a).
Cindy Mitchell #8	Question: could this new zoning by-law and/or new Official Plan	These proposed amendments do not address aggregate operations such as licensed and unlicensed

COMMENT FROM	DETAILS	RESPONSE
	amendment provide direction for the timely and progressive rehabilitation of both an unlicensed and a licensed aggregate quarry operation so that there is not kilometres of exposed aquifer (i.e. best rehabilitation solution is passive lakes).	quarry operations. Those types of uses are addressed through separate privately initiated application processes that would include reviewing the aquifer. The Aggregate Resources Act also addresses the rehabilitation solution through the licensing process.
Cindy Mitchell #9	Is it correct that if this by-law is passed or not passed that there is a 90-day period in which one could appeal the matter?	The appeal period is twenty (20) days.
Cindy Mitchell #10	What is a "comprehensive analysis"? Is this an environmental assessment or study?	A comprehensive analysis is used as the term so it is broadly based. Depending on the site location, it could include environmental analysis. For example, if the site was near a creek then an environmental analysis would be required. However if the site was in a location with no creek, an analysis of creeks would not be required. The environmental analysis would include addressing features on and around the site including air quality, noise and vibration. These studies would be completed by persons qualified to do that work.
Cindy Mitchell #11	I am mixed up as to whether an MAAU activity or plant could be in a MAO zone or not or vice versa?	The MAUU Zone has been removed from the proposed By-law Amendment.
Jack Hellinga #1	One of the missing descriptions of MAO uses in the ZBL is that this should apply only to "natural occurring" aggregate, and the process of preparing the natural material on site prior to sale.	The By-law does not include this reference as the proposed permitted uses could be located in areas other than MAO (example: Heavy Industrial). The OPA is designed to allow the review of the studies and the application to determine if the use is appropriate on the proposed site.
Jack Hellinga #2	What is identified as not permitted is ancillary land uses such as asphalt plants, cement/concrete plants and aggregate depots that blend and stockpile aggregate materials with salt and aggregate transfer. What is not identified as prohibited is asphalt recycling and concrete recycling.	Please refer to the response to Cindy Mitchell (#3).
Jack Hellinga #3	What is missing from uses in a MAAU zone is storing and processing of asphalt and concrete for recycling. The site controls for MAAU for these uses would require studies that recognize O. Reg. 466-20, which	Please refer to the response to Cindy Mitchell (#3).

COMMENT FROM	DETAILS	RESPONSE
	would ensure protection of the aquifers.	
Jack Hellinga #4	Another missing component in the proposed amendments is the prioritizing of Prohibited Uses and Permitted Uses. Throughout the OP and ZBL are phrases such as "except where prohibited elsewhere". An applicant will only refer to the permitted use.	In our experience, the phrase "except where prohibited elsewhere" is used by applicants and their planners to do a comprehensive review of the requirements.
David Henderson	Proposed addition to amendment: That any new mineral aggregate operations or expansion of existing mineral aggregate operations, within the City of Port Colborne, be limited in depth above the aquifer, with an appropriate vertical buffer distance between the bottom of the pit and the water bearing aggregate.	The City's current Official Plan has detailed policies and requirements for new mineral aggregate operations. The requested amendment does not conform to the requirements of the Province of Ontario for aggregate operations.
Melissa Bigford #1	Where are the Highly Vulnerable Aquifer policies that were included in a previous recommendation report to council regarding these official plans and zoning bylaw amendments?	The previous amendments were not in conformity with the Niagara Region Official Plan nor the Source Water Protection Plan for the Niagara Area.
Melissa Bigford #2	Since zoning bylaws are a local document that provide for the day-to-day regulation of land use controls; how do these new amendments provide additional protection of the aquifer and surrounding sensitive land uses?	<p>The protection of the aquifer is a complex, multi-layered and multi-jurisdictional matter. The aquifer is protected through:</p> <ol style="list-style-type: none"> 1. Niagara Source Water Protection Plan 2. Niagara Region Official Plan identifying the aquifer 3. Niagara Region Official Plan policies related to land use in and around the aquifer 4. Aggregate Resources Act requirements 5. Port Colborne Official Plan – natural heritage policies. <p>These amendments address accessory uses. The requirements limit the potential location to certain areas of the City and further require specific studies in order to allow the use to occur on any proposed site.</p>
Melissa Bigford #3	Will the subsequent site-specific zoning by-law amendment applications come through council, will public input be allowed or will it be a decision made by staff.	The site-specific applications will be decided by City Council.

