



# **The Municipal Corporation of the Town of Fort Erie**

## **By-law No. 80-2019**

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### **Being a By-law to Authorize the Entry into a Memorandum of Understanding between The Regional Municipality of Niagara and Local Area Municipalities for Planning Function and Services In Niagara**

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**Whereas** By-law No. 94-07 was passed by the Municipal Council of the Town of Fort Erie on the 18<sup>th</sup> day of June, 2007 to authorize the entry into a Memorandum of Understanding between The Regional Municipality of Niagara, Area Municipalities and the Niagara Peninsula Conservation Authority for improving the Planning Function in Niagara; and

**Whereas** at the Council-in-Committee Meeting held July 12, 2010 Report No. CDS-040-10 was authorized and approved to amend the Memorandum of Understanding for improving the Planning Function in Niagara; and

**Whereas** at the Council-in-Committee Meeting held February 18, 2014 Report No. CDS-17-2014 was authorized and approved to endorse the Draft Memorandum of Understanding between the Town, Region and Niagara Peninsula Conservation Authority relative to the delivery of Planning Services; and

**Whereas** at the Council-in-Committee Meeting held May 6, 2019 Report No. PDS-29-2019 was authorized and approved to endorse the updated Memorandum of Understanding for Planning Function and Services between The Regional Municipality of Niagara and Local Area Municipalities and to authorize the Chief Administrative Officer to sign the updated Memorandum of Understanding on behalf of the Town of Fort Erie; and

**Whereas** it is deemed desirable to authorize the entry into a new Memorandum of Understanding between The Regional Municipality of Niagara and Local Area Municipalities for Planning Function and Services in Niagara;

**Now therefore** the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

- 1. That** the entry into a new Memorandum of Understanding between The Regional Municipality of Niagara and Local Area Municipalities for the Planning Function and Services in Niagara in the form of Schedule "A", attached hereto and forming part of this by-law, is authorized and approved.
- 2. That** the Chief Administrative Officer is authorized and directed to execute the Memorandum of Understanding on behalf of the Town of Fort Erie under the corporate seal.

- Read a first, second and third time and finally passed this 21<sup>st</sup> day of May, 2019.**

Clerk

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## **MEMORANDUM OF UNDERSTANDING**

between

The Regional Municipality of Niagara

The Town of Fort Erie

The Town of Grimsby

The Town of Lincoln

The City of Niagara Falls

The Town of Niagara-on-the-Lake

The Town of Pelham

The City of Port Colborne

The City of St. Catharines

The City of Thorold

The Township of Wainfleet

The City of Welland

The Township of West Lincoln

***Planning Function and Services in Niagara***

***March 2019***

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## **Part 1**

### **Preamble**

#### **Part 1 – Preamble**

##### **1.1 Introduction**

The Memorandum of Understanding (MOU) has been prepared for the following thirteen government planning authorities (hereafter referred to as Parties), which operate within a two-tier system in the Niagara Region planning area:

- a) The Council for the Regional Municipality of Niagara (Region); and
- b) The Councils of the Town of Fort Erie, the Town of Grimsby, the Town of Lincoln, the City of Niagara Falls, The Town of Niagara-on-the-Lake, the Town of Pelham, the City of Port Colborne, the City of St. Catharines, the City of Thorold, the Township of Wainfleet, the City of Welland and the Township of West Lincoln (collectively referred to as the “area municipalities”);

The purpose of this MOU is to update and clarify the respective roles and responsibilities of the Parties, as well as to be an instrument of continuously improving service and relationship management. This revised MOU sets the foundation for undertaking transformational changes into the future and confirms the framework within which the Parties will function and provide planning services.

The MOU has been collaboratively developed by the MOU Working Group, a sub-group of the Niagara Area Planners. The MOU has been reviewed, refined and endorsed by the Niagara Area Planners. The MOU was also presented for discussion to the CAOs, Building Officials and Public Works group meetings during January/February 2019.

##### **1.2 Background**

In 2007, the Region, area municipalities and NPCA signed a Memorandum of Understanding (2007 MOU) for improving the planning function in Niagara. The primary function was to be a relationship management tool with a focus on the respective roles and responsibilities of the signing parties for policy planning and the review of development applications. The 2007 MOU was reviewed and revised in 2011 and again in 2014.

The 2007 MOU (as amended) succeeded in managing relationships, reducing duplication and effecting continuous improvements. However, significant changes have more recently occurred in Niagara, in terms of legislation, relationships, resources, and growth that have impacted the established roles and responsibilities.

Following discussions at Niagara Area Planners, in September 2017, reports were presented to Regional Council and the NPCA (PDS-43-2017 and CR-92-17 respectively) outlining the need to update the 2007 MOU, as amended, as well as the 2008 Protocol for Plan Review and Technical Clearance between the Niagara Peninsula Conservation Authority and Niagara Region (2008 Protocol).<sup>1</sup>

A priority was established for updating the 2008 Protocol due to new directions within the NPCA that required the NPCA and Regional roles to be realigned. This work was undertaken in Fall 2017. The revised Protocol was approved by Regional Council and the NPCA in January 2018 and came into effect upon these approvals.

The 2018 Protocol shifted responsibility for reviewing policy and development applications and providing technical clearance services ensuring compliance with the Regional Official Plan and Provincial legislation to the Region. In addition, the Region also took on responsibility for stormwater management review. A full description of the Region and NPCA's roles and responsibilities are detailed in the 2018 Protocol, which is attached to this MOU as Appendix III, and is to be read in conjunction with the MOU. Following the approval and implementation of the 2018 Protocol, work commenced to update the MOU.

