



**Subject: Recommendation Report for Official Plan & Zoning By-law Amendment Applications, File D09-01-20 & D14-03-20 Mineral Aggregate Resources & Operation Zone**

**To: Council**

**From: Planning and Development Department**

Report Number: 2021-63

Meeting Date: March 8, 2021

---

### **Recommendation:**

That the Official Plan Amendment, attached hereto as Appendix A, adding new Mineral Aggregate and Petroleum Resources and aquifer protection policies, be approved.

That the Zoning By-law Amendment, attached hereto as Appendix B, adding new Mineral Aggregate provisions, definitions and aquifer protection provisions, be approved.

---

### **Purpose:**

The purpose of the report is to provide Council with a recommendation regarding a proposed Official Plan and Zoning By-law Amendment introducing new policies and provisions related to Mineral Aggregate Resources and aquifer protection in the rural area.

---

### **Background:**

On September 28, 2020, Council received Planning & Development report 2020-123 for information in which contained a staff proposal to amend the Official Plan and Zoning By-law 6575/30/18 which was subject to a public meeting under the Planning Act.

It was proposed to amend the Official Plan's Mineral Aggregate and Petroleum Resources policies under file number File D09-01-19 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 adjoining lands from the negative effects of a reduced water supply, noise, dust, odour, lighting and outdoor storage;*
- ii) the protection of the environment from negative effects of dust, chemical spills, run-off, or contamination of surface or groundwater;*
- iii) access being obtained directly to a road capable of carrying the anticipated truck traffic; and,*
- iv) notwithstanding b) above, ancillary land uses will not be permitted where they are identified as a prohibited use in accordance with the Source Water Protection policies in Section 8.3 of this Plan.*

Under file number D14-03-20, Zoning By-law 6575/30/18 proposed to add the following to Section 2.3 Uses Prohibited in All Zones:

- b) Asphalt and cement manufacturing without an amendment to this by-law.*

As Council is aware, there was interest from the public with several written submissions being received for the September 28, 2020, Public Meeting. Minutes of the public meeting were presented to Council at their meeting on October 13, 2020.

On October 26, 2020, Councillor Wells brought forward a motion to identify the Highly Vulnerable Aquifer as a drinking water source for the rural portion of Port Colborne and to protect it.

The motion passed by Council at the October 26, 2020 Council meeting was as follows:

That Council recognizes the Aquifer as identified in Schedule B3 of the Official Plan as a source water for the rural residents of the City; and

That the Director of Planning and Development be directed to amend the Official Plan to include the Aquifer such that the Aquifer receives the same consideration and protection from susceptible threats of contamination or adverse impact as the intake protection zones (IPZ-1 and IPZ-2); and

That the Region of Niagara, Township of Wainfleet, City of Welland, Town of Fort Erie and Niagara Peninsula Conservation Authority be notified of the City's action and be requested to pursue similar updates to their municipal planning documents in order to protect the aquifer.

On December 14, 2020, staff advised Council that a recommendation report would be submitted once additional public comments received after the public meeting can be reviewed.

On January 4, 2021, staff met with Regional Planning staff to discuss the proposed amendments and were informed that a report will be submitted on February 17, 2021, to the Regional Planning and Economic Development Committee in response to a 2020 motion.

Regional minutes of a December 9, 2020, Planning and Economic Development Committee meeting are copied below:

### 7.3 Port Colborne Aquifer

Councillor Butters requested staff provide a report at the Planning and Economic Development Committee meeting being held on February 17, 2021 respecting changes to Niagara Region's planning documents in order to protect the Port Colborne Aquifer, as identified in Schedule B3 of the City of Port Colborne's Official Plan.

Attached as Appendix D is the Regional Planning report. Staff is now in a position having reviewed all information to provide a recommendation report for Council's consideration.

---

## **Discussion:**

### **Review of Council's October 26, 2020 direction**

Staff have reviewed the Provincial Policy Statement (PPS) Policies and the Growth Plan related to Water Resources and for the protection/identification of the Highly Vulnerable Aquifer and provide the following:

#### **► PPS**

2.1.1 Natural features and areas shall be protected for the long term.

2.1.2 The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.

2.2.1f) implementing necessary restrictions on development and site alteration to:

1. protect all municipal drinking water supplies and designated vulnerable areas; and
2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;

## ► Growth Plan

### 4.2.1 Water Resource Systems

1. Upper-and single-tier municipalities, partnering with lower-tier municipalities and conservation authorities as appropriate, will ensure that watershed planning is undertaken to support a comprehensive, integrated, and long-term approach to the protection, enhancement, or restoration of the quality and quantity of water within a watershed.
2. Water resource systems will be identified to provide for the long-term protection of key hydrologic features, key hydrologic areas, and their functions.
3. Watershed planning or equivalent will inform:
  - a) the identification of water resource systems;
  - b) the protection, enhancement, or restoration of the quality and quantity of water;
  - c) decisions on allocation of growth; and
  - d) planning for water, wastewater, and stormwater infrastructure.
4. Planning for large-scale development in designated greenfield areas, including secondary plans, will be informed by a subwatershed plan or equivalent.
5. Municipalities will consider the Great Lakes Strategy, the targets and goals of the Great Lakes Protection Act, 2015, and any applicable Great Lakes agreements as part of watershed planning and coastal or waterfront planning initiatives.

