

## **Growth Strategy and Economic Development**

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### **Via Email Only**

January 16, 2024

Region File: D.18.07.ZA-23-0126

David Schulz, MCIP, RPP  
Senior Planner  
City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON, L3K 3C8

Dear Mr. Schulz:

**Re: Regional and Provincial Comments  
Proposed Zoning By-law Amendment Application  
City File: D14-08-23  
Owner: 1000367026 Ontario Inc.  
Agent/Applicant: Rachelle Larocque – The Biglieri Group  
179 Mellanby Avenue and 56-56 ½ Main Street West  
City of Port Colborne**

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Staff of the Regional Growth Strategy and Economic Development Department has reviewed the above noted Zoning By-law Amendment (ZBA) application located on lands municipally known as 179 Mellanby Avenue and 56 – 56 ½ Main Street West in the City of Port Colborne. Regional staff received circulation of the application and materials on December 21, 2023, with the associated review fees received on January 16, 2024.

The property is designated 'Downtown Commercial' in the City of Port Colborne Official Plan and zoned 'Downtown Commercial' and 'Fourth Density Residential' in the City of Port Colborne Zoning By-law 6575/30/18. The ZBA application proposed to change the current zoning on the property to a site-specific 'Downtown Commercial' zone in order to permit an eight-storey, 101 residential unit mixed-use apartment building with 131.58 m<sup>2</sup> of ground floor commercial space. The site-specific amendment also seeks to reduce the minimum landscaped area, increase the maximum gross floor area, reduce the number of parking spaces to 0.5 spaces per unit and establish a maximum building height of 25.9 m. The proposal contemplates the use of leased parking spaces on abutting lands.

A pre-consultation meeting was held to discuss the proposal on October 27, 2022 with staff from the City and Region in attendance. Since the pre-consultation meeting, the *Niagara Official Plan, 2022* (NOP) was approved by the Province, coming into force and effect. The following comments are offered from a Provincial and Regional perspective to assist the City with their consideration of the application.

## **Provincial and Regional Policies**

The property is within the 'Settlement Area' under the *Provincial Policy Statement, 2020* ("PPS"), designated 'Delineated Built-up Area' under *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 Consolidation* ("Growth Plan") and designated 'Built-Up Area' in the NOP.

The PPS directs growth to Settlement Areas, and encourages the efficient use of land, resources, infrastructure, and public service facilities that are planned or available. The Growth Plan contains policies that encourage accommodating forecasted growth in complete communities that are well designed to meet people's needs for daily living by providing convenient access to an appropriate mix of jobs, local services, public service facilities, and a full range of housing to accommodate a range of incomes and household sizes. To support the concept of complete communities, the Growth Plan sets minimum intensification targets within the Delineated Built-Up Area. The NOP builds on the direction of both the PPS and Growth Plan, setting the minimum intensification target for the Built-Up Area of Port Colborne to 30 percent as set out within Table 2-2 of the NOP. The NOP encourages opportunities for the integration of gentle density, and a range and mix of densities, unit sizes, and housing types, including affordable and attainable housing throughout the urban area in order to meet housing needs at all stages of life.

The proposed redevelopment of the subject lands will provide 101 new residential units, consisting of one- and two-bedroom units in an area that is serviced and in close proximity to various facilities that meet people's needs for daily living. The proposal will also contribute to the City's 30 percent intensification target as set out in the NOP. As the interface with surrounding land uses is primarily a local planning responsibility, the City should be satisfied that the proposed redevelopment is compatible with the surrounding local context and its built-form provides for a transition with nearby existing and planned land uses. Subject to the below comments, staff do not object to the proposal from a Provincial and Regional perspective.

## **Site Condition**

The PPS and NOP state that sites with contaminants in land or water shall be assessed and remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no adverse effects. The subject lands are currently used as both residential and commercial. The Environmental Protection Act, and regulations O. Reg. 153/04, 511/09 and 407/19, require that a Record of Site Condition (RSC) be filed on the Ministry of Environment, Conservation and Parks (MECP)

Environmental Site Registry (ESR) prior to any change in land use to a more sensitive use (i.e. commercial to residential).

Regional staff have reviewed the submitted 'Phase One Environmental Site Assessment' (ESA), prepared by Niagara Soil Solutions Ltd. (dated October 14, 2022) and the 'Preliminary Phase Two ESA and Excess Soils Assessment', prepared by Niagara Soil Solutions Ltd. (dated October 8, 2022).