### **1.3 Goal**

The MOU established a goal of having "an integrated and seamless planning system that is embraced and easily understood by Councils, the public, applicants and staff that encourages participation in policy development and application processing." This goal continues to have relevance; however, it does not address all of the principles of the ideal planning system. To assist the Parties in managing growth and change while protecting the natural environment, agricultural land base and cultural heritage, the goal of this MOU is having:

A Niagara region planning system that is:

- Integrated
- Efficient
- Collaborative

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<sup>1</sup> The 2008 Protocol consolidated planning services with respect to the natural environment.

- Proactive
- Solution focused
- Consistent
- Predictable
- Easily understood
- Transparent, and
- Responsive.

#### **1.4 Objectives**

This MOU seeks to achieve the following objectives:

- To clarify respective roles and responsibilities with respect to the provision of planning services;
- To deliver timely, accurate, effective and customer-focused planning services;
- To eliminate unnecessary duplication to maximize the utilization of existing resources and technical expertise and, where possible, coordinate efforts;
- To develop transparent, effective, efficient and collaborative processes for policy development;
- To pursue improvements to the planning application processes that achieve good planning, streamlining, predictability and consistency;
- To improve on communications between regional, NPCA and area planners to work together more effectively and efficiently;
- To identify an approach/process to interpret policy thereby ensuring consistency both now and in the future;
- To develop a model that demonstrates how planning services are appropriately resourced and structured;
- To hear and understand the needs and desires of the public;
- To ensure that public aspirations are considered and communicated in the planning process;
- To develop transparent, easily understood processes for community engagement;
- To monitor the performance of this MOU and service delivery;
- To encourage public participation in policy development and development review; and
- To ensure the MOU is embraced and easily understood by Councils, the public, applicants and staff.

#### **1.5 Authority**



There are several land use policy planning approvals that rightly are addressed at the Regional Municipality level – these will be retained as expressed in the MOU. However, the Council of the Regional Municipality is empowered by The Planning Act to delegate all or parts of its approval authorities to its Area Municipalities subject to such conditions as the Regional Council deems appropriate. In 1997 and 1999, Regional Council adopted by-laws delegating authority for the approval of subdivisions and consents (respectively) to the local municipal Councils.

In 1996, the Province of Ontario transferred the responsibility to review planning applications for Provincial interests to the Regional Municipality of Niagara on behalf of the Ministry of Municipal Affairs and Housing, Ministry of the Environment, Conservation and Parks, Ministry of Natural Resources and Forestry, Ministry of Tourism, Culture and Sport, and Ministry of Agriculture, Food and Rural Affairs. Matters of provincial interest are identified in the Planning Act S.2 and further defined in Provincial legislation, such as the Growth Plan for the Greater Golden Horseshoe. There is a need to clarify the roles and responsibilities of the Region and area municipalities with respect to some provincial interests, as follows:

- **Growth Management:** The Region allocates population and employment growth to the area municipalities. The area municipalities distribute population and employment growth within their communities.
- **Water and Wastewater Services:** The Region is responsible for all connections to the Region's trunks and pipes.
- **Urban Design:** The Region has an interest in urban design along Regional Roads.
- **Natural Heritage and Water Resources:** The Region has an interest in Natural Heritage and Water Resources (see Protocol).

While not a party to this MOU, the Region and area municipalities work collaboratively with the NPCA and recognize its authority. The NPCA is an autonomous corporate body established under the Conservation Authorities Act with a mandate, as set out in Section 20 of the Conservation Authorities Act, to establish and undertake programs designed to further the conservation, restoration, development and management of natural resources. NPCA comments are limited to natural environment interests as set out in legislation, regulation and/or delegated authority (as detailed in the 2018 Protocol).

## **1.6 Jurisdiction**

This MOU applies to those lands within the Regional Municipality of Niagara. It is noted that a portion of Grimsby is under the Hamilton Conservation Authority's jurisdiction.

## 1.7 Definitions:

### Complete Application means:

Submission of prescribed requirements under the Planning Act including all application fees, application form and application requirements determined in consultation with the Lead Agency and commenting/review Parties. In addition to the compulsory requirements, supplementary information may also be required. The requirements of a Complete Application will be determined through pre-consultation.

### Interests means:

The interests of the Party as defined by its approved plans, policies, programs and delegated authorities, and as further defined within this MOU.

### Lead Agency means:

The organization responsible for coordinating the processing of a development application, policy project or environmental assessments;

### Lead Agency for Technical Study means:

The organization responsible for the principal review of a technical study(s) ensuring compliance and conformity with related applicable legislation.

### Niagara Area Planners means:

A group representing the Parties that collaborate on matters of common interest. This group is comprised of planning and development directors or their designate.

### Planning Application Review means:

The review of planning applications (including formal pre-consultation) under the *Planning Act*, the *Niagara Escarpment Planning and Development Act* and the *Environmental Assessment Act*, which may include:

1. The identification of the need for and review of related technical reports (including scoping); and/or
2. The identification of conditions of approval.

### Policy Review means:

1. The review of existing or new policy documents, such as stormwater management guidelines, watershed studies, secondary plans and background studies; and/or
2. The identification of the need for and review of related technical reports.

Technical Clearance Review means:

1. The assessment of technical reports submitted by a proponent of development to determine if the reports satisfy the specified requirements; and
2. The clearing of conditions.

## **Part 2 - Roles and Responsibilities of the Parties**

### **2.1 Policy and Implementation Planning**

The Parties agree that successfully meeting the objectives for this MOU will require a collaborative approach to policy and implementation planning. The signatories are committed to developing Niagara and building good communities.