COMMENT FROM	DETAILS	RESPONSE
Melissa Bigford #4	Why is the zoning by-law not being amended to include prohibited uses which were going to include asphalt and cement manufacturing plant, and an aggregate transfer station omitted?	Please see the response Gary Gaverluck (#5a).
Barbara Butters #1	Supportive of protecting the aquifer.	Please see comments under Gary Gaverluck (#3).
Barbara Butters #2	Prefers 500 m separation to sensitive land uses over 300 m.	The next version of the OPA will use the D-6 Separation Guidelines – 300 m.
Thomson Rogers #1	We recommend that the City exclude the existing lands designated and zoned for MAO uses, including MAO-38-H, from being subject to the proposed OPA and ZBLA.	The revised Zoning By-law includes asphalt plant, concrete plant etc as accessory uses with nothing being removed from the MAO provisions or MAO-38-H.
Thomson Rogers #2	Further recommends the OPA and ZBA proposed by the City should not apply to Pit 3.	Pit 3 is addressed by applications that precede the adoption of this OPA and ZBA. The OPA and ZBA would not apply to Pit 3.
Thomson Rogers #3	Failure to be consistent with the Provincial Policy Statement 2020, (“PPS 2020”) including the mineral aggregate resources provisions;	Several updates have been made to address the PPS (2020).
Thomson Rogers #4	Non-conformity with the Region’s Official Plan	Niagara Region has provided comments on the proposed OPA and ZBA and confirmed, subject to addressing the comments, conformity to the Niagara Region Official Plan.
Thomson Rogers #5	Non-conformity with the approved City Official Plan	The revised OPA and ZBA conform with the City’s Official Plan.
Thomson Rogers #6	Inappropriate and vague definition of a “needs” test, including restricting same to the boundaries of the City	This provision has been removed from the updated version of the Zoning By-law.
Thomson Rogers #7	Lack of appropriate definition of applicable criteria including lack of clarity regarding the reference to municipal servicing	The wording was chosen to address circumstances in both settlement areas and outside settlement areas.
Thomson Rogers #8	Inclusion of a 500 m separation distance which distance: has not been demonstrated to have any justification; is contrary to both the PPS 2020 and Ministry of Environment, Conservation and Parks guidelines, including D-1; and, is prohibition masquerading as regulation	This is not prohibition masquerading as regulation – please see earlier comments to Gary Gaverluck (#5a) in this regard. The 500 m separation distance has been changed to 300 m in the next version of the OPA.
Thomson Rogers #9	Failure to appreciate the impact of section 66 of the Aggregate Resources Act for licensed lands	For clarity, Section 66 of the Aggregate Resources Act addresses that the Act overrides municipal plans, policies, and zoning.

COMMENT FROM	DETAILS	RESPONSE
	which overrides municipal planning documents including site plan control	The OPA and ZBA have been drafted recognizing the limits of responsibility for municipalities.
Thomson Rogers #10	Providing for split zoning for licensed aggregate operations contrary to accepted practice;	Overlay zoning is an emerging practice and appropriate to these circumstances including the Council and community feedback.
George McKibbon #1	The proposed asphalt plant (permanent and portable), cement concrete plant and aggregate depot uses generate air and noise emissions. Municipal studies show these air emissions can result in hospitalizations and mortalities when air quality is poor. These conditions exist even with the best efforts of Ministry of the Environment, Conservation and Parks (MECP) Environmental Protection Act regulators, who apply OR 348 and 419 and NPC 300, and municipal planners, who apply the MECP D Series Land Use Compatibility Guidelines.	This comment is noted.
George McKibbon #2	Port Colborne has no air monitoring stations within its jurisdiction with which to benchmark local community air quality. Track out occurs from existing comparable uses. Lands under the Seaway jurisdiction are Federal lands on which Provincial and municipal authority is constrained. Fugitive emissions from existing uses are available for re-suspension with traffic and extreme wind events. Caution should be applied when considering these amendments.	This comment is noted.
George McKibbon #3	When these uses are proposed assessment of cumulative air and noise emissions from existing and proposed industrial uses and local traffic is needed. Under 29.3, Zone Requirements, (a) it is recommended the following underlined words be added after “ <u>appropriate studies including cumulative and worst-case scenario noise and air analyses</u> ”.	The requested wording will not be added in the next version of the Zoning By-law Amendment. Studies will be required however this wording is not appropriate given the generally industrial location of the potential uses.
George McKibbon #4	Under 29.3 Zone Requirements, (b) it is recommended that the minimum	The distance separation has been updated in the next version of the Zoning By-law Amendment to read 300