The Phase One ESA included the subject properties as well as 48 Main Street West and was completed in accordance with O.Reg 153/04. The properties were developed for residential purposes, dating back to the early 1930s, with the addition of commercial use to 56 Main Street West in the early 1950s. The Phase One ESA identified 34 potentially contaminating activities (PCAs) that resulted in three on-site areas of potential environmental concern (APEC), including the importation of fill material of unknown quality, paints manufacturing, processing and bulk storage, and gasoline and associated products storage in fixed tanks. Accordingly, a Phase Two ESA was recommended to further evaluate these APECs. It was further recommended that a Designated Substance and Hazardous Materials Survey be conducted for each on-site structure to identify potential lead-based paints and asbestos-containing materials prior to demolition.

The Preliminary Phase Two ESA was completed for the subject lands (179 Mellanby Road and 56-56 ½ Main Street West). The Phase Two ESA found that the fill material across the subject lands is impacted by Metals (Lead and Nickel) ranging in depth from surface 0 m to shallow bedroom 0.5-07 m below ground surface. The qualified professional (QP) utilized the Table 7 Generic Site Condition Standards for Shallow Soils in a Non-Potable Groundwater Condition Residential property use. It was found that the soil material does not meet O.Reg 153/04 standards and therefore the soil must be excavated and removed prior to site redevelopment. Furthermore, the soil does not meet the Excess Soil Regulation 406/19 for reuse purposes and therefore it must be transferred to an approved MECP landfill or re-use site.

As of the date of this letter, no additional material has been submitted to indicate that the soil meets the MECP site condition standards, and the preliminary Phase Two ESA did not complete groundwater investigations. Accordingly, this study and filing of the RSC remains outstanding and will be required. Regional staff recommend that a holding provision (H) be placed on the amending Zoning By-law to allow time to complete the Phase Two ESA, remediation work, and ensure the requirement for a RSC is addressed. If the City concurs with a holding provision, the RSC must be filed and acknowledged by the MECP before the holding provision can be removed.

## **Land Use Compatibility**

The PPS states that sensitive land uses (including residential) shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise, and other contaminants. Furthermore, the NOP

states that where new development for a sensitive land use is adjacent to a Regional Road, the Region may consider the need for a noise study to address traffic noise as per Provincial Guidelines. The subject lands are located along Regional Road 3 and 03A, which have high average annual daily traffic counts. Accordingly, a Noise Impact Study was requested by Regional staff at the pre-consultation meeting.

Regional staff have reviewed the submitted 'Noise Impact Study', prepared by dBA Acoustical Consultants Inc. (dated April 2023). The Study was completed in accordance with the MECP NPC-300 Environmental Noise Guideline. The Study utilized a Class 1 area, which is an acoustical environment typical of a major population centre, with background sound level dominated by the activities of people, usually road traffic. The Study also projected future road traffic out to 2043 in accordance with the Region's Traffic Noise Control Policy (PW5.NO1.0). The Study found that transportation noise sources exceeded the MECP NPC-300 guideline and therefore, the following noise control measures are required for the development:

- Provision for central air conditioning for all units;
- Sound transmission class (STC) method for construction, including 32 STC for windows, 46 STC for doors, and 32 for patio door construction; and
- Registered warning clauses (Type B and C) on title, which warn purchasers/tenants of road traffic levels and that the dwelling has been fitted with forced air heating system and ducting to accommodate central air conditioning, allowing windows and doors to remain closed.

The Study further recommends that the qualified acoustical consultant certify that the required noise control measures have been incorporated into the builder's plans prior to issuance of a building permit and that the qualified acoustical consultant certify that the required control measures have been properly installed prior to occupancy.

Regional staff note that the above noise mitigation measures, warning clauses and future requirements can be addressed through the future Draft Plan application.

## **Urban Design**

The Region comments on urban design for development along Regional Roads, pursuant to Regional policy. The NOP contains urban design policies promoting excellence and innovation to be promoted in architecture, landscape architecture, site planning, streetscape design, and overall community design to ensure built environments are attractive, walkable, accessible, diverse, and functional. Regional Urban Design staff have reviewed the application and provide the following comments. At this early stage, staff provide the following suggestions:

At this early stage, staff encourage the development to include commercial uses that wrap the corner of the building at the intersection of Mellanby and Main Street West. Staff also encourage the development to consider alternative best practices for concealing the at grade parking along Mellanby Avenue. At night-time, the interiorized

parking will be visible from street. If activated spaces are not possible, a best practice approach may consider alternatives such as metal screens or lattices, living walls, high quality materials such as stone, and a layered approach to landscaping.