The parties agree to provide comments based on:

- Legislative, regulatory or delegated authority,
- Council approved policies and by-laws,
- Interests that have been identified through this MOU, pre-consultation, terms of reference, complete application requirements, and/or requisite studies.

Specific provisions related to roles and responsibilities are provided in this MOU and Table 1 - Responsibilities by Application Type, Report, Submission.

The Parties agree that a high degree of policy alignment is important in advancing an integrated and consistent planning system. In order to achieve policy alignment, the Parties agree to collaborate and include the following measures for each policy planning project and implementation of projects:

- Pre-consultation with relevant partners, prior to project start-up, identifying areas of common interest,
- Placement of appropriate representation on project steering committees;
- Agreed-to milestone meetings, consultations, and document review;
- Mutually satisfactory review protocols with shared commitment to timeliness; and
- Work collaboratively toward sharing GIS files and data.

### **Policy Planning**

The following are the means by which Policy Planning will be conducted by the Parties for specific types of policy planning projects.

**2.1.1 Regional Official Plan and Amendments (ROPAs)**

Approval of the Regional Official Plan rests with the Province of Ontario. The Adoption of ROPAs rests with Regional Council. Area Municipalities provide comments based on circulation by the Region. The Niagara Peninsula Conservation Authority (NPCA) comments to Region during circulation.

**2.1.2 Area Municipal Comprehensive Official Plans and Non Site-Specific LOPAs**

Approval rests with Regional Council. The Area Municipality prepares the Comprehensive Official Plan, collaboratively with direct involvement of Regional Planning and NPCA *prior* to releasing a draft Official Plan for public comment. The NPCA provides comments during circulation.

**2.1.3 Area Municipal Site Specific and Policy Specific Official Plan Amendments**

For the purposes of this Section, 'site specific' means that the proposal:

- is single application on a single property or multiple contiguous properties under single ownership or control; and
- does not require a Regional Official Plan Amendment or Secondary Plan.

Area Municipality approves and Region provides comments during circulation stage and reviews draft Official Plan Amendment prior to adoption. The NPCA provides comments during circulation stage.

**2.1.4 Secondary Plans**

Approval rests with the Region, except where deemed exempt as per the Regional Official Plan. The Region will determine whether the Secondary Plan is exempt from Regional approval within the timeframe outlined in Table 2. <sup>2</sup>

The Area Municipality prepares the Secondary Plan, collaboratively with direct involvement of Regional Planning and NPCA:

- in the development of the Terms of Reference, Scope of Work or Initiation Report
- the review of the draft Secondary Plan policies and mapping/schedules prior to release for public comment

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<sup>2</sup> The MOU Group has identified a need to review and update Regional Official Plan policies with respect to local Official Plan Amendment exemptions, specifically related to Secondary Plans. This item has been included in the Niagara Area Planners' Work Program for Improvements 2019-2022 (attached as Appendix I).

The Region provides comments on the Secondary Plan within the timeframe outlined in Table 2. The NPCA provides comments during circulation.

#### **2.1.5 Community Improvement Plans**

Proponent, either Region or Area Municipality, approves the CIP. If Regional funding is provided (subject to Regional budget approvals), proponent municipality prepares the Community Improvement Plan, collaboratively with direct involvement of the Area Municipality, Regional Planning and NPCA:

- in the development of the Terms of Reference, Scope of Work or Initiation Report
- in the development committees pertaining to CIP creation

The Region will review the draft Community Improvement Plan policies and mapping/schedules prior to release for public comment. Non-proponent, Region or Area Municipality comments during circulation. Conversely, the Area Municipality will review draft Regional Community Improvement Plan policies and mapping/schedules prior to release for public comment. The NPCA provides comments during circulation.

#### **2.1.6 Niagara Escarpment Plan Amendments**

Approval rests with Province. The Region comments during circulation. The Area Municipality comments during circulation. The NPCA comments during circulation.

#### **2.1.7 Regional Environmental Assessments**

Approval rests with Province. The Region adopts. The Area Municipality comments during circulation. The NPCA comments during circulation.

#### **2.1.8 Local Environmental Assessments**

Approval rests with Province. The Area Municipality adopts. The Region comments during circulation. The NPCA comments during circulation..

#### **2.1.9 Special Studies**

The principal or lead proponent of any special study is the agency that is responsible for adopting. In the event of joint studies, all proponent agencies

adopt. The relevant partners participate in the process via a collaborative framework that is established at the beginning of the study process.

### **Implementation Planning**

The Parties agree that successfully meeting the objectives for this MOU will involve placing responsibility for implementation planning primarily with the Area Municipalities as the legislated/delegated approval authority for such activity.

The following are the means by which Implementation Planning will be conducted by the Parties for specific types of Implementation Planning activities.

#### **2.1.10 Comprehensive Zoning By-laws**

Area Municipality approves. The Area municipality prepares the Comprehensive Zoning By-law, collaboratively with direct involvement of Regional Planning and NPCA *prior* to releasing a draft Comprehensive Zoning By-law for public comment. The NPCA comments during circulation.

#### **2.1.11 Zoning By-law Amendments**

Area Municipality approves. Based on Table 1 and Section 3.3.4, Region may comment during circulation. The NPCA provides comments upon request by Area Municipality.

#### **2.1.12 Draft Plans of Subdivision**

Area Municipality approves. Based on Table 1 and Section 3.3.4, Region comments during circulation of new Draft Plans. The NPCA provides comments upon request by Area Municipality.

#### **2.1.13 Plans of Condominium**

Area Municipality approves. The Region comments during circulation, for vacant land condominiums and for conversions of rental housing to condominiums, based on Table 1 and Section 3.3.4. The NPCA provides comments upon request by Area Municipality.