COMMENT FROM	DETAILS	RESPONSE
	500 metre distance from the closest residential use be amended to read: "is at least 500 metres from any residential use <u>provided the maximum emissions scenario and cumulative air and noise analyses do not require a greater separation distance.</u> "	m, consistent with the D-6 guidelines. The additional requested text is not being added as the studies will determine if a greater distance is required.
George McKibbin #5	Last, where Mineral Aggregate Operations are considered, these uses should not be permitted where the Aggregate Resources license and site plan provide for extraction below the water table.	This is contrary to the PPS (2020).
LaFarge #1	In order to be consistent with PPS Policy 2.5.2.3, a new definition for Mineral Aggregate Ancillary Uses (MAAUs) should be added to the Official Plan. This new definition should make it clear that these uses are different and separate from the blending, recycling, and stockpiling activities that are secondary and accessory to a typical existing and new Mineral Aggregate Operation.	This term is no longer used in the draft OPA because the PPS (2020) includes accessory uses in the definition of Mineral Aggregate Operations.
LaFarge #2	S. 29 (ZBA) In accordance with PPS Policy 2.5.5.1, text should be added to make it clear that Portable Asphalt Plants and Portable Concrete Plants used on public authority jobs do not require a zoning by-law amendment in all areas, except in areas of existing development or particular environmental sensitivity which have been determined to be incompatible with extraction and associated activities. Portable Asphalt Plants and Portable Concrete Plants have specific definitions in the PPS.	This revision is in the next version of the ZBA.
LaFarge #3	S 29.3 (a) The first sentence of this proposed provision should be deleted as it is not an appropriate zoning tool nor is there any planning mechanism that allows for this type of restriction to be added to a zoning by-law. This type of requirement should be added as an Official Plan policy	This has been removed from the next version of the Zoning By-law Amendment and has been moved to the draft Official Plan Amendment.

COMMENT FROM	DETAILS	RESPONSE
	which would have the intent of directing Ancillary Aggregate Uses to appropriate Designations (e.g. Industrial or Extractive Industrial Designations)	
LaFarge #4	S. 29.3 b) Setback restrictions for new ancillary aggregate uses should be based on site-specific studies. There is no justification for the required arbitrary 500m setback from residential uses to be included in the Zoning By-Law. There is no discussion in the accompanying staff report as to how this setback distance was derived. It is also not clear how “residential uses” would be defined. This distance exceeds Ministry of the Environment, Conservation and Parks guidelines. A 500m minimum setback from residential uses would potentially sterilize most suitable locations within the City. There are already existing policies in the Official Plan that require new development to demonstrate Land Use Compatibility using Ministry of the Environment, Conservation and Parks.	Please see response to Thomson Rogers (#8).
LaFarge #5	S. 39 The definition for Mineral Aggregate Operation should be consistent with the definition in the PPS. As previously noted, the PPS also has specific definitions for Portable Asphalt and Concrete Plants. In order to avoid confusion, these definitions should also be consistent with the PPS.	This revision is in the next version of the ZBA.
Robert Henderson	I believe the By-law 6575/30/18 can be made even more watertight if an additional clause is added to ancillary uses. The intent of such a clause would be to prohibit the backfilling with soil of wet pits.	This type of request is dealt with in aggregate operation licensing and rehabilitation plans under the Aggregate Resources Act.

RESPONSE TO NIAGARA REGION WRITTEN COMMENTS (LETTER OF JANUARY 18, 2022)

ISSUE	DETAILS	RESPONSE
Wayside pits and quarries, portable asphalt plants and portable concrete plants used on public authority contracts	“ ... are also permitted under Policy 2.5.5.1 of the PPS, without the need for an official plan amendment, rezoning, or development permit under the <i>Planning Act</i> in all areas, except those areas of existing development or particular environmental sensitivity which have been determined to be incompatible with extraction and associated activities. An exemption should be incorporated into the amendment for public authority contracts.”	This revision has been incorporated into the next version of the Zoning By-law.
Sensitive land uses and major facilities	The guidelines indicate that industrial uses and sensitive uses should be located with a minimum separation distance, unless impacts from industrial activities can be mitigated to the level of “trivial impact (i.e. no adverse effects)”. Guideline D-6 identifies potential influence areas for industrial land uses, ranging from 70 metres for Class I (e.g. light) industries to 1,000 metres for Class III (e.g. heavy) industries, within which adverse effects may be experienced. The guideline also recommends minimum separation distances, ranging from 20 metres to 300 metres, where no incompatible development should occur (other than redevelopment, infilling and in mixed use areas).	This revision has been incorporated into the next version of the Official Plan Amendment.
OPA – Land Use Compatibility through Rezoning	Staff from the Ministry of Northern Development, Mines, Natural Resources and Forestry (MNFMRNF) has confirmed that additional studies to address compatibility of proposed new uses may not be required through the ARA Site Plan Amendment	Noted.

ISSUE	DETAILS	RESPONSE
	process. Municipalities are responsible for regulating land use; therefore, The Region supports the inclusion to require studies to address land use compatibility through a zoning by-law amendment process.	
OPA – Public Authority Facilities	An exemption for portable asphalt plants and portable concrete plants used on public authority contracts should be included to be consistent with Policy 2.5.5.1 of the PPS.	This revision has been incorporated into the next version of the OPA. There is existing policy to this effect in Section 10.2.2 g) however the additional clarity will be added.
OPA – Recycling Facilities	The amendment proposes to exclude recycling facilities from the definition and permission for mineral aggregate operations. Regional staff note that the PPS directs mineral aggregate resource conservation to be undertaken, including through the use of accessory aggregate recycling facilities within operations, wherever feasible. Consideration should be given to removing this portion of the amendment.	This revision has been incorporated into the next version of the OPA.
ZBA – Public Authority Facilities	A similar exemption for portable asphalt and concrete plants used on public authority contracts should be included in the amendment.	This revision has been incorporated into the next version of the Zoning By-law.
ZBA – Extractive Industrial	Consideration should be given to including the Extractive Industrial (EI) zone in the proposed section 29.3(a).	This is a reference to a former By-law and is not applicable.
ZBA - Need	Analysis of demand, as required by section 29.3(a) (b) may be contrary to PPS policy 2.5.2.1. Consider excluding this criteria.	This provision has been removed in the next version of the Zoning By-law.
ZBA – Residential Areas	What is meant by “residential areas” in section 29.3(a) (f) should be clarified to assist in implementing the amending by-law. Does this mean lands zoned to permit residential uses or residentially zoned lands?	This will be revised to state “residential use”.

