

PLANNING OPINION

**PROPOSED OFFICIAL PLAN AMENDMENT
AND
ZONING BY-LAW**

**223-227 MARY STREET
TOWN OF NIAGARA-ON-THE-LAKE**

LEHMAN

& ASSOCIATES

For the Niagara Foundation

February, 2023

1.0 INTRODUCTION

This opinion is provided at the request of the Niagara Foundation. I have been asked to review the planning issues applicable to the proposed development at 223-227 Mary Street (the “Property” in the Town of Niagara-on-the-Lake (the Town)). The information on the proposal was filed with the Town as part of the application for Official Plan Amendment and zoning change in November of 2022.

2.0 THE PROPOSAL

An application has been filed with the Town of Niagara-on-the-Lake to amend the Official Plan and zoning by-law to permit the development of an apartment building that is four storeys or 18.0m in height with 17 two bedroom units and 24 one bedroom units. The Property has a frontage of 45.59 metres on Mary Street, a depth of 90.83 metres and an area of 4,130.9 square metres. The project would have a density of 99 units per hectare.

The Application for Official Plan Amendment proposes to redesignate the Subject Lands includes the following:

In addition to the uses identified under Section 9.3.3(1) of the Official Plan an apartment building being 3.5-storeys (18.0 metres) in height and consisting of 41 units with a density of 100 units per hectare shall be permitted.

3.0 SUMMARY OF OPINION

1. There are few, if any, communities in Ontario that have the character of the Old Town of Niagara-on-the-Lake. While walkability is touted as a goal for most Ontario communities, it exists and has always existed in the Old Town. The character of the neighborhoods with large trees and yards, the historic homes and institutions, and the generous park system focused on a main street that attracts thousands of tourists, is one that requires a very cautious approach to managing change.
2. The neighborhood north of Mary Street, where the proposal is located, is composed of low density homes on relatively narrow streets with a semi-rural character. The area has a wide variety of housing styles and sizes and is characterized by modest homes, wide frontages and large trees. The street pattern is one of one and two storey dwellings with a consistent proportion of building height to the separation between dwellings – a key factor in the character of a residential community. There are no multi-storey apartment buildings in the neighborhood north of Mary Street.
3. The application would allow for the construction of a building at a density of 100 units per hectare. The proposed unit mix would result in a site density of a minimum of 280 persons per hectare. This level of density is even higher than that expected by the Region of Niagara