**2.1.14 Consents**

Area Municipality approves. Based on Table 1 and Section 3.3.4, Region may comment during circulation. The NPCA provides comments upon request by Area Municipality.

**2.1.15 Minor Variances**

Area Municipality approves. Based on Table 1 and Section 3.3.4, Region may comment during circulation. The NPCA provides comments upon request by Area Municipality.

**2.1.16 Site Plan Control**

Area Municipality approves. Based on Table 1 and Section 3.3.4, Region may comment during circulation. The NPCA provides comments upon request by Area Municipality.

**2.1.17 Niagara Escarpment Development**

Region provides comments, upon circulation. The Area Municipality provides comments, upon circulation. The NPCA provides comments, upon circulation.

## **2.2 Roles and Responsibilities with Respect to Environmental Features**

**2.2.1** This MOU gives overall direction for the coordinated review of development applications, policy planning and environmental assessments. For purposes of clarity with respect to environmental features, the NPCA reviews development applications, policy and environmental assessments, in accordance with the Conservation Ontario MOU with the Province to ensure consistency with Conservation Authority Regulation, NPCA Board adopted Policies and Section 3.1. Natural Hazards of the Provincial Policy Statement (except Section 3.1.8). This may include providing comments directly to MMAH as part of the provincial one window process. Through the approved 2018 Protocol the NPCA agreed to copy the Region and area municipality on all correspondence.

**2.2.2** The approved 2018 Protocol identifies the roles and responsibilities of the Region and NPCA in Ontario's Land Use Planning System with respect to environmental matters. The 2018 Protocol (as may be amended) is to be read concurrent with this MOU.

**2.2.3** The Region agrees to prepare and maintain, with the assistance of the NPCA and Area Municipalities, a Natural Environment Information Map for the lands within its jurisdiction.<sup>3</sup> This map shall define the Region, Area Municipalities and NPCA geographic areas of interest in the Natural Environment including the following features and required buffers:

- All streams and watercourses;
- Environmental designations and Policies in the Regional Official Plan
- Lake Ontario and Lake Erie Shoreline;
- Regulated Areas under Section 28 of the Conservation Authorities Act; and
- Mapping of Natural Heritage Features and Areas as defined by the Provincial Policy Statement, Greenbelt Plan, and any other Provincial Policy Document.

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<sup>3</sup> This statement recognizes that a portion of Grimsby is under Hamilton Conservation Authority jurisdiction with respect to natural hazards.



## Part 3 – Development Application Review Processes

### 3.1 General

The Parties agree that the timely, efficient and predictable review of development applications is paramount to encouraging well planned, affordable development in the region. Part 3 – Development Application Review Processes identifies segments of the development review process that benefit from clarification and agreement.

### 3.2 Preliminary Review

A preliminary review occurs prior to Pre-consultation. Its purpose is to gather information and is typically part of a developer's due diligence. Preliminary discussions about a potential development application benefit the applicant by supplying early information about the land, process and possible issues. An important part of a preliminary review is providing direction on the Pre-Consultation Process. In particular, the applicant needs to understand what information is required by the parties prior to pre-consultation and any fees.

### 3.3 Pre-Consultation

Pre-consultation is a requirement for most Planning Act Applications. It requires specific actions by the applicant and each of the Parties with an *interest* in the development. After pre-consultation the applicant should have a clear understanding of the documentation required to submit a Complete Application (Section 3.4) as well as preliminary comments regarding whether the proposal will be supported by the Region and the Area Municipalities

#### 3.3.1 Required Information<sup>4</sup>

Prior to scheduling a pre-consultation meeting, the Lead Agency will determine which Parties should attend the meeting and require specific information from the applicant to provide to the attending Parties in order that the Parties may complete an initial review. The required information will vary depending on the type of application, but generally includes:

- A completed Pre-consultation Request Form, including permission to enter property,
- The required fee (if applicable),
- Preliminary Plans showing the following:
  - Location of existing and proposed land uses, buildings and structures;

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<sup>4</sup> The MOU Group has identified an issue with respect to the consistency in the information circulated for preparation of a pre-consultation meeting. The lack of information diminishes the benefits of pre-consultation. Standardization of forms and required information would help in this regard. This item has been included in the Niagara Area Planners' Work Program for Improvements 2019-2022 (attached as Appendix I).

- Location of significant features on the site and adjacent to the site (i.e. wetlands, hazard lands, watercourses, woodlands, wells, septic tanks, etc.);
- Existing and proposed lot fabric (as appropriate); and
- Proposed development concept, including setbacks from lot lines and significant features.

### **3.3.2 Circulation/Timelines**

Refer to Table 2 for circulation/timelines. If the circulated information is incomplete and/or the timeline is not met, the commenting agencies may request in writing the rescheduling of the pre-consultation meeting to offer better service and outline of study requirements.

Commenting agencies may conduct site visits prior to the date of the pre-consultation meeting, where time permits, to inform discussion at the meeting regarding the scoping of required studies.

### **3.3.3 Required Studies and Scoping of Studies<sup>5</sup>**

The Terms of Reference, or the minimum requirements for each of the required studies will be discussed during the pre-consultation process. The objectives and parameters of the studies will be agreed to prior to them being undertaken in accordance with the Local and Regional Official Plans as well as accompanying guidelines.

The following is agreed to with respect to requesting and scoping studies:

- When determining the need for a study or plan, the Party requiring the study shall scope the study by identifying the specific necessary information. In addition, the Party requesting the study may offer to review the Terms of Reference.
- When more than one Party requests the same study, it is essential that a collaborative approach for scoping and Terms of Reference review occurs to ensure that all matters are addressed, and the applicant understands the requirements.
- For clarity, the NPCA has a role in scoping Environment Impact Studies (EIS) and reviewing the Terms of Reference for EIS and similar reports where natural hazards (as defined in the 2018 Protocol) and NPCA Regulation/Policy are required to be addressed.