ISSUE	DETAILS	RESPONSE
ZBA – Distance Separation	Regional staff is not clear where the minimum recommended separation distance of 500 metres in the amendment came from. The D6 guideline specified separation distances of 30 metres (for Class I uses), 70 metres (for Class II uses) and 300 metres (for Class III uses), noting that this minimum may need to increase to address mitigation as determined through more detailed study. Regional staff recommend that in the absence of detailed study, a distance of 300m be used as asphalt and concrete plants, and aggregate depots would be considered Class III uses.	This is addressed in the revision to the Official Plan Amendment.

NOTE TO READER:

This version of proposed Official Plan Amendment No. 7 is a redline version to assist the reader in understanding the revisions to the amendment arising from the public meeting of January 18, 2022 and the comments received from Niagara Region dated January 18, 2022.

Text that is deleted will have a strikethrough as follows:

Deleted text

~~Text that is added~~ will be in red and underlined as follows:

Added text

DRAFT

The Corporation of the City of Port Colborne

By-law No.XX

Being a By-law to Adopt Amendment No. X to the Official Plan for the City of Port Colborne

Whereas it is deemed expedient to further amend the Official Plan, heretofore adopted by Council for the City of Port Colborne Planning Area;

Now therefore, the Council of The Corporation of the City of Port Colborne under Section 17(22) of the *Planning Act*, hereby enacts as follows:

1. That Official Plan Amendment No. 7 to the Official Plan for the City of Port Colborne Planning Area, consisting of the explanatory text is hereby adopted.
2. That this By-law shall come into force and take effect on the day of passing thereof.

Enacted and passed this XXth day of XX, 20242.

William C. Steele
Mayor

Nicole Rubli
Acting City Clerk

AMENDMENT NO. 7
TO THE
OFFICIAL PLAN
FOR THE
PORT COLBORNE PLANNING AREA

PREPARED BY:
NPG PLANNING SOLUTIONS for the CITY OF PORT COLBORNE
DEPARTMENT OF PLANNING & DEVELOPMENT

~~DECEMBER X, 20XX~~
REVISED JUNE 2022

AMENDMENT NO. 7
TO THE
OFFICIAL PLAN
FOR THE
PORT COLBORNE PLANNING AREA

AMENDMENT NO. 7
TO THE OFFICIAL PLAN
FOR THE
CITY OF PORT COLBORNE

This Amendment to the Official Plan for the City of Port Colborne, which has been adopted by the Council of the Corporation of the City of Port Colborne, is hereby approved in accordance with Sections 17 and 21 of the Planning Act R.S.O. 1990, c. P.13, as Amendment No. 6 to the Official Plan for the City of Port Colborne.

Date: December XX, 202X

**AMENDMENT NO. 7
TO THE OFFICIAL PLAN**

**FOR THE
PORT COLBORNE PLANNING AREA**

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1. ~~Any included~~ Minutes of Statutory Public Meeting – January 18, 2022
2. Comment letter dated January 18, 2022 from Niagara Region

STATEMENT OF COMPONENTS

PART A

The Preamble does not constitute part of this Amendment.

PART B

The Amendment constitutes Amendment No. 7 to the Official Plan for the Port Colborne Planning Area.

PART C

The Appendices do not constitute part of this Amendment.

PART A - THE PREAMBLE

Purpose

The purpose of the amendment is to, to introduce new policies to the Mineral Aggregate and Petroleum Resources designation for the purposes of facilitating site specific zoning by-law amendments for these uses via through future amendments to the Zoning By-law.

Location

These policies will apply to the entirety of the ~~jurisdictional boundaries of the~~ planning area for the City of Port Colborne.

Basis

The Planning Act, R.S.O. 1990, as amended, provides that amendments may be made to the Official Plan. Policies of the Official Plan have been considered in the preparation of this Amendment and the following factors: 1. the policies will ensure compatibility with the surrounding land uses. 2. This Amendment is consistent with the Provincial Policy Statement, conforms to the Growth Plan for the Greater Golden Horseshoe and the Region of Niagara Official Plan.

