

---

**Subject:** Background of Town of Niagara-on-the-Lake New Adopted Official Plan

**Report to:** Planning and Economic Development Committee

**Report date:** Wednesday, March 11, 2020

---

## **Recommendations**

1. That Report PDS 11-2020 **BE RECEIVED** for information; and
2. That report PDS 11-2020 **BE CIRCULATED** to the Town of Niagara on the Lake, prescribed agencies and interested parties.

## **Key Facts**

- The purpose of this report is to update Council on the status of the new Niagara on the Lake Official Plan, which was received for Regional review on January 30, 2020.
- Niagara Region is the approval authority for all local municipal Official Plans within the Region and typically must make a decision with respect to the approval or refusal of a plan within 120 days.
- The Town's Manager of Planning has provided the Region with a statement that indicates the Town's new Official Plan is not consistent with Provincial Policy and does not conform to the Regional Official Plan.
- The Planning Act provides an exception to the 120 day timeframe by allowing for a temporary pause when a local Official Plan does not conform to an upper tier (Regional) Official Plan.
- Appendix I is a Statement of Opinion of Non-conformity with the Regional Official Plan signed by Niagara Region's Commissioner of Planning and Development Services.
- The Region has met with Town staff and elected officials regarding a path forward to bring the plan into Regional conformity so that Regional Council can consider it for approval.

## **Financial Considerations**

Costs associated with the review are accommodated within the Planning & Development Services 2020 Operating Budget.

## Analysis

The Town of Niagara on the Lake (NOTL) began their Official Plan project in 2012 with the development of a Community Vision and draft policy direction. Regional staff were consulted throughout this process and provided substantive feedback related to Provincial and Regional conformity. However, since 2012 the Provincial policy planning framework has changed considerably.

### The Changing Policy Framework:

- 2014 - release of the 2014 Provincial Policy Statement;
- 2015 – Royal Ascent of Bill 73: Smart Growth for our Communities Act (2015)
- 2015-2017 Coordinated Policy Review:
  - release of the 2017 Growth Plan for the Greater Golden Horseshoe;
  - release of the 2017 Greenbelt Plan; and
  - release of the 2017 Niagara Escarpment Plan;
- 2019 - Royal Ascent of Bill 108, More Homes, More Choice: Ontario's Housing Supply Action Plan;
- 2019 - release of the current 2019 Growth Plan as part of the Housing Supply Action Plan;
- 2019 - changes to the *Planning Act*, R.S.O. 1990, as amended;
- 2019 - changes to existing regulations issued under the *Planning Act*; and,
- 2019 – proposed changes to the Provincial Policy Statement.

Despite the rapid changes to the land use planning policy framework, the *Planning Act* (1990) continues to require local Official Plans and decisions related to planning matters to be consistent with Provincial policies and plans, be consistent with the Provincial Policy Statement, meet the requirements of the *Planning Act* (1990) and conform to the upper tier (Regional) Official Plan.

Throughout the changing planning policy framework, Regional and Town staff met on several occasions (see Appendix II) to discuss conformity matters between the Town's draft OP and the Regional Official Plan, the 2017 Provincial plans and 2019 Growth Plan. Regional staff also noted that the Region is currently preparing a new Regional Official Plan and encouraged the alignment of these OP programs to achieve improved and coordinated policy outcomes. Regional staff has developed a comprehensive OP program to ensure conformity with new Provincial planning directions released as part

of the suite of policy and legislative changes over the last several years. This OP program has been messaged to both Town staff and Council.

On October 22, 2019, NOTL Town Council adopted its new Official Plan through By-law 5180-19. This new Official Plan will replace the in effect Official Plan adopted on March 14, 1994 through By-law 2735-94, and any amendments made thereto, once approved by the Region.

The Region is the approval authority for all local Official Plans. Submission of a Record for the adopted NOTL Official Plan was hand delivered to Niagara Region on January 14, 2020, with an addendum item sent by e-mail on January 30, 2020.

On February 13, 2020, Regional Planning staff circulated a letter to the Town Clerk acknowledging that requirements under Section 7 of Ontario Regulation 543/06 (as amended) issued under the *Planning Act (1990)* with respect to submission of a complete record had been satisfied. The Region's review and approval process commenced as of this date.

As the approval authority for the Town's new adopted Official Plan, Niagara Region has 120 days after the day the Record is deemed complete to review the Official Plan for conformity and consistency and for Council to either give a decision to approve, modify and approve, or refuse the Official Plan. If Council fails to give a decision within 120 days, an appeal may be filed for non-decision with the Local Planning Appeal Tribunal.

As an exception, subsection 17(40.2) of the *Act* allows a temporary pause in processing timeframe of a local OP when in the opinion of the approval authority, the Plan does not conform to the upper-tier municipality's Official Plan. Provided the opinion is stated within the legislated 120 days after receiving the local Official Plan, no appeal of the approval authority's opinion of non-conformity is allowed. Additionally, no appeals for a non-decision can be filed until the non-conformity is resolved.