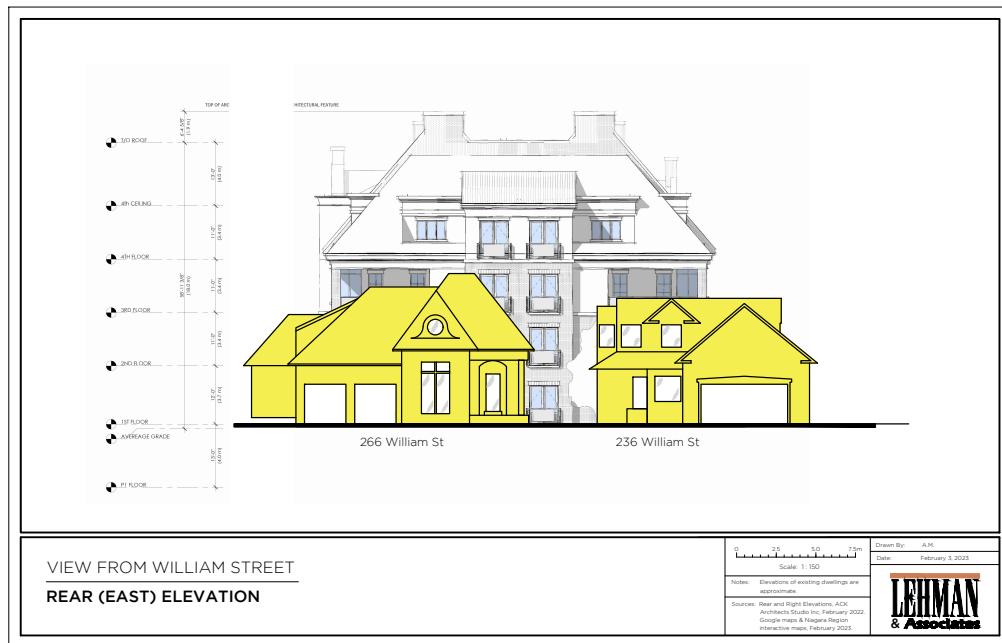
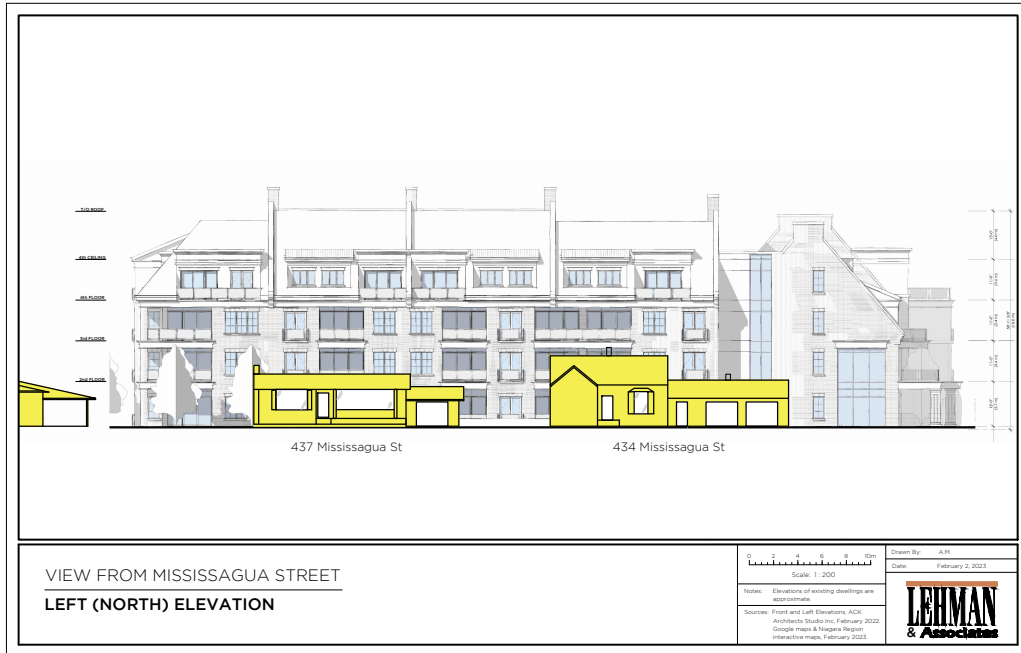
Official Plan in highly urban locations with major transit facilities such as downtown St. Catharines.

4. There is no development in the Old Town with density comparable to the proposed building (100 units per hectare). The Kings Point condominium development on Ricardo Street has a density of 56 units per hectare. The thirteen dwellings surrounding the proposal are on properties that total approximately 5 ha with a resulting density of 2.6 dwelling units per hectare. It is difficult to find an adjective that describes how inconsistent the proposed building is with the existing or planned densities.
5. The proposed building is 18m in height. The existing zoning permits a height of 10m and most of the existing homes are less than 10m in height. The proposed building height is not consistent with height of buildings in the neighborhood. The homes in the neighborhood are relatively small and on large well treed properties. The proposed building will tower over them with a mass that runs through the interior of the block with a significant overlook of all of the homes.
6. There are a series of policy requirements in the Niagara-on-the-Lake (“NOTL) Official Plan that variously require development to be in character with the existing built form and, in the case with higher buildings, to provide a transition between forms of development. This proposal is in direct conflict with this primary goal of the Town’s Official Plan. There is no transition provided and the building is completely out of character with the existing forms of development in both the area and the Old Town more generally.
7. The Plan’s permissions for intensification are directly linked to meeting the tests of Section 4.6, Land Use Compatibility, which require both compatibility and consistency with the existing built form, density and height and massing of the neighborhood. The proposed four storey apartment does not meet any of these tests.
8. An Official Plan Amendment permitting a density of 100 uph does not exempt an application from meeting all of the Plan tests dealing with neighborhood character, built form consistency, density consistency and building height and mass. While the applicant’s material deals with a wide variety of specific impacts it provides no justification for a building of this size or density.
9. The proposal does not conform with the general objectives, land use permissions, built form, density, character and justification policies of the existing NOTL Official Plan.
10. The proposal does not conform to the use policies, the compatibility policies, the intensification policies or the urban design policies of the adopted Official Plan. It should be noted that the adopted Plan classifies development that is over 75 uph as high density and does not permit this level of density in the Old Town but only in Glendale and only subject to a secondary plan.
11. The recently approved Region of Niagara Official Plan requires the Town to conduct studies to determine the most appropriate location and form of intensification.