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<sup>5</sup> The MOU Group has identified the need for standardized Terms of Reference for required studies. Standardization would help in scoping studies as well as ensure consistency. This need has been included on the Niagara Area Planners' Work Program for Improvements 2019-2022 (see Appendix I).

- In the event that one or more studies have been undertaken prior to pre-consultation, the Parties retain the right to require revisions to ensure that the studies are completed in accordance with requirements.
- All required studies shall be prepared and signed by a qualified professional.
- The Province has downloaded the responsibility to determine the need for an Archeological Study to the Region. Where an approved Archeological Master Plan has been incorporated into a Local Official Plan, this responsibility, as well as any related clearance of condition(s), will fall to the Lead Agency.

### **3.3.4 Exemption from Application Review by the Region<sup>6</sup>**

All development applications are circulated to the Region for review, except where the Region has determined through pre-consultation that the development proposal is exempt from further circulation and review. Examples include, but are not limited to:

1. Zoning By-law Amendment applications for "Agricultural Purposes Only" required as a condition of consent
2. Zoning By-law Amendment, Consent, Minor Variance and Site Plan applications where:
  - The application is not situated on a Regional road, easement or facility, or as determined at the pre-consultation meeting,
  - The Region has indicated during the pre-consultation process that there are no Provincial or Regional interests, and
  - The application received by the area municipality is the same as reviewed at pre-consultation.
3. Zoning By-law Amendment applications as a condition of consent, where Provincial and Regional interests have been dealt with through the consent application.
4. Draft Plans of Condominium, Site Plan and Part Lot Control applications where:
  - Provincial and Regional interests have been dealt with through a previous or concurrent development review process, provided no changes have been made to the application which effects Provincial or Regional interests

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<sup>6</sup> The MOU Group has identified the need for a standardized letter to be provided at a pre-consultation meeting that acknowledges the potential for exemption from further review on the part of a Party. This need has been included on the Niagara Area Planners' Work Program for Improvements 2019-2022 (see Appendix I).

### **3.3.5 Fees**

Each of the parties to the pre-consultation shall identify the fees required for application review, including the identification of additional costs should a peer review of a technical study be required.

The Parties agree not to charge each other fees for applications processed under the Planning Act.

### **3.3.6 Incentives**

Each of the Parties to the pre-Consultation will endeavor to identify financial incentive programs, if any, that the project may be eligible for. Incentives available from either the Region or Area Municipality are subject to both program changes and budget approvals. As such, incentives identified at pre-Consultation may not be available at time of construction.

## **3.4 Complete Applications**

### **3.4.1 Submission Requirements<sup>7</sup>**

The requirements of a Complete Application are determined during pre-consultation and provided in writing to the applicant by the Lead Agency in consultation with the commenting agencies.

The Lead Agency will review the application submission to ensure all required materials (forms, fees, plans, studies, etc.), as requested by all commenting agencies, are provided, and deem the application complete or not.

### **3.4.2 Circulation and Development Application Review Timelines**

The Planning Act and related Regulations identify statutory timelines for the review of Complete Applications by the Lead Agency. In order to ensure the statutory timelines are met, the Parties agree that the commenting agencies, as identified in Table 1 – Responsibilities by Application Type, Report, Submission, shall use best efforts to complete the review of all

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<sup>7</sup> In addition to the information prescribed in *Planning Act Regulations*, the *Planning Act* also provides that the applicant may also be required to provide additional information provided the Municipality's Official Plan contains a provision related to the requirements. All of these requirements are identified during the pre-consultation process.

applications in accordance with the timelines identified in Table 2 – Non-statutory Development Application Review Timelines.

### **3.5 Application Review and Commenting**

**3.5.1** The Parties agree, where possible, to streamline commenting methods by using standardized wording in emails, forms, letters, conditions of approval etc.

**3.5.2** When a concern and/or condition of approval is not supported by the Lead Agency, the Lead Agency shall inform the commenting agency and initiate discussions to resolve the issue.

In the case of multiple applications for the same land, the Lead Agency shall use the greater of the timelines.

Revisions to applications during the review process may result in the review period being extended depending on the complexity of the revisions and the need for revised studies.

When new issues arise from the analysis of studies during application review which results in the need for additional information or study, addendums to the study may be required and additional review time may be required to review any addendums.

### **3.6 Other**

#### **3.6.1 Extensions of Draft Plan Approval**

The Parties agree that the request for an extension to a draft approved Plan of Subdivision or Condominium be received, with the required review fee, and circulated for comment by the Area Municipality, not the applicant.<sup>8</sup>

#### **3.6.2 Modifications to Conditions of Draft Plan Approval**

The Parties agree that the request for a modification to a draft approved Plan of Subdivision or Condominium be received, with the required review fee, and circulated for comment by the Area Municipality, not the applicant.

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<sup>8</sup> The MOU Group has identified the possibility of exemption for a request for extension to a draft approved Plan of Subdivision or Condominium by the Region and NPCA. This idea has been included on the Niagara Area Planners' Work Program for Improvements 2019-2022 (see Appendix I).