The City's Official Plan identifies the Highly Vulnerable Aquifer Areas in the City as Schedule B3 but provides no policy direction for lands that rely on private well water supply. Policies in the Official Plan and the Regional Plan only speak to protecting municipal water supply around intake areas. Both documents are silent for water supply when municipal services are unavailable.

The policies in the Official and Regional Plan regarding the Highly Vulnerable Aquifer Areas and protection of intake areas for municipal water supply first involved the completion of a science-based Assessment Report and a Source Protection Plan by the Niagara Peninsula Conservation Authority (NPCA).

When Official Plan policies of Section 8.3 were proposed to Council in 2014, they had to be read in their entirety and in conjunction with the Source Protection Plan, Assessment Report and the Explanatory Document that provided the context and rationale for the land use policies and in identifying significant threats for the Port Colborne water treatment plant intake protection zones.

Section 8 of the Official Plan was amended to identify the intake protection zones along the Welland Canal and included the following policies that controlled land use:

- a) No new waste disposal sites shall be permitted within the Port Colborne IPZ 1.
- b) No new waste disposal sites for the application of untreated septage to land shall be permitted within the Port Colborne intake Protection Zone 2.
- c) The commercial storage of pesticides in a quantity greater than 2,500 kg is considered a significant threat in the Port Colborne Intake Protection Zone 1. The future storage of pesticides in quantities greater than 2,500 kg may only be permitted subject to an approved Risk Management Plan within the Port Colborne Intake Protection Zone 1.
- d) The storage of road salt is considered a significant threat in the Port Colborne Intake Protection Zone 1, if stored outside with no cover, in amounts greater than 5,000 tonnes. New open storage of road salt greater than 5,000 tonnes is not permitted within the Port Colborne Intake Protection Zone 1.
- e) The storage of snow, and the contaminants associated with it, is considered a significant threat in the Port Colborne Intake Protection Zone 1 if stored in an area greater than 1 hectare. New storage of snow greater than 1 hectare in area is not permitted within the Port Colborne Intake Protection Zone 1.
- f) The discharge from untreated stormwater management systems is a significant threat where the storm sewer drainage area is at least 10ha in size with the predominant land use being commercial or industrial. Future stormwater management facilities which meet these criteria are not permitted within the Port Colborne Intake Protection Zone 1 and Intake Protection Zone 2.
- g) The discharge from wastewater treatment plants or combined sewer overflows, or discharge of industrial effluent is considered a significant threat as defined under the applicable circumstances in table 20, table 21, table 46, and in table 47 in Appendix C of the Assessment Report (2013). Future combined sewers, wastewater treatment facilities, and industrial effluent systems which meet these criteria are not permitted within the Port Colborne Intake Protection Zone 1 and Intake Protection Zone 2.
- h) An application for commercial or industrial development or the expansion, extension, or alteration of existing stormwater management facilities or the expansion of an existing commercial or industrial development, in instances where the Risk Management Official deems such an expansion may pose a significant threat to municipal drinking water, within the Port Colborne Intake Protection Zone 1 and Intake Protection Zone 2, shall be accompanied by a stormwater management plan that demonstrates and implements best

management practices related to managing stormwater runoff to the satisfaction of the Region's Chief Planning Official and City of Port Colborne, in consultation with the Risk Management Official, such that the development does not pose a significant threat to municipal drinking water.

i) In consideration of existing or future significant threats related to stormwater discharges, the City shall, within 5 years from the date the Source Protection Plan comes into effect (October 1, 2019), prepare and implement a comprehensive stormwater management master plan for the catchments out-letting to the Port Colborne IPZ 1 and Port Colborne IPZ 2. The stormwater management master plan will be prepared in accordance with the Municipal Class Environmental Assessment and will include:

An evaluation of the cumulative environmental impact of stormwater from existing and planned development.

j) The storage, and application to land of agricultural source material, and the lands used for livestock grazing/pasturing, farm animal yards and outdoor confinement areas, are significant threats in the Port Colborne Intake Protection Zone 1 and Intake Protection Zone 2. Future agricultural land uses are not permitted within the Port Colborne Intake Protection Zone 1 and Intake Protection Zone 2.

k) Any planning or building permit application for a land use other than residential in Port Colborne Intake Protection Zone 1 and Intake Protection Zone 2 may require a Section 59 Notice from the Region of Niagara's Risk Management Official. The requirements of the notice will be determined through the application screening process.

l) By February 1st of each year, the City of Port Colborne shall report to the Source Protection Authority on the steps it has taken in the previous calendar year to implement the significant drinking water threat policies.