12. The Planning Justification Report (the 'PJR') relies on a context for the site that is overstated. The proximity of a commercial node is used as an indicator of the suitability of the site in providing for the needs of the new residents. While there is a nearby collection of commercial uses these provide for few daily needs and offer little in the way of support for intensification. A grocery store, drug store and/or other common retail facilities would provide such support.
13. The applicant has provided a detailed analysis of their planning opinion on potential impacts but has not addressed the myriad of Official Plan policies that deal with the nature of the existing Town, the anticipated forms of growth, the nature of that growth and the more general consistency with the character of the Old Town.
14. The PJR cites the role of Mary Street as an arterial suggesting that this corridor might at some point be provided with a transit route that would serve the development. The future holds great promise but is not relevant to a planning analysis of this nature.
15. The PJR incorrectly relies on the Mary Street Urban Design Guidelines as a policy document of the Town.
16. It may be that a more gentle form of intensification on the site with a smaller and lower building, at a density more in character with the neighborhood would be appropriate on this site. This determination should be made as part of the Official Plan update to be undertaken by the Town to implement the Regional Plan.

4. THE PROPOSED BUILDING

In order to better understand the relative size of the proposed building I have prepared two elevations and a comparison diagram. The two elevations are from the north and the east of the building showing the elevations of the homes on Mississauga Street and William Street. These are shown below with the proposed building in the background.



In addition I have prepared a drawing superimposing the outline of the proposed building on a plan view and front elevation of the wing of the Queen’s Landing Hotel that faces Byron Street. The proposed building is approximately 66m in length and 23.5m in width. The height as calculated to the ridge of the roof is 18m. All dimensions are taken from the site plan and elevations filed with the application.



The purpose of these drawings is twofold. First to demonstrate the height and bulk of the building in relation to the actual dwellings in the same block and secondly, to understand the size of the building in the context of other structures in the Old Town. Put simply, this would be the largest residential building in the Old Town with the exception of the Kings Point condominium buildings which are both wider and longer but only three storeys in height. The proposed building would be approximately equal in size to the Byron Street wing of the Queens Landing Hotel in length and width and be an additional storey higher.

Density

The application proposes to amend the Official Plan by permitting a density of 100 units per hectare. There is no information in the application material to provide a context for this level of density. In a case where the Official Plan is being amended it would be reasonable to expect the supporting planning analysis to provide a justification for the density. For example, are other similar densities found in the Town?

It is my understanding that there is no other building in the Old Town that approaches this density. For example, the Kings Point Condominium development on Ricardo Street has 90 units on a site of approximately 1.6 hectares. This is a density of 56 units per hectare. There are many policies in the Plan that require a consistency in density, no context is available to understand the rationale for such an increase.

The existing Official Plan for the Town sets a maximum density for intensification at less than one-third of the proposed density:

k) The Town will utilize maximum and minimum densities to ensure that intensification areas/sites are not underdeveloped. Minimum net density shall be 14 units per hectare (6 units per acre) and maximum density of 30 units per hectare (12 units per acre).

As such there is an onus on the applicant to justify this significant increase in density, not simply say that the amendment will permit it.

There are other relevant means of measuring density. The application proposes to have a total of 58 bedrooms, assuming two persons per bedroom as an average that would be 116 persons on approximately .41 ha of land or $116/.41=280$ persons per hectare. The Functional Servicing Report submitted by the applicant estimated a maximum load in the building of 168 persons which would be a density of $168/.41=407$ persons per hectare. This measure of density thus ranges between 280 to 407 persons per hectare.

The Growth Plan and Region of Niagara Official Plan densities are calculated by including any roads and parklands but excluding natural heritage features. Road allowances and parkland average at between 25 and 35% of urban land area. For the purpose of this analysis the site density of the application can be factored down by 35% to make it comparable to the minimum density requirements of the Growth Plan. Using this factor the density of the Mary Street proposal would range between 182 and 267 persons per hectare.