Subsection 17(40.2) was added to the *Act* through a suite of reforms under Bill 73, *Smart Growth for Our Communities Act*, (2015) in an effort to ensure better coordination between various levels of government.

As the upper-tier of government and approval authority, Niagara Region is responsible for reviewing and determining local Official Plan conformity and consistency. Regional Council is responsible for making decisions with respect to approval or refusal of local

Official Plans. Upon resolving matters of conformity and consistency with the NOTL new Official Plan, staff will prepare a report for consideration recommending a decision with respect to the Official Plan.

In addition to the Town's statement that the new adopted Official Plan is not consistent with Provincial Policy and does not conform to the Regional Official Plan, Regional staff have identified multiple areas where conformity with the Regional Official Plan has not been achieved. These include, but are not limited to:

- the identification of and permitted uses within the Natural Heritage System;
- the identification of and permitted uses within agricultural lands;
- growth management; and,
- proposed employment land conversions and permitted uses within the employment areas.

A statement of opinion of non-conformity with the Regional Official Plan has been attached as Appendix I. The statement is intended for circulation to all prescribed agencies and all persons who have requested to be circulated on matters related to the NOTL Official Plan.

In discussion with Town staff, the development of a work program has been prioritized as a means to ensure that non-conformity is resolved and the Official Plan continues through the approvals process. The 120-day processing period under subsection 17(40.4) will not begin until the issues related to non-conformity have been resolved.

### **Alternatives Reviewed**

None.

### **Relationship to Council Strategic Priorities**

This report advances Council's strategic priority of a sustainable and engaging government by ensuring delivery of high quality, efficient and coordinated core services (i.e. the review and approval of local Official Plans).

### **Other Pertinent Reports**

N/A

---

**Prepared by:**

Morgan, Casciani, MCIP, RPP  
Senior Planner  
Community Planning

---

**Recommended by:**

Rino Mostacci, MCIP, RPP  
Commissioner  
Planning and Development Services

---

**Submitted by:**

Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

*This report was prepared in consultation with Erik Acs, Manager of Community Planning, and reviewed by Doug Giles, Director of Long Range and Community Planning and Rino Mostacci, Commissioner of Planning and Development Services.*

**Appendices**

Appendix I: Statement of Opinion of Non-Conformity with the Regional Official Plan

Appendix II: Niagara on-the-Lake Official Plan Background – Timelines and Regional Staff's Points of Engagement (2012 – 2020)



## Planning and Development Services

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7  
905-980-6000 Toll-free: 1-800-263-7215

DELIVERED BY MAIL

March 11, 2020

To All Prescribed Agencies and All Persons Who have requested  
Notice of the Region's Decision of the  
Town of Niagara-on-the-Lake Official Plan  
File: D.10.M.18.12

**RE: Statement of Opinion of Non-Conformity with the Regional Official Plan under  
Subsection 17(40.2) of the *Planning Act***

On October 22, 2019, Niagara-on-the-lake City Council adopted its new Official Plan (the "Plan"). On January 30, 2020, the record pursuant to subsection 17(31) of the Planning Act was received by Niagara Region as the approval authority to make a decision on the Plan. On February 13, 2020 Niagara Region circulated a letter of acknowledgement of complete record to the Town.

Beginning in 2012 the Town of Niagara-on-the-Lake commenced a three-phase Official Plan project. As part of the project, the Town retained consulting services in 2015 for the preparation of the new Official Plan. Over the years, a number of draft versions of the Plan have been circulated to Niagara Region's Planning staff for review and comment. Through the Region's review, staff have identified a number of issues with respect to the Plan's conformity with the Regional Official Plan. The Plan does not conform to the Regional Official Plan with respect to policies and mapping related to, among other matters:

- the identification of and permitted uses within the Natural Heritage System;
- the identification of and permitted uses within agricultural lands;
- growth management; and,
- proposed employment land conversions and permitted uses within the employment areas.

The identified matters above is not an exhaustive list of non-conformity, but reflect a sample of matters that need to be resolved prior to the approval authority making a decision on the Plan. Regional Planning staff will continue to work closely with Niagara-on-the-Lake Planning staff to ensure matters of non-conformity with the Regional Official Plan are resolved and that the Town's Official Plan continues through the approvals process.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Mostacci".

Rino Mostacci, MCIP, RPP  
Commissioner, Planning and Development Services

cc: Craig Larmour, Director of Community and Development Services, Town of Niagara-on-the-Lake

## **Niagara on-the-Lake Official Plan Background – Timelines and Regional Staff's Points of Engagement (2012 – 2020)**

**2012:** The Town of Niagara on-the-Lake commenced a Community Vision process as a first phase in the OP project to guide the future development of the Town over the next 20 years. The process resulted in the formation of eight (8) strategic pillars and associated goals, which would be implemented through the Town's new Official Plan.

**2013 – 2014:** Following the development of the community vision, the Town commenced Phase 2 background work on the new Official Plan, including producing a series of issues papers and draft policy development for various introductory sections of the new OP. Regional Planning staff were provided the opportunity to comment on background papers during this phase of the OP project.