PART B – THE AMENDMENT

The Official Plan adopted by By-law 5855/109/12 and approved by the Ontario Municipal Board decision of November 25, 2013, for the Port Colborne Planning Area is hereby amended by doing the following:

Amend Section 10 by adding the following to Section 10.1.1 Additional Policies:

- ~~d) require site specific Zoning By-Law Amendments to permit ancillary land uses such as asphalt plants, cement/concrete plants, and aggregate depots that blend and stockpile aggregate materials with salt and aggregate transfer except where otherwise prohibited by the policies of this Plan, subject to:-~~

- ~~i) The protection of groundwater quality and quantity;~~
- ~~ii) the protection of adjoining lands from noise, dust, odour, lighting and outdoor storage;~~
- ~~iii) the protection of the environment from adverse effects of dust, chemical spills, run-off, or contamination of surface or groundwater;~~
- ~~iv) access being obtained directly to a road capable of bearing the anticipated loaded truck weights and conveying the cumulative volume of traffic without negative impacts to current traffic flow; and,~~
- ~~v) ancillary land uses will not be permitted where they are prohibited in O. Reg. 466/20 or any successor to this regulation.~~

1. Amend Section 3.16 by adding a new subsection 3.16.10 as follows:

3.16.10 Uses Related to Mineral Aggregate Operations

Mineral Aggregate Related Uses are permitted as a principal use of a lot and generally be directed to Industrial Areas. The use shall be subject to a site-specific zoning by-law amendment which shall address the following:

- a) The use, excluding offices and parking, shall be located a minimum of 300 metres from any residential use;
- b) The long-term impacts on the environment including the quality and quantity of surface water and ground water, impacts on significant environmental features, and impacts on areas of significant cultural resources;
- c) The protection of adjoining lands from noise, dust, odour, lighting and outdoor storage;
- d) The long-term impacts on municipal servicing;
- e) The impact of the proposed development on surrounding existing and proposed developments;
- f) Access shall be obtained directly to a road capable of bearing the anticipated loaded truck weights and conveying the cumulative volume of traffic without negative impacts to current traffic flow; and
- g) That the designated truck access routes will not be primarily through residential areas; and,
- h) That all operations shall adhere to applicable federal, provincial and local regulations, including but not limited to emissions and noise.
- i) The use shall be subject to site plan control.

This policy does not apply to Wayside Pits and Quarries, Portable Asphalt Plants and Portable Concrete Plants used for public authority contracts.

2. The following definition is added:

Mineral Aggregate Related Use: means uses such as Asphalt Plant, Permanent; Asphalt Plant, Portable; Concrete Plants; Aggregate Depots; Recycling of Asphalt; and/or Aggregate Plants. A Mineral Aggregate Related Use does not include the blending, recycling, and stockpiling activities that are secondary and accessory to a typical existing and new Mineral Aggregate Operation.

IMPLEMENTATION AND INTERPRETATION

The implementation and interpretation of this amendment shall be in accordance with the respective policies of the Port Colborne Official Plan and the City of Port Colborne Zoning By-law.

PART C – THE APPENDICES

~~Non applicable~~

NOTE TO READER:

This version of proposed the Draft Zoning By-law is a redline version to assist the reader in understanding the revisions to the amendment arising from the public meeting of January 18, 2022 and the comments received from Niagara Region dated January 18, 2022.

Text that is deleted will have a strikethrough as follows:

~~Deleted text~~

Text that is added will be in red and underlined as follows:

Added text

DRAFT

The Corporation of the City of Port

Colborne By-law No. _____

Being a By-law to Amend Zoning By-law 6575/30/18
Regarding Mineral Aggregate Accessory Use
Provisions

Whereas By-law 6575/30/18 is a By-law of The Corporation of the City of Port Colborne restricting the use of land and the location and use of buildings and structures; and

Whereas the Council of The Corporation of the City of Port Colborne desires to amend the said by-law.

Now therefore and pursuant to the provisions of Section 34 of the *Planning Act, R.S.O. 1990*, The Corporation of the City of Port Colborne enacts as follows:

1. ~~That the following be added to Section 4.1:~~

~~MAAU ————— Mineral Aggregate Ancillary Use~~

2. ~~That the following is added as Section 29 — Mineral Aggregate Ancillary Use Zone (MAAU):~~

~~29.1 — General~~

- ~~a) No person shall make or establish any pit or quarry, or use any lot or erect, alter or use any building or structure in any Mineral Aggregate Ancillary Use (MAAU) Zone except in accordance with the applicable provisions of Sections 2, 3 and 29.~~
- ~~b) In addition to Section 29.1 (a), any lot may be subject to additional regulations or restrictions by the City, upper tier government or agencies as indicated in Section 1.3.~~

~~29.2 — Permitted Uses~~

- ~~a) Asphalt Plant, Permanent~~
- ~~b) Asphalt Plant, Portable~~
- ~~c) Cement Concrete Plants~~
- ~~d) Aggregate Depots~~

~~29.3 — Zone Requirements~~

- ~~a) Applications for uses in Clause 29.2 may only be considered for lots~~

which are within current Mineral Aggregate Operations (MAO), Gateway Industrial (GI) and/or Heavy Industrial (HI) zones. The uses may only be undertaken subsequent to a successful zoning amendment (subject to additional approvals) following a comprehensive analysis which demonstrates:

- a. Comprehensive analysis through appropriate studies;
- b. The demand for the type and scope of development proposed in relation to the demographics of the City;
- c. The long-term impacts on municipal servicing;
- d. The long-term impacts on the environment including the quality and quantity of surface water and ground water, impacts on significant environmental features and impacts on areas of significant cultural resources;
- e. The impact of the proposed development on surrounding existing and proposed developments;
- f. That the designated truck access routes will not be primarily through residential areas; and,
- g. That all operations shall adhere to applicable federal, provincial and local regulations, including but not limited to emissions and noise.