### **3.6.3 Clearance of Conditions of Draft Plan Approval**

The Parties agree that the request for formal clearance of conditions of Draft Plan of Subdivision or Condominium be received and circulated by the Area Municipality, not the applicant. The Area Municipality is also responsible for circulating a copy of the draft agreement. The applicant's submissions shall include the following:

- the required review fee
- a letter from the applicant which outlines how each Regional condition has been met, accompanied by the necessary supporting documents<sup>9</sup>

### **3.6.4 Support Services**

The Region may offer support services to the Area Municipalities on a fee for service basis. These services are identified in Appendix II – Support Services - Niagara Region, and may be modified on the advisement of the Region without amendment to this MOU.

### **3.6.5 Applications for New or Expanded Mineral Aggregate Operations**

For applications for new or expanded mineral aggregate operations a Joint Agency Review Team (JART) process will be considered. The JART is a streamlined process that allows for the coordination of applications and sharing of resources and expertise, while maintaining independent decision-making authority.

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<sup>9</sup> The Region will continue to review submissions related to individual conditions prior to receiving the formal request for clearance



## **Part 4 - Managing Relationships with Other Governments on Planning Matters**

### **4.1 Provincial Interest**

When a planning matter arises in terms of Provincial interest and the administration of same, area municipalities will channel their concerns through the Regional Municipality with the expectation that the Regional Municipality will facilitate/coordinate an understanding between Provincial authorities and local interests.

### **4.2 Federal Interest**

When a planning matter arises in terms of Federal interest and the administration of same, area municipalities will channel their concerns through the Regional Municipality with the expectation that the Regional Municipality will facilitate/coordinate an understanding between Federal authorities and local interests.

### **4.3 Other Governments**

When significant planning matters arise from the efforts and activities of neighbouring municipalities, such as the City of Hamilton and the County of Haldimand in Ontario and Erie and Niagara Counties in Western New York, the signatories will present a unified and singular position with coordination being provided by the Region.



## **Part 5 - Continuous Improvement Efforts**

### **5.1 Working Groups**

As part of this MOU, the Parties have committed to undertaking continuous improvement efforts and agree that the Niagara Area Planners establish a working team or teams to determine and implement, as feasible, best practices in policy planning and development application review.

### **5.2 Work Program for Improvements**

As a result of the Development Industry Round Table meeting, MOU Group discussions and other consultations, several areas for improvement were identified. The MOU has been revised to address many of those improvements. Suggested improvements which require research, analysis or amendments to policy prior to implementation have been included in Appendix I - Niagara Area Planners' Work Program for Improvements 2019-2022.

### **5.3 Training Opportunities**

The Parties agree to assess opportunities to jointly/collaboratively train staff on matters pertaining to improving service efficiencies. The Parties agree to assess opportunities to jointly/collaboratively educate staff on related and pertinent topics, such as changing legislation. Where feasible, education/training will be offered to members of the development industry and consultants to develop common understandings planning matters.

Interested parties may explore opportunities related to cross-training Staff through secondment and job-shadowing, in addition to sharing of resources.

## **Part 6 - MOU Terms and Implementation**

### **6.1 Duration and Review**

This MOU shall remain in effect until such time as replaced by an updated MOU (if any). A mandatory review shall occur a minimum of every 5 years to:

- reflect any changing policies or programs at the provincial, watershed, or regional level, and
- assess its effectiveness, relevance and appropriateness with respect to the affected parties.

The mandatory review shall be coordinated by the Region, undertaken by the MOU technical review team and overseen by the Niagara Area Planners.

The MOU may be reviewed at any time before the mandatory review if there are matters that need to be addressed. Based on a review by the MOU technical review team, changes considered minor in nature may not require Regional or local Council approvals. This MOU will be reviewed and amended concurrent with the new Regional Official Plan.

The Appendices are intended to be independent of the MOU and may be reviewed and amended, as necessary.

### **6.2 Overlapping Mandate**

There will be occasions when the responsibilities of the Parties overlap. On those occasions, the Parties shall work together to provide consistent and sound comments. This will be accomplished by maintaining open dialogue and a good working relationship.

### **6.3 Conflict**

Where there is conflict between new (changing) legislation and this MOU, new legislation will take precedence.

Where there is a conflict between an Official Plan, the NPCA Regulation and/or Board adopted policies, the Regulation shall take precedence.

Where there are conflicts, Regional, NPCA and local municipal staff will work together to resolve the issue. If all efforts fail to resolve a policy conflict, a decision will be made by the approval authority, as per Table 1.

#### **6.4 Information Sharing / Open Data**

Any information or data sources generated by the Province, NPCA or Region, or generated through municipal or watershed studies will be shared, where possible.

#### **6.5 Fees**

Fees for pre-consultation, planning review and technical clearance services will be set independently by the Parties.

All development application fees will be collected by the Area municipalities and remitted to the Region and NPCA upon circulation of a complete application, except for Regional Official Plan amendment applications.

The Region and Municipality will collect the NPCA fee for applications to amend the Region's Official Plan and remit any fees collected upon circulation of the application to the NPCA.

The NPCA will be responsible for collecting any further processing, approvals and/or Final Clearance Fees, if required.

The NPCA and Region will provide the area municipalities with an approved schedule of fees and updates.

#### **6.6 Effective Date**

This MOU will take effect on the last date signed by the Parties to this MOU.