The Region of Niagara Official Plan implements the requirements of the Growth Plan by directing minimum densities to areas that are considered to be strategic growth areas such as downtowns and transit hubs. These key areas are required to have much higher densities to support the infrastructure. At the same time the Growth sets out a minimum density for new greenfield areas to ensure compact development, minimum environmental impact, and again, more efficient use of municipal infrastructure.

The minimum density for a new residential greenfield area in Niagara Region is established at 50 persons per hectare. Downtown Welland is required to have a minimum density of 125 persons per hectare and downtown St. Catharines 150 pph.

This analysis is a rather long way of describing the density of the project as one that would be welcome in adjacent to a major transit hub throughout the GTA or any of the Downtown Growth Centres designated for development by the Growth Plan. However it is totally out of context for a low density neighborhood in Niagara-on-the-Lake.

Mary Street Urban Design Guidelines

The PJR characterizes the Mary Street Urban Design Guidelines as follows:

“The Mary Street Urban Design Guidelines (MSUDG) have been prepared as part of the Town’s new OP (2019) and is intended to be adopted along with the new Town OP (2019). They provide design guidance on developments along the Mary Street corridor. Although they have not been officially adopted by the Town, their contents establish important context and key design considerations for future developments along Mary Street. These design guidelines should be read and understood in conjunction with the provisions of the Town’s OP (2019)”

It is my understanding that these Design Guidelines were not adopted as part of the adopted Official Plan as there is no reference to them in the document. It is not appropriate to rely to any great extent on a planning analysis that has not been through a public process and approved by Council. The Official Plan sets out the following requirements for all Design Guidelines:

The Town may develop Community Design Guidelines for all or parts of each settlement area. These guidelines may be implemented through the preparation and approval of secondary plans, community improvement plans, heritage district plans, or through a community planning permit system. Community Design Guidelines may be adopted by the Town as free-standing initiatives following a public review and may be incorporated into site plan approval or development approval standards.

As such, before the Mary Street Design Guidelines can be relied upon the adopted Official Plan must be approved by the Province of Ontario, the guidelines must go through a public review and then implemented through one of the means noted above, all of which allow for an appeal.

It may be appropriate for the PJR to conclude that, in its opinion, the area is in ‘transition’ but not to conclude that this analysis is in any way Town policy as constituted under the Planning Act. That would be premature.

5.0 PLANNING POLICY

There are five planning documents with policy relevant to the application:

- Provincial Policy Statement (the “PPS”);
- Growth Plan;
- Region of Niagara Official Plan;
- Town of Niagara-on-the-Lake existing Official Plan; and,
- Town of Niagara-on-the-Lake adopted but not yet approved Official Plan.

PPS and Growth Plan

The PPS requires that municipalities make land available for intensification by identifying appropriate locations and promoting opportunities. The Growth Plan sets a 50% target for the proportion of development to occur by intensification in Niagara Region. Provincial policies require the Region of Niagara to set targets for each municipality in the Region for the total amount of residential growth and the proportion of that growth that is to occur through intensification.

Using these targets each municipality must establish where the growth through intensification should occur. Municipalities are also required to establish official plan policies directing the form and nature of the intensification. These targets can vary by municipality within the Region provided the overall 50% intensification target is met.

Due to the recent changes to the Growth Plan and the more recent approval of the Niagara Region Official Plan the Town of Niagara-on-the-Lake adopted Official Plan (2019) will require substantial revision. In addition to meeting longer term targets – 2050 instead of 2030, the Town will be required to determine the best locations for intensification and provide this direction in the Official Plan. The relevant Provincial policies are provided with commentary in Appendix A.

Region of Niagara Official Plan

The Region of Niagara Official Plan was approved in November of 2022 and sets out a variety of policies dealing with the amount and nature of intensification.

2.2 Regional Structure Established residential neighbourhoods have a unique scale and character. Local Area Municipalities may establish standards for appropriate infill development in these areas.