- b) New uses will be placed under site plan control and will only be permitted where the plant operations area (excluding offices and parking) is at least 500 ~~300~~ metres from any residential use, where the use will be totally enclosed by a security fence or within a fireproof building, and where adequate stormwater drainage can be provided.

~~c) Provision 29.3 a) and b) do not apply to Portable Asphalt Plants and Portable Concrete Plants used on public authority projects.~~

1. That subsection 2.2 a) is amended by adding “portable asphalt plant, portable concrete plan” immediately following “water or electrical power or energy,”.
2. That Section 2 is amended to add a new subsection 2.27, as follows:

2.27 Uses Related to Mineral Aggregate Operations

- a) Aggregate Depot, Permanent Asphalt Plant, Permanent Concrete Plant and Mineral Aggregate Resource Conservation Use, as a principal use on a lot, shall be subject to a site-specific amendment to the Zoning By-law and to the following provisions:
 - i. The use, excluding offices and parking, shall be located a minimum of 300 metres from any residential use
 - ii. The use shall be enclosed by a security fence or located within a fireproof building
 - iii. The use shall be subject to site plan control

- b) Subsection 2.27 shall not apply to Wayside Pits and Quarries, Portable Asphalt Plants and Portable Concrete Plants used for public authority contracts.

3. That Section 28 is amended by adding a new subsection 28.4, as follows:

28.4 Permitted Uses – Accessory

- a) Aggregate Depot
- b) Asphalt Plant, Permanent
- c) Asphalt Plant, Temporary
- d) Concrete Plant, Permanent
- e) Concrete Plant, Temporary
- f) Mineral Aggregate Resource Conservation Use

4. That the following is added to Section 39:

- a) **Aggregate Depot:** A place where gravel, rock, sand, earth, clay, or fill is stored prior to sales and/or distribution. An aggregate depot may include the blending of aggregate with salt.
- b) **Asphalt Plant, Permanent:** A facility for the mixing of asphalt components, including hot mix asphalt, for transfer to a job site.
- c) **Asphalt Plant, Portable:** ~~Equipment that is used to produce asphalt and which is capable of being readily drawn by a motor vehicle and which is not permanently affixed to the ground.~~ A facility with equipment designed to heat and dry aggregate and to mix aggregate with bituminous asphalt to produce asphalt paving material, and includes stockpiling and storage of bulk materials used in the process, which is not of permanent construction, but which is to be dismantled at the completion of the construction project.
- d) **Cement Concrete Plant, Permanent:** A facility manufacturing concrete from any combination of cement, cement supplement, fine aggregate, coarse aggregate and water. The concrete plant includes associated bins, weigh hoppers, and cement silos.
- e) **Concrete Plant, Portable:** A building or structure with equipment designed to mix cementing materials, aggregate, water and admixtures to produce concrete, and includes stockpiling and storage of bulk materials used in the process which is not of permanent construction, but

which is designed to be dismantled at the completion of the construction project.

f) **Mineral Aggregate Resource Conservation Use:** a facility for the recovery and recycling of manufactured materials derived from mineral aggregates, such as glass, porcelain, brick, concrete, asphalt or slag, for re-use as a substitute for new mineral aggregates.

g) ~~**Mineral Aggregate Operation:**~~ means:

- ~~a) An operation other than wayside pits and quarries, conducted under a license or permit under the Aggregate Resources Act or successors thereto; and~~
- ~~b) Does not include accessory uses/facilities used in processing or recycling of mineral aggregate resources and derived products such as asphalt and concrete, or the production of secondary related aggregate products.~~

~~4. That the existing Sections 29 to 39 are renumbered accordingly.~~

5. That this By-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of the *Planning Act*.

6. The City Clerk is hereby authorized and directed to proceed with the giving notice of the passing of this by-law, in accordance with the *Planning Act*.

Enacted and passed this ____ day of _____, 2022.

William C. Steele
Mayor

Nicole Rubli
Acting City Clerk

Public Comments and Responses – Mineral Aggregate Operations

Official Plan and Zoning By-law Amendments – Files D09-01-20 & D14-03-20

Note: Comments have been summarized in the chart below. The full comments can be found in the pages following the chart.