In response to Council's direction that the Aquifer receives the same protection as the intake protection zones (IPZ-1 and IPZ-2) creates a land use policy conflict and cannot be supported by staff.

*The Planning Act, R.S.O. 1990*, as amended, provides that amendments may be made to the Official Plan. However, when considering policy amendments, the policies will need to ensure compatibility with the surrounding land uses and be consistent with the Provincial Policy Statement (PPS), conforms to the Growth Plan, Regional and City Plan.

Prohibiting certain land use on designated Agricultural, Rural, Aggregate Resources, Hamlet, and Rural Employment lands create this policy conflict with use being supported in the Regional and City Official Plan. For example, the intake protection zones do not want land used for livestock grazing/pasturing. Prohibiting agricultural land

use on aquifer lands would not be supportable from a land use policy perspective as Agriculture land use is protected and preserved for long term use in the PPS, Regional and City Plan.

Staff however have reviewed the intake protection policies in the Official Plan and have proposed land uses to prohibit in the Highly Vulnerable Aquifer. These were done after review of Section 2.3.1 of the PPS which states that agricultural areas shall be protected for long-term use and while balancing Section 2.2.1 of the PPS. Staff have read the PPS in its entirety and feel that the relevant policies have been considered and applied for proposing the Official Plan amendments.

The Draft Zoning By-law attached as Appendix B proposing prohibitions can be supported (e.g. non-industrial livestock grazing will still be permitted on designated agricultural land in the aquifer).

### **Review of the Niagara Region Planning Report on Aquifer Options**

Staff have reviewed the report (attached as Appendix D) and it is supported. It provides good information on the protection of groundwater resources and drinking water systems. It speaks to what staff have been drafting following receipt of public comments on the proposed applications. Regional staff commented that there are mechanisms such as the zoning by-law that can offer the protection of groundwater resources.

The report supports what staff have proposed through the Zoning By-law amendment by not allowing certain land use in the Highly Vulnerable Aquifer. Regional staff conclude that they are presently developing a comprehensive water resource system as part of their new Niagara Official Plan that will include specific policies regarding the Highly Vulnerable Aquifer. Once approved, the City would then be able to make amendments the Official Plan to ensure conformity with the Regional Plan.

### **Summary of Official Plan and Zoning By-law amendments**

The following amendments have now been included and are summarized below:

#### **Official Plan**

- Amend Section 8.3 Source Water Protection by relocating it to Section 4.1.3.2
- Amend Section 4 Natural Heritage by adding 4.1.3.3 Highly Vulnerable Aquifer policies a) to g)
- Introducing new Source Water Protection policies for rural lands in the Highly Vulnerable Aquifer.
- Site Alteration policy in the Highly Vulnerable Aquifer.

- Mineral Aggregate Policy additions in Section 10.

#### Zoning By-law

- Deleting a) Mineral Aggregate Operations and b) Making or establishment of pits and quarries for the purpose of extracting natural materials from the earth including soil, clay, sand, gravel, stone, rock, shale and minerals; and replacing it with a) Aggregate Extraction Operation.
- Adding the following definitions to Section 38: Aggregate Extraction Operation, Aggregate Storage Area, Natural Ground Water Table, Wet Pit, Dry Pit and the Highly Vulnerable Aquifer.
- Addition of Schedule A10 Highly Vulnerable Aquifer Overlay.
- Addition of Section 2.3.2 Highly Vulnerable Aquifer prohibited uses.
- Removal of the Mineral Aggregate Operation definition.
- Addition of the following prohibited uses in the Mineral Aggregate Operation zone:
  - Asphalt Plant, Concrete Plant and Aggregate transfer station.

---

#### Internal Consultations:

No internal consultation for proposed Official Plan policy and Zoning By-law changes were necessary.

---

#### Financial Implications:

There are no financial implications.

---

#### Public Engagement:

The public was first engaged on the proposed applications on a Zoom Open House on September 10, 2020, a public meeting on September 28, 2020 and additional public comment submission after the public meeting.

---

#### Conclusion:

Staff have recommended amendments to the Official Plan and the Zoning By-law by adding policies to the Mineral Aggregate Resources designation, new policies and provisions protecting the Highly Vulnerable Aquifer. The recommendations are made in the public's interest and represent good planning.

---

**Appendices:** (If none delete section)

- a. Appendix A: Draft Official Plan Amendment
- b. Appendix B: Draft Zoning By-law Amendment
- c. Appendix C: Schedule A10 Draft Zoning By-law Amendment
- d. Appendix D: Regional Planning Report on Aquifer Options

Respectfully submitted,

Dan Aquilina, MCIP, RPP, CPT  
Director of Planning and Development  
905-835-2901 ext. 203  
Dan.Aquilina@portcolborne.ca

**Report Approval:**

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