Table 2-1 sets out the minimum targets for population and employment growth:

Table 2-1 – 2051 Population and Employment Forecasts by Local Area Municipality

Municipality	Population	Employment
Fort Erie	48,050	18,430
Grimsby	37,000	14,960
Lincoln	45,660	15,220
Niagara Falls	141,650	58,110
Niagara-on-the-Lake	28,900	17,610
Pelham	28,830	7,140
Port Colborne	23,230	7,550
St. Catharines	171,890	79,350
Thorold	39,690	12,510
Wainfleet	7,730	1,830
Welland	83,000	28,790
West Lincoln	38,370	10,480
Niagara Region	694,000	272,000

The policies and targets for intensification are set out in Table 2.2 of the Official Plan of the Region of Niagara (the ROP).

2.2.2 Strategic Intensification and Higher Densities

2.2.2.1 Within urban areas, forecasted population growth will be accommodated primarily through intensification in built-up areas with particular focus on the following locations:

a) strategic growth areas, including:

- i. Downtown St. Catharines urban growth centre;*
- ii. protected major transit station areas;*
- iii. regional growth centres; and*
- iv. district plan areas identified in Section 6.1;*

b) areas with existing or planned public service facilities; 18

c) other locations with existing or planned transit service, with a priority on areas with existing or planned frequent transit; and

d) local growth centres and corridors, as identified by Local Area Municipalities.

2.2.2.7 Local Area Municipalities shall prepare intensification strategies to set out where and how the minimum intensification targets in Table 2-2 will be accommodated.

Table 2-2: Niagara Region Minimum Residential Intensification Targets by Local Area Municipality 2021-2051

Municipality	Units	Rate
Fort Erie	3,680	50%
Grimsby	4,500	98%
Lincoln	8,895	90%
Niagara Falls	10,100	50%
Niagara-on-the-Lake	1,150	25%
Pelham	1,030	25%
Port Colborne	690	30%
St. Catharines	18,780	95%
Thorold	1,610	25%
Wainfleet	0	0%
Welland	10,440	75%
West Lincoln	1,130	13%
Niagara Region	62,005	60%

2.2.2.8 *Local intensification strategies will identify strategic growth areas, as shown on Schedule B, and local growth centres as a focus for intensification, as well as other areas appropriate for intensification.*

2.2.2.9 *Local Area Municipalities may apply different intensification targets throughout their built-up area, provided the overall minimum intensification target in Table 2-2 for their municipality is planned to be achieved.*

2.2.2.10 *Local intensification strategies shall be implemented through Local official plans, secondary plans, zoning by-laws, and other supporting documents that identify:*

a) development standards to support the achievement of complete communities, permit and facilitate a compact built form and all forms of intensification throughout the built-up area, and avoid or mitigate risks to public health and safety;

b) the location and boundaries of local growth centres and corridors, that:

- 1. are considered priority areas for development;*
- 2. achieve higher densities than what currently exist;*
- 3. identify an appropriate design and scale of development and the transition of built forms to adjacent areas pursuant to Section 6.2;*

4. *provide a diverse mix of land uses at densities that support existing or planned public transit and active transportation infrastructure;*
5. *support the provision of affordable housing; and*
6. *revitalize and, where appropriate, preserve cultural heritage resources within areas that reflect local heritage, character, and streetscapes pursuant to Section 6.5;*

c) other major opportunities for intensification, such as infill, redevelopment, brownfields, and the expansion or conversion of existing buildings and greyfield sites; and

The Regional Plan requires local municipalities to identify the locations where intensification will be directed. It states: *“Local Area Municipalities shall prepare intensification strategies to set out where and how the minimum intensification targets in Table 2-2 will be accommodated.”* The Plan specifically references ‘local growth centres’ and ‘corridors’ that are considered priority areas for intensification.

For these areas the local Official Plans are to identify *“the location and boundaries of local growth centres and corridors”*. In addition the local Plans are to identify *“other major opportunities for intensification, such as infill, redevelopment, brownfields, and the expansion or conversion of existing buildings and greyfield sites.”*

While both the existing and approved NOTL Official Plans designate areas for intensification neither sets out the location of local growth centres or corridors, a new Regional requirement. This exercise will occur as the Town brings their Official Plan into conformity with the new PPS, new Growth Plan and new Region of Niagara Official Plan. The definition of Local Growth Centres and Corridors in the Region of Niagara Official Plan is as follows:

Local Growth Centres and Corridors

Established areas, outside of strategic growth areas, that will be the focus for growth within Area Municipalities and the preferred location for public and private investment. Local growth centres and corridors will vary in size, nature and character, and may include traditional downtown cores and key mixed use areas and areas of intensification along transit corridors.