Commentor	Comment	Response
Barbara and Larry Butters – 1152 Weaver Road – Comment 1	Concerns respecting the vulnerable aquifer. The answer is to protect the aquifer as it is an important source of water for rural residents, farms, businesses etc.	Thank you. The comment has been noted and will be considered through the preparation of the final drafts of the amendments.
Thomson Rogers LLP on behalf of Port Colborne Quarries Inc. – Comment 1	Would like further confirmation that Special Provision MAO-38-H will not be impacted as a result of this application.	This is correct. The amendments will not impact or remove this existing approval.
Thomson Rogers LLP on behalf of Port Colborne Quarries Inc. – Comment 2	Suggest revised wording with respect to the D6 Guidelines and the required separations from sensitive land uses.	This comment has been noted.
Thomson Rogers LLP on behalf of Port Colborne Quarries Inc. – Comment 3	Suggest revised wording for the definition of Mineral Aggregate Related Use.	This comment has been noted.
Thomson Rogers LLP on behalf of Port Colborne Quarries Inc. – Comment 4	The comments above apply equally to section 2.27 (a) (i) of the ZBA.	This comment has been noted.
Thomson Rogers LLP on behalf of Port Colborne Quarries Inc. – Comment 5	Note that section 28.4 is redundant given that all of the permitted accessory uses listed in [section 28] would be permitted in any event given the definition of Mineral Aggregate Operation in the parent Zoning By-law.	This comment has been noted.
Jack Hellinga – 770 Highway 3 – Comment 1	Provides excerpts from Ontario Regulation 466/20	Thank you. The comment has been noted and will be

	under the Aggregate Resources Act respecting the storage of recyclable asphalt within 30 metres of a body of water or within two metres of the groundwater table.	considered through the preparation of the final drafts of the amendments.
Jack Hellinga – 770 Highway 3 – Comment 2 (oral at Open House)	Concerns with respect to the definitions for ancillary and accessory not being interchangeable. Precise identification should be provided.	Thank you. The comment has been noted and will be considered through the preparation of the final drafts of the amendments.
Jack Hellinga – 770 Highway 3 – Comment 3 (oral at Open House)	Concerns with the separation distances proposed required from sensitive uses. Suggested to specify that it is measured between property lines of sensitive land uses.	The comment has been noted and will be considered through the preparation of the final drafts of the amendments.
Jack Hellinga – 770 Highway 3 – Comment 4 (oral at Open House)	Suggests the definition of MAO should be revisited to only include virgin aggregate and not off-site imported materials.	Comment received.
Jack Hellinga – 770 Highway 3 – Comment 5 (oral at Open House)	Clarification related to the history of the application.	Comment received.
Harry Wells – 548 Highway 3 – Comment 1 (oral at Open House)	Question regarding the highly vulnerable aquifer included in the new Regional Official Plan.	Mary Lou Tanner provided a response at the Open House, however, further follow up may be required.
Harry Wells – 548 Highway 3 – Comment 2 (oral at Open House)	Question regarding the site alteration by-law update and potential tools that may be able to be used to protect the aquifer.	David Schulz provided a response that the site alteration by-law will be brought up to speed with new Ontario Regulations, however, further follow up may be required.
Gary Gaverluk – 21 Woodside Drive – Comment 1 (oral at Open House)	Question pertaining to prohibited uses and including asphalt and concrete recycling within them.	Response provided by Mary Lou Tanner of where these uses can and cannot take place under provincial policy.

David Schulz

From: Barbara Butters [REDACTED]
Sent: June 15, 2022 8:09 AM
To: David Schulz
Subject: Re: D09-01-20 & D14-03-20 Notice of Open House & Public Meeting - Mineral Aggregate and Petroleum Resources - Proposed OPA & ZBA - City of Port Colborne

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you David . We will be away but will add my comment here if thats ok .

My main concern has been , will always be - how do we protect the aquifer ? Do we allow more activity below the water table in any pit that has the potential to contaminate the aquifer ? If the answer is no - we do not allow more than presently there , if the answer is that we always look thru the lens of protection of this important source of water to rural residents , businesses , farms and wildlife first , then demonstrate that in the language of city documents . Which includes Official Plan , zoning etc . Be very clear that this will be the determining factor in any development piece . Anything less puts our water source at dire risk .

My thanks for the opportunity to comment .

Barbara and Larry Butters
1152 Weaver rd
Port Colborne Ont L3K5V3

David N. Germain

SENT BY EMAIL

June 24, 2022

Mayor Steele and Members of City Council
c/o Mr. David Schulz, Senior Planner
City of Port Colborne
66 Charlotte Street
Port Colborne ON
L3K 3C8

Dear Mayor Steele and Members of Council:

**City of Port Colborne Proposed OPA and ZBA re: Mineral Aggregate Operations
City Files D09-01-20 and D14-03-20
Port Colborne Quarries Inc. re Land Use Approvals
Our File No. 500725**

We are the solicitors for Port Colborne Quarries Inc. ("PCQ") which owns and operates the Port Colborne Quarry in the City of Port Colborne.