## Part 7 - Tables

**Table 1 - Responsibilities by Application Type, Report, Submission**

Application Type	Lead Agency	Commenting Agencies	Responsibility for Final Approval	Mandated Approval Authority
Application Type				
Regional Official Plan and updating Amendments (under Sect. 26 Planning Act)	Region	Local NPCA Province	MMAH	Planning Act S. 17 and s. 26
Regional Official Plan Amendments (other than above)	Region	Local NPCA Province	Region	Planning Act S.22
Local Official Plan, updating Amendments to Local Official Plans, Secondary Plans and other non-exempt Local Official Plan Amendments <sup>10</sup>	Local	Region NPCA	Region	Planning Act, Regional Official Plan
Exempt Local Official Plan Amendments and Secondary Plans <sup>11</sup>	Local	Region NPCA	Local	O.Reg 699/98, Planning Act, Regional Official Plan
Zoning By-Law/Amendments	Local	Region NPCA	Local	Planning Act S. 34
Minor Variance/Permissions	Local	Region NPCA	Local	Planning Act S. 45
Draft Plans of Subdivision	Local	Region NPCA	Local	Planning Act S.51 and Regional By-laws <sup>12</sup>
Draft Plan of Condominium	Local	Region NPCA	Local	Planning Act S. 51 and Regional By-laws <sup>13</sup>
Consent/Boundary Adjustments	Local	Region NPCA	Local	Planning Act S. 53 and Regional By-laws <sup>14</sup>

<sup>10</sup> Regional Official Plan Policies 14.E.7 and 14.E.8 identify criteria under which approval of Local Official Plan Amendments may be delegated to the local Council for approval.

<sup>11</sup> Regional Official Plan Policies 14.E.7 and 14.E.8 identify criteria under which approval of Local Official Plan Amendments may be delegated to the local Council for approval. Ontario Regulation 699/98 and Regional By-laws 129-2001 and 43-2001.

<sup>12</sup> Delegation Authority By-laws 8620-97, 8763-97, 8760-97, 8819-97, 8764-97, 8793-97, 8792-97, 8807-97, 8761-97, 8884-97, 8619-97, 8762-97.

<sup>13</sup> Delegation Authority By-laws 8620-97, 8763-97, 8760-97, 8819-97, 8764-97, 8793-97, 8792-97, 8807-97, 8761-97, 8884-97, 8619-97, 8762-97

<sup>14</sup> Delegation Authority By-laws 179-1999, 180-1999, 181-199, 182-1999, 183-1999, 184-1999, 185-1999, 186-1999, 187-1999, 188-1999, 188-1999, 124-1999.

Application Type	Lead Agency	Commenting Agencies	Responsibility for Final Approval	Mandated Approval Authority
Part Lot Control	Local	Region NPCA	Local	Planning Act S. 50 and Reg. By-laws <sup>15</sup>
Site Plan	Local	Region, NPCA	Local	Planning Act S. 41
NEC Applications: Amendments and Permits <sup>16</sup>	NEC	Local, Region NPCA	NEC	Niagara Escarpment and Development Act
Aggregate License	MNRF Region	Local, Region NPCA	MNRF	Aggregate Resources Act S.11
Environmental Assessments	Local/Region /Province	Local, Region NPCA	Local/ Region/ Province	Environmental Assessment Act
Reports / Submissions		Commenting Agencies	Prepared to the Satisfaction of:	Mandated Approval Authority
<i>EIS in a NPCA Regulated Area</i>		Region Local	NPCA	O. Reg. 155/06, PPS, Regional Official Plan
<i>EIS outside Settlement Area<sup>17</sup></i>		NPCA Local	Region	Regional Official Plan
<i>EIS inside Settlement Area<sup>18,19</sup></i>		NPCA Region	Local	Regional Official Plan
Watershed Studies		Region	Local NPCA	Region
Sub-Watershed Studies		Local	Region NPCA	Local
Technical Reports for Natural Hazard Identification		Local Region	NPCA	PPS, Conservation Act S. 28
Regional Master Servicing Plans		Local NPCA	Region	Regional Official Plan
Regional Stormwater Master Plan/Guidelines		Local NPCA	Region	Regional Official Plan
Regional Transportation Plans		Local NPCA	Region	Regional Official Plan
Local Master Servicing Plans		Region NPCA	Local	Planning Act, Local Official Plan

<sup>15</sup> Delegation Authority By-laws 8620-97, 8763-97, 8760-97, 8819-97, 8764-97, 8793-97, 8792-97, 8807-97, 8761-97, 8884-97, 8619-97, 8762-97.

<sup>16</sup> The Niagara Escarpment Commission is not a party to this MOU.

<sup>17</sup> Notwithstanding the EIS is outside the Settlement Area, if the EIS includes a NPCA Regulated Area, the NPCA shall be the Lead and responsible for Final Approval of the EIS for the regulated features.

<sup>18</sup> Notwithstanding the EIS is within the Settlement Area, if the EIS includes a NPCA Regulated Area, the NPCA shall be the Lead and responsible for Final Approval of the EIS for the regulated features.

<sup>19</sup> Where an area municipality does not have in-house expertise to review an EIS, the area municipality may require a peer review.

<b>Application Type</b>	<b>Lead Agency</b>	<b>Commenting Agencies</b>	<b>Responsibility for Final Approval</b>	<b>Mandated Approval Authority</b>
Local Stormwater Master Plan/Guidelines		Region NPCA	Local	Planning Act, Local Official Plan
Local Transportation Plans		Region NPCA	Local	Planning Act, Local Official Plan

**Table 2 - Non-Statutory Development Application Review Timelines**

<b>Application Type</b>	<b>Pre-Consultation</b>	<b>Target for Comments After Circulation of a Complete Application</b>
<b>Site specific Regional Official Plan Amendment</b>	Commenting agencies to receive required information/plans a min. of 7 calendar days prior to pre-consultation.	Parties to provide comments within 20 calendar days
<b>Secondary Plan (Local Official Plan Amendment)</b>	Same as above	For draft Secondary Plans policies and mapping/schedules, within 30 - 45 calendar days the Region shall: a) indicate whether or not the Secondary Plan is exempt from Regional approval; and b) provide comments
<b>Other Comprehensive Local Official Plan Amendment</b>	Same as above	As determined in consultation with the area municipality
<b>Site specific Local Official Plan Amendment</b>	Same as above	Parties to provide comments within 20 calendar days
<b>Comprehensive zoning by-law</b>	Same as above	Parties to provide comments within 30 - 45 calendar days
<b>Site specific zoning by-law amendment (including Holding Provision)</b>	Same as above	Parties to provide comments within 20 calendar days
<b>Draft plans of subdivision or condominium</b>	Same as above	Parties to provide comments within 30 - 45 calendar days
<b>Modifications to Draft Approved Subdivision and Condominium</b>	Same as above	Parties to provide comments within 30 - 45 calendar days
<b>Consent</b>	Same as above	Parties to provide comments within 10 calendar days in urban areas and within 14 calendar days in rural areas (on private services).

<b>Application Type</b>	<b>Pre-Consultation</b>	<b>Target for Comments After Circulation of a Complete Application</b>
<b>Minor Variance</b>	Same as above	Parties to provide comments within 10 calendar days.
<b>Site Plan</b>	Same as above	Parties to provide comments within 20 calendar days
<b>Extension of draft Approval</b>	N/A	Parties to provide comments within 10 calendar days
<b>Clearance of Conditions</b>	N/A	Parties to provide comments within 15 calendar days
<b>Niagara Escarpment Development Permit</b>	N/A	Parties to provide comments within 30 calendar days
<b>Niagara Escarpment Plan Amendment</b>	N/A	Parties to provide comments within 60 calendar days

**Notes for Table 2**

1. To convene a pre-consultation meeting, the lead agency must have enough information from the applicant for the parties to complete an initial analysis and provide advice, including but not limited to advice on requirements for a Complete Application.
2. All due dates are from the time of receipt by the commenting parties and are for applications deemed complete as determined by the parties as part of pre-consultation.
3. Studies that require peer review may require an additional 30-60 day review period.
4. Revisions to Plans of Subdivision or Condominium during the review process may result in the review period being extended depending on the complexity of the revisions and the need for revised studies.
5. When new issues arise from the analysis of studies or required consultation during application review which results in the need for additional information or study, additional review time may be required.

**Part 8 - Endorsement and Signature Pages**

**Regional Municipality of Niagara**

Date of Regional Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**Town of Fort Erie**

Date of Town Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**Town of Grimsby**

Date of Town Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**Town of Lincoln**

Date of Town Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**City of Niagara Falls**

Date of City Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**Town of Niagara-on-the-Lake**

Date of Town Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**Town of Pelham**

Date of Town Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_

**City of Port Colborne**

Date of City Council endorsement: \_\_\_\_\_

CAO Signature: \_\_\_\_\_



**City of St. Catharines**

Date of City Council endorsement:

CAO Signature:

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**City of Thorold**

Date of City Council endorsement:

CAO Signature:

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**Township of Wainfleet**

Date of Township Council endorsement:

CAO Signature:

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**City of Welland**

Date of City Council endorsement:

CAO Signature:

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**Township of West Lincoln**

Date of Township Council endorsement:

CAO Signature:

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## Part 9 – Appendices

### Appendix I - Niagara Area Planners' Work Program 2019-2022

1. Review the issues related to the package of information circulated for preparation of a pre-consultation meeting, as this impacts the ability to prepare and provide comprehensive information to the applicant and others. It is expected that an update to the standard forms (e.g. Pre-consultation Request Form) and required information would help in this regard.
2. Prepare standardized terms of reference for studies (for example: planning justification, noise, air quality, etc.). Standardization would aid in the scoping of studies, as well as, ensure consistency.
3. In addition to the standardized checklist, prepare a standardized letter to be provided at a pre-consultation meeting that acknowledges the potential for exemption from further regional review.
4. Review the possibility of regional exemption for an extension request for a draft approved Plan of Subdivision or Condominium.
5. Prepare standardized guidelines or terms of reference for the preparation of Secondary Plans to ensure Secondary Plans across the region are comprehensive, consistent and timely.
6. Investigate the implementation of a portal where an application can be tracked in order that a developer/consultant can understand the rate of movement.
7. Hold education programs, in consultation with the development industry, on topics including, but not limited to:
  - "The Business of Development – Understanding Development Performa",
  - Customer Service related to Development ("Race to Register").
8. Review the issues identified by the Development Industry related to securities, including but not limited to standardization and release of securities.
9. Formulate a collaborative multiyear policy planning program for Niagara that addresses:
  - Conformity of the Regional Official Plan to Provincial plans and policies;
  - Conformity of Local Official Plans to the Regional Official Plan;

- Timely update of Comprehensive Zoning By-laws to conform to Local Official Plans;
  - Harmonization of Regional and Local Official Plan policies and Conservation Authority regulations and policies, where possible; and
  - Alignment of guidelines and protocol between the Parties, such as guidelines that set out requirements for preparation of a Secondary Plan; and
10. Continued efforts to streamline the development review process, as it relates to Provincial, NPCA and regional/local interests.
11. Modifications to Regional Official Plan policies 14.E.6, 14.E.7, 14.E.8, 14.E.9 with respect to exemption policies (e.g., Secondary Plans).

## **Appendix II**

### **Support Services - Niagara Region**

**From time to time, the area municipalities may require support. The Region may provide support services to the MOU parties on a fee for service basis in the following areas:**

**Urban Design**

**EIS Review**

**Noise Study Review**

**Appendix III**

**Protocol for Planning Services Between the Regional Municipality of Niagara  
and the Niagara Peninsula conservation Authority, approved January 2018**