Through the future Draft Plan/Site Plan application, staff will review the streetscape interface between the development and Regional Roads (Main Street West and Mellanby Ave.). Staff will further request a detailed site plan, landscaping plans and details, and building elevations.

## **Regional Road Allowance**

The subject property is situated along Regional Road 03A (Mellanby Ave) and Regional Road 3 (Main Street W). Both of these sections of road meet the current road width requirements in the NOP. However, the intersection of the two roads requires a daylight triangle of 10m x 10m for the signalized intersection. Therefore, in accordance with the approved NOP, the following daylight triangle is to be granted gratuitously to the Region as part of the future Draft Plan / Site Plan applications for the subject property:

- A 10m x 10m daylight triangle at the intersection of Regional Road 03A and Regional Road 3.

Please note that the actual width of the required daylight triangle would need to be confirmed by an Ontario Land Surveyor as the information provided is only an approximation of the requirement.

## **Regional Permit Requirements**

Regional staff have reviewed the submitted plans and acknowledge that construction works are required within the Regional road allowance for servicing. Furthermore, there are two existing entrances on Mellanby Ave that will be required to be closed and barrier curb and boulevard restored. The civil plans are to be updated to provide the details for the closure of two entrances.

Prior to any construction taking place within the Regional Road allowance, the applicant will be required to obtain the necessary Regional Construction Encroachment and Entrance Permits from the Transportation Services Division, Public Works Department. Permit applications can be made online through the Region's website using the following link: <http://niagararegion.ca/living/roads/permits/default.aspx>

Also, please note that any signage proposed within 20 metres of the centreline of a Regional road allowance will require a Regional Sign Permit. Future Regional Permit applications can be submitted online through the Region's website using the following link: <http://niagararegion.ca/living/roads/permits/default.aspx>

## **Traffic Impact Study**

Regional Transportation Planning staff have reviewed the Transportation Impact Study (TIS), prepared by Paradigm Transportation Solutions (dated October, 2023) and have provided the following comments:

- The report has recommended closing the access to the park from Main Street West. Regional staff support this position; however, the recommendation will need to be approved by the City to ensure they are satisfied that the park can operate without this access. Future plans are to show the proposed barrier if access is to be limited. If the access is to remain open, the TIS is to be updated to address the City's position.
- The report also recommends that the existing crosswalk over the Lock 8 Park Driveway to Mellanby Avenue be redesigned with a crossing treatment consistent with the OTM Book 18 – Cycling Facilities, as shown in Figure 3.2 (layout for a multi-use crossing treatment over a driveway). Since this access is on private property the City is to approve the upgrade and determine if the applicant is responsible for the costs to upgrade the crossing.
- Section 5 - Figure 5.1 A is identical to Figure 4.2 A, please clarify why vehicles are still illustrated to be using Main Street at Lock 8 Park Driveway on this scenario. Capacity analysis assessment and left turn lane warrants at Mellanby Avenue & Lock 8 Park Driveway to be revised accordingly.
- Appendix G/H - Left Turn Lane Warrants for the Total Traffic Horizon are not included in the report for the intersection of Mellanby Avenue at Lock 8 Park Driveway. Please include this as part of the TIS to confirm that the left turn lane is not warranted.

## **Servicing**

The Functional Servicing Report, prepared by Hallex Engineering Ltd (dated October 19, 2023) was calculated based on the building code flows. The FSR is to be updated to calculate the anticipated flows based on the Region's Master Servicing Plan (MSP) or the City's design flows and people per unit. The site is within the Main Street Sewage Pumping Station which has a ECA capacity of 16.4 L/sec.

Therefore, based on the flows provided in this report the flows exceed the capacity of the station. The updated FSR is include analysis of the Region's station. The City is working on their Pollution Control Plan which may provide some opportunities to remove wet weather flows in the system to provide some capacity.

## **Stormwater Management**

The submitted Stormwater Management (SWM) Design Brief, prepared by Hallex Engineering Ltd. (dated October 24, 2023) proposes the development stormwater to mainly outlet to Lockview Park. The SWM and engineering plan details will be subject to final review and approval to ensure local infrastructure requirements can be adequately addressed.