We are writing to provide submissions on behalf of PCQ regarding the City's proposed official plan amendment ("OPA") and zoning by-law amendment ("ZBA") dealing with mineral aggregate related uses. We request that these submissions be provided to members of City Council in advance of the public meeting on these amendments, which we understand is scheduled for July 19, 2022. We also request that notice of any decision made by Council with respect to these amendments be provided to the undersigned as well as to Mr. David Sisco at [REDACTED].

General Comments

This letter follows previous comments made on behalf of PCQ by Mr. Sisco, in a letter dated Oct. 2, 2020 as well as by my colleague Mr. Wilker in letters dated Nov. 3, 2020, Dec 11, 2020, Feb 5, 2021 and March 8, 2021. It also follows a telephone conference held between representatives of PCQ and the City's planning consultants on January 5, 2022.

By email dated January 6, 2022, the City's planning consultants confirmed that the intent of the OPA and ZBA is not to impact existing operations, permissions already in place (including Special Provision MAO-38(H)), or applications currently being processed. This is appropriate and should be confirmed in the forthcoming planning report. Our client will be relying on this confirmation.

The Proposed OPA

The proposed policy 3.16.20(a) requires that Mineral Aggregate Related Uses, as the principal use of a lot, be located a minimum of 300 metres from any residential use. We understand that this minimum separation distance is based on the MECP's D6 guideline. This policy should permit flexibility where it can be demonstrated, through site specific studies, that mineral aggregate related uses can be located closer to residential uses while meeting all applicable standards. Without such flexibility, the policy is arbitrary and not science-based. We note that the D6 Guidelines are themselves implemented flexibly where site-specific studies justify a departure from the rules of thumb set out in the guideline. We therefore request the following revised wording:

- a) The use, excluding offices and parking shall be located a minimum of 300 metres from any residential use, except where the proponent demonstrates through site specific studies that this separation distance can be reduced while maintaining compliance with all applicable standards.*

The definition of Mineral Aggregate Related Uses is ambiguous, in that it does not clearly exclude all such uses undertaken in association with a Mineral Aggregate Operation. We understand that the City's intent is that this definition should apply only to stand-alone uses. We therefore request rewording the relevant definition as follows:

Mineral Aggregate Related Use: means uses such as Asphalt Plan, Permanent; Asphalt Plant, Portable; Concrete Plants; Aggregate Depots; Recycling of Asphalt; and/or Aggregate Plants where any such use is undertaken a principal use of a lot. A Mineral Aggregate Related Use does not include any use undertaken in association with a Mineral Aggregate Operation.

This change is required to resolve uncertainty that would otherwise result from overlap between this definition and the definition of Mineral Aggregate Operation in the parent Official Plan. It is also necessary to ensure that the Official Plan is not rendered inoperative pursuant to s. 66 of the *Aggregate Resources Act*.

The Zoning By-law Amendment

Our comments regarding policy 3.16.20(a) in the Official Plan amendment apply equally to s. 2.27(a)(i) of the ZBA. We therefore request the same revised wording as above.

We note that the proposed s. 28.4 is redundant given that all of the permitted accessory uses listed in this section would be permitted in any event pursuant to part (b) of the definition of Mineral Aggregate Operation in the parent Zoning by-law.

Conclusion

We trust the foregoing is satisfactory. We would be pleased to have further discussions with City staff or planning consultants as required.

Yours very truly,



David N. Germain

DNG/dng

cc: Client
David Sisco, IBI Group
Amber LaPointe, City Clerk

David Schulz

From: Jack Hellinga [REDACTED]
Sent: June 28, 2022 2:01 PM
To: David Schulz
Subject: References for OP and ZBL Amendments to MAO Ancillary Uses

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Afternoon David,

Below is **the reference** I made at the Open House last evening regarding asphalt storage and processing within 2 metres of the groundwater table. This should be specifically stated in the OP and ZBL amendments. Only part of O.Reg. 466/20 is copied.

ONTARIO REGULATION 466/20

made under the

AGGREGATE RESOURCES ACT

(2) Subsection 0.13 (1) of the Regulation, as made by subsection (1), is amended by adding the following paragraphs:

- 26. Only scrap generated directly as a result of the aggregate operation may be stored on the site.
- 27. All fluid shall be drained from any discarded equipment, machinery or motor vehicle prior to storage and disposed of in accordance with the *Environmental Protection Act*.
- 28. A licensee or permittee shall take all reasonable measures to prevent fly rock from leaving the site during blasting if a sensitive receptor is located within 500 metres of the boundary of the site.
- 29. Recyclable asphalt shall not be stored within 30 metres of a body of water or within two metres of the groundwater table.**
- 30. Recyclable asphalt and recyclable concrete shall not be stored on a site where the site plan does not permit processing of materials.
- 31. Rebar or other structural metal shall be separated from recyclable aggregate material during processing.
- 32. Recycling activities on the site shall not interfere with the operational phases of the site or with the rehabilitation of the site.

Respectfully,
Jack S Hellinga