



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

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

Amber LaPointe
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

DRAFT

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~~

Appendix 2 - DRAFT ZBA Redline Version June 2022

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

Amber LaPointe
City Clerk

Appendix 3 - Comment and Response Table

DRAFT

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

Appendix 3 - Comment & Response Table

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?	The protection of the aquifer is a complex, multi-layered and multi-jurisdictional matter. The aquifer is protected through: <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.

Appendix 3 - Comment & Response Table

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	<p>S. 29.3 b)</p> <p>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.</p>	Please see response to Thomson Rogers (#8).
LaFarge #5	<p>S. 39</p> <p>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.</p>	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.