## **Waste Collection**

Niagara Region provides curbside waste and organic collection for developments that meet the requirements of Niagara Region's Corporate Waste Collection Policy. The proposed development is eligible to receive Regional curbside waste and organic collection provided that the owners bring the waste and organics to the curbside on the designated pick up day, and that the following curbside limits are met:

### **Waste Collection (Mixed Use)**

- Green – no limit (weekly)
- Waste – 8 containers (bi-weekly)
- **Curbside collection only**

Region staff have reviewed the submitted site plan and acknowledge that the development is proposing to utilize in-ground Molok/Earth Bin waste containers.

The applicant is advised that this method of waste storage is not eligible for Regional collection and waste collection for the subject property will be the responsibility of the owner through a private waste collection contractor and not the Niagara Region.

Circular Materials Ontario has taken over the delivery of residential Blue / Grey Box recycling collection services currently administered by Niagara Region. The most up to date information can be found on the Region's website using the following link:

<https://niagararegion.ca/projects/blue-box-transition/default.aspx>

## **Regional Bicycle Network**

The subject property has frontage on Mellanby Avenue & Main Street West which is designated as part of the Regional Niagara Bicycling Network. If the bicycle routes are currently not established and identified with signage, it is the intent of the Region to make provisions for doing so when an appropriate opportunity arises. This may involve additional pavement width, elimination of on-street parking, etc.

## **Smart Growth Regional Development Charges Reduction Program**

This program provides a financial incentive to encourage responsive development and redevelopment in Designated Exemption Areas (outlined in Appendix 2 of Report PDS 3-2022: Regional Transitional Incentive Timelines) and on brownfield sites within urban areas. The project may be eligible for a regional development charge (RDC) grant resulting in a rebate of up to 50% of the RDCs paid, subject to meeting the requisite number of Smart Growth Design Criteria under this program and meeting the transition provisions detailed below.

In order to qualify for the Smart Growth RDC grant as a brownfield site, the property must meet the definition of "Brownfield," including:

- Having been previously used for industrial, institutional, or commercial or open lands use or other use as prescribed under the Environmental Protection Act, R.S.O. 1990, c.E.19 and Ontario Regulation 153/04 thereto, each as amended from time to time;
- Requiring site remediation in accordance with a Phase 2 Environmental Site Assessment (ESA); and
- Requiring a Record of Site Condition (RSC) be filed on the Province's Brownfields Environmental Site Registry (BESR).

In the fall of 2021, Regional Council approved an extension to the SG RDC Reduction Program to **October 1, 2024**, contingent on projects meeting the transition policy, which includes that the following must be completed before October 1, 2024 to be eligible for the program:

- the Owner and Niagara Region must enter into the transition agreement;
- a preliminary assessment must be completed with Regional staff;
- all applicable RDCs must be paid;
- a building permit must have been obtained; and
- construction must have been initiated on at least one phase of the project.

If the above are completed by October 1, 2024, a formal application process follows where there is a final assessment of the approved Site Plan. Note that the formal application must be submitted within one month of the completion of the project or within five years of the executed transition agreement, whichever is earlier. Please contact [sgrdc.incentives@niagararegion.ca](mailto:sgrdc.incentives@niagararegion.ca) to discuss eligibility further.

## Conclusion

Growth Strategy and Economic Development staff do not object to the proposed Zoning By-law Amendment application in principle; however, recommend the inclusion of holding provision (H) on the amending by-law in order to allow time for a Phase Two ESA, remediation work, and filing of a RSC to be completed. If City staff concurs with this approach, the RSC must be filed and acknowledged by the MECP before the holding provision can be removed.

Regional staff note that additional changes to the proposed site layout and, by extension, the proposed Zoning By-law Amendment, may be warranted depending on the outcome of discussions with the Seaway regarding the use of the abutting lands. Please send copies of any updated plans and/or revised applications for Regional staff's review and further comment, as applicable.

Staff advise that all other comments with further requirements can be addressed through the future Draft Plan application for the subject lands.

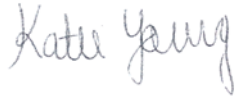


January 16, 2024

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Should you have any questions regarding the above comments, please contact the undersigned at [Katie.Young@niagararegion.ca](mailto:Katie.Young@niagararegion.ca). Please send a copy of the staff report and Council's decision on the application.

Kind regards,



Katie Young, MCIP, RPP  
Senior Development Planner

cc: Pat Busnello, MCIP, RPP, Manager, Development Planning  
Stephen Bureau, Development Approvals Technician  
Shaili Shojaei, Urban Designer