**March 2015:** The Town moved to the third phase of the project with a request for proposal for consulting services for a new Official Plan. Through the procurement process, Planscape was the successful proponent and awarded the contract.

**November 2015:** The Town circulated first draft of the Official Plan prepared by the consultant to the Region for comment. Regional and Town staff met to discuss high-level comments on the first draft OP.

**March 2016:** The Town circulated Draft 2 of the Official Plan to the Region for comment. A third draft was circulated to the Region for review and comment in June 2016.

**Summer 2016:** The Region circulated Draft 3 of the Town's OP to the Province through the One Window Planning Service to obtain comments from the respective ministries on Provincial conformity.

**December 23, 2016:** The Province provided written comment on Draft 3 of the OP to both the Region and Town, identifying concerns with the general organization of the Official Plan, issues with terminology, and a series of non-conformity matters with Provincial policies.

**January 2017:** Regional staff consolidated Provincial and Regional comments into a matrix detailing over 215 itemized non-conforming draft policies in the third draft of the local OP. The matrix was provided to the Town for its review and consideration.

**January 23, 2019:** Niagara Region was circulated Draft 5 of the Town's Official Plan with a request for comment by March 6, 2019. (An interim fourth draft version of the OP was not circulated to the Region for comment.)

**February 13, 2019:** In an effort to scope the review and meet the requested comment deadline, Regional staff requested the Town provide a "track changes" document for the over 350-page draft OP. Regional Planning also requested comment responses detailing how past Provincial and Regional comments provided in the Draft 3 comment matrix had been incorporated into Draft 5 of the Town's OP and how matters of non-conformity with Provincial and Regional policy had been addressed.

**February 2019:** The Town hosted an Official Plan Open House and Public Meeting, pursuant to the *Planning Act*.

**March 6, 2019:** Niagara Region Planning staff provided the Town with preliminary comments on Draft 5. Preliminary comments highlighted a letter in February 2019 from the Minister of Municipal Affairs and

Housing Minister, Steve Clark. The Minister's letter was sent to municipal Heads of Council advising of anticipated changes to the *Planning Act*, the Provincial Policy Statement, along with other provincial legislation and policies. The Minister's letter indicated that the upcoming changes may help to inform local actions and therefore, municipalities may wish to consider an interim "pause" on major planning documents (i.e. Official Plans and Zoning By-laws).

Regional staff re-iterated in both written comments and in-person meetings with Town staff the uncertainty of the changing policy context relative to completion of the Town's new Official Plan. Regional staff highlighted that the Town's OP would need to demonstrate conformity with all in effect Provincial plans and policies and the Region's Official Plan.

Regional Planning staff also discussed timing of the new Niagara Region Official Plan project and opportunities for coordinating these major planning projects to achieve policy conformity.

The Region is currently preparing the new Niagara Official Plan to guide growth and development in Niagara over the long-term and to conform to the suite of new policy documents released by the Province, including the 2014 PPS, the 2019 Growth Plan for the Greater Golden Horseshoe, the 2017 Greenbelt Plan and the 2017 Niagara Escarpment Plan. Regional staff is also reviewing existing Regional Official Plan policies against the proposed changes to the Provincial Policy Statement. In light of these recent and on-going policy changes, Regional and Town staff discussed the option and advantages of synchronizing the local and Regional Official Plan projects.

**June 4, 2019:** Niagara Region circulated Draft 5 of the Town OP to the Province for a One Window Planning Service review and comment.

**August 1, 2019:** The Town of Niagara on-the-Lake held a Special Council Meeting with an update on the Town's new Official Plan from their consultant, Planscape.

**August 15, 2019:** The Town held another Special Council Meeting on the new OP (Draft 5). During the meeting, more than 35 changes were made by resolution to this draft of the Official Plan. Town Council adopted the Official Plan with the changes to the document made during the Special Council meeting.

**October 22, 2019:** Town Council passed By-law No. 5180-19, being a By-law to adopt the new Official Plan under Section 17 of the *Planning Act*.

**January 13, 2020:** The Region received comments from the Province through the One Window Planning Services on Draft 5 of the Town's Official Plan. Provincial comments outlined a series of issues and concerns with the Plan's alignment and conformity to Provincial policies. Regional staff provided Town staff with an e-mailed copy of the province's comments on January 30, 2020. The Province had not circulated the Town a copy of the comments as they had done with the December 23, 2016 comments.

**January 14, 2020:** The Town forwarded the official record for the Niagara on-the-Lake Official Plan to the Region for review and approval.

**January 30, 2020:** The Town forwarded Region additional materials requested as part of the complete record package.



**January 31, 2020:** Region and Town Planning staff met to discuss the Town's Official Plan, including Provincial comments dated January 13, 2020 and concerns of the adopted Official Plan's non-conformity with Provincial policies and the Regional Official Plan.

**February 13, 2020:** Regional Planning staff circulated a letter to the Town acknowledging completeness of the OP record under subsection 7 of Ontario Regulation 543/06 (as amended) issued under the *Planning Act* and commencement of the review and approvals process.