Until the Town has had an opportunity to consider the new Regional requirements and assess where local growth centres and corridors might be this application is premature.

Town of Niagara-on-the-Lake Existing Official Plan

The relevant policies are described in the following section.

Section 2.0, Municipal Urban Structure sets out the basic framework of the Town, one component of which is termed “*Intensification Areas within the Built-Up Areas*”. This Section notes that there is a difference between existing developed areas that are to remain as stable neighbourhoods and, within those areas, pockets of land which are intended to be redeveloped over the long term, such pockets being designated for that purpose as Intensification Areas and shown on the Official Plan Schedules.

Section 2.5 of the Plan establishes the planned function of Intensification Areas. It states that such areas “*are planned to provide the Town with an opportunity to accommodate growth and/or redevelopment on lands within the Built-Up Area*”.

The existing Official Plan is quite specific about where intensification is to occur. The Intensification Areas are delineated on Schedules I-1 and I-2. Schedule I-1 shows the six parcels of land have been designated as Intensification Areas in the Old Town. They are found in cluster all south of John Street West between Charlotte Street and Gate Street.

In the Growth Management section the Plan states:

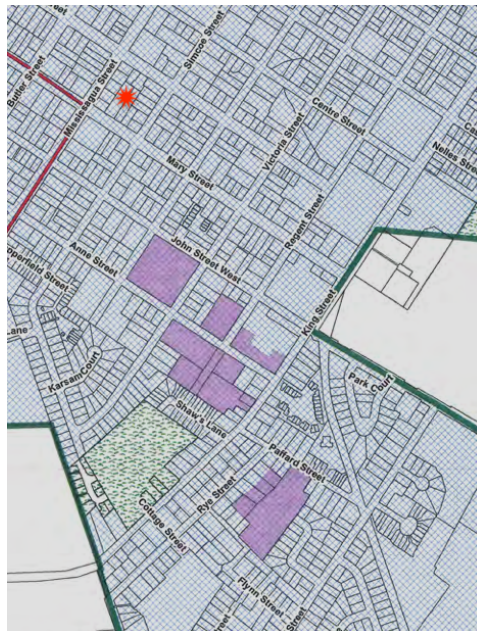
3.2 Growth Management Objectives

Growth Strategy Objectives

The objectives of the Town's growth strategy are to:

- f) Direct appropriate intensification to Designated Intensification Areas.*

The lands designated for intensification are shown in purple and the Mary Street site with a red dot.



Section 3.4 introduces the theme of character as a test of impacts.

3.4 Housing Mix

The Official Plan's land use policies are based on providing an appropriate mix of housing to meet the needs of the Town and its long term land needs and housing growth. While a majority of the lands are designated for low density residential development medium density development is also a permitted form of housing in low density residential and established residential designations subject to specific design and locational criteria as provided in the residential policies of the Official Plan.

Given the small Town character and heritage of Niagara-on-the-Lake, high density development will be limited especially within established residential areas where high density development may adversely impact heritage resources and the character of the area in terms of scale, mass or height.

The proposal is a medium density building form but is a high density use as described earlier and as such the Plan policy is to limit such development, especially within established residential areas.

The existing Plan supports intensification generally with the requirement that it be consistent with the character of the Old Town and the specific neighborhood as stated in section 3.6 and 4.1 below:

4. INTENSIFICATION

4.1 General Intensification Policy

The Town supports intensification and infilling within appropriate areas throughout the Built-Up Area in accordance with Land Use Compatibility, urban design and other applicable land use compatibility criteria of this Plan. The Town also supports forms of infilling that use the existing built form, including garden suites and accessory dwelling units, where the proposed development and reuse is consistent with the land use compatibility of this Plan.

The strategy in Section 4.3 is to direct intensification to specific locations but allow development on other sites provided “in accordance with Land Use Compatibility, urban design and other applicable land use compatibility criteria of this Plan.” These criteria are repeated in the next section of the Plan.

4.3 Strategy

The majority of the Town's intensification will be encouraged in specific Intensification Areas, and with infilling in other locations in the Built-Up Area where the development is consistent with the land use compatibility, Urban Design and other applicable policies of this Plan and where development will not negatively impact designated heritage areas, heritage resources and estates lots. The Town also supports the intensification through providing for the potential for second dwelling units within a detached house, semi-detached house or townhouse located in an area where residential use is permitted provided the development is consistent with the applicable residential policies of this plan and meets requirements of the Ontario Building Code and Fire Code and provided that sufficient public services are available.

An objective in Section 4.4 repeats the policy to direct the majority of development to the Intensification Areas:

4.4 Intensification Objectives

Objectives

The objectives of the intensification policies of this Plan are to:

- a) Support the Built-up Areas by strategically directing the majority of intensification to Intensification Areas;*

The policies dealing with intensification outside of the Intensification Areas are quite specific. These policies require consistency with character of the area:

Built-Up Area Intensification Policies

The Town will support appropriate infilling and intensification within the limits of the Built-Up Area. The following policies apply:

- b) The predominant built form for intensification and redevelopment within the residential areas of the Built-up Area will be single detached, semi-detached and townhomes and low rise apartment buildings subject to the relevant development and compatibility policies of this plan.*
- h) The Town will ensure that intensification and redevelopment is consistent with the heritage and character of the Built-up Area. Urban design guidelines for the Built-up Area may be prepared and used as a tool to achieve compatible built form with intensification and redevelopment.*

The above policy is directed specifically at the designation that includes the subject lands. It refers to the need for consistency with the character of the larger Built-Up Area, which like the immediate neighborhood is composed primarily of detached dwellings of one or two storeys in height.

k) The Town will utilize maximum and minimum densities to ensure that intensification areas/sites are not underdeveloped. Minimum net density shall be 14 units per hectare (6 units per acre) and maximum density of 30 units per hectare (12 units per acre).

This policy (k) is a blanket and mandatory policy for the subject lands. The maximum density is 30 units per hectare, the proposal is 100 units per hectare. No explanation is given in the supporting material to justify waiving the maximum density. There is great detail of discussion of impacts and compatibility however the current Official Plan policy is a maximum density of one-third that proposed, and there is no anticipation in the Plan that this will be amended.

In a section on Urban Design the Plan sets out tests which include a requirement to be consistent with the Land Use Compatibility criteria and that the *“Bulk, mass and scale of new development shall fit the context within which it is located”*.

Urban Design

In addition, the Town will continue to prepare Urban Design Guidelines as part of the preparation of Secondary Plans. In the interim, the following urban design guidelines apply to intensification proposals in Virgil and the Old Town. (Development within the urban area boundary of St. Davids, Queenston and Glendale shall be in accordance with its approved Secondary Plan and urban design guidelines for these communities).

a) Infill and intensification sites should match the average pre-established building setback of adjacent buildings within the block face.

d) Bulk, mass and scale of new development shall fit the context within which it is located.

f) The design of infill and intensification development should be consistent with the Land Use Compatibility criteria of this Plan.

The Plan’s permissions for intensification are directly linked to meeting the tests of Section 4.6, Land Use Compatibility, which require both compatibility and consistency with the existing built form, density and height and massing of the neighborhood. The proposed four storey apartment does not meet any of these tests.

4.6 Land Use Compatibility Policies

Residential Neighbourhoods

Neighbourhoods are stable but not static. There is a degree of change that occurs within neighbourhoods over time and the policies of this provide that this change

will be appropriate and compatible within the Town's neighbourhoods and throughout the entire Built-Up Area.

Compatibility and Appropriate Infrastructure

Notwithstanding the requirements for a severance, site plan, plan of subdivision or plan of condominium, intensification development within the Built-up Area should be compatible with surrounding existing and planned land uses as shown in the Land Use Schedules of this Plan. Intensification and/or redevelopment should be consistent with:

- a) The existing and/or planned built form and heritage of the property and surrounding neighbourhood;*

The term consistent means, according to the Miriam Webster online dictionary:

“marked by harmony, regularity, or steady continuity : free from variation or contradiction”

There are no apartment buildings in the surrounding neighborhood. A four storey, high density apartment building is not consistent with this requirement.

- c) The existing and/or planned densities of the surrounding neighbourhood; and,*

The thirteen dwellings surrounding the proposal are on properties that total approximately 5 ha with a resulting density of 2.6 dwelling units per hectare. The proposed density of the apartment is 99 units per hectare. It is difficult to find an adjective that describes how inconsistent the proposed building is with the existing or planned densities.

- d) The existing and/or planned height and massing of buildings within the surrounding neighbourhood.*

The building is 18m in height. The existing zoning permits a height of 10m and most of the existing homes are less than 10m in height. The proposed height is not consistent with height of buildings in the neighborhood. The homes in the neighborhood are relatively small and on large well treed properties. The proposed building will tower over them with a mass that runs through the entire interior of the block with a significant overlook of all of the homes. The proposal is contrary to this policy.

- e) Development proposals will demonstrate compatibility and integration with surrounding land uses by ensuring that an effective transition in built form is provided between areas of different development densities and scale. Transition in built form will act as a buffer between the proposed development and existing uses and should be provided through appropriate height, massing, architectural design, siting, setbacks, parking, public and private open space and amenity space.*

All of the buildings in this block are one or two storeys in height. All of the buildings in the surrounding neighborhood are one or two storeys in height. There are some commercial uses on the opposite side of the Mary Street and Mississauga Street frontages. However there is no difference between the built form north, south, east or west of the property. The zoning by-law's maximum height for the residential uses is 10m and for the commercial uses 10.5 m.

There is no transition or buffer between anything. The proposed building would be the largest residential building in this part of the Old Town in a sea of one and two storey homes.

The Plan further confirms the importance of the built form policies by noting that they would take precedence over meeting any intensification targets.

Conflicts Between Built Form and the Target

In circumstances where a proposed development supports the Town's intensification target but does not support the compatibility policies of the Plan, the compatibility policies shall prevail.

Section 6.23 provides a general requirement to be met for any Official Plan amendment. The policy notes that if an amendment is requested the test is twofold - to determine the appropriateness of such a change and secondly, to identify ways of reducing any adverse impacts.

6.23 PLANNING IMPACT ANALYSIS

A Planning Impact Analysis is required as part of any application for an Official Plan and/or Zoning change. If the application is initiated by a development proposal then the proponent shall prepare and submit the required Planning Impact Analysis as part of the application. If the request to amend the Official Plan or Zoning By-law is initiated by the municipality then the Town through its resources shall prepare and submit the required Impact Analysis. The Impact Analysis is required to determine the appropriateness of the proposed change and to identify ways of reducing any adverse impact on surrounding land uses. It is understood and expected that the Planning Impact Analysis will address broader issues when development is proposed that requires an amendment to this Plan. In the same sense, a minor application will not be expected to provide the level of detailed analysis as would be required for significant developments. Town Council shall be the final arbiter in determining the level of analysis required.

The applicant has provided a detailed analysis of their planning opinion on potential impacts but has not addressed the Official Plan policies that deal with the nature of the existing Town, the anticipated forms of growth, the nature of that growth and the more general consistency with the character of the Old Town. Policy 6.23 specifically states:

“It is understood and expected that the Planning Impact Analysis will address broader issues when development is proposed that requires an amendment to this Plan.”

This has not been done. In planning terms the approach used in the planning justification report is referred to as the slice and dice approach, one in which the detail overwhelms and/or ignores the basic issues and principles relied upon to manage growth.

Section 9.4 below anticipates change in the form and density of new housing. This section limits medium density housing to 30 uph, which is a common and standard upper limit for medium density housing in Official Plans in Ontario.

9.4 General Residential Policies

(4) (RESIDENTIAL DENSITY)

The maximum number of dwelling units per acre is a function of the capacity to provide municipal services and the topography of the site. The visual impression of density is expressed in the mass and arrangement of the buildings on the site. In Niagara-on-the-Lake the visual impression is that of a low rise, low density small-town community. While that impression should be maintained it is possible to consider a variety of housing forms that will complement this image. Generally low density residential developments will not exceed 6 units per acre (14 units per hectare) residential net density and medium density residential developments will not exceed 12 units per acre (30 units per hectare) residential net density unless accompanied by a detailed site and area analysis demonstrating that there will be minimal impact on surrounding neighbourhoods and development and which will be subject to a public review process. The Council reserves the right to establish in an implementing zoning by-law the maximum number of units to be permitted on any property subject to the relevant policies of this Plan and applicable Provincial Policy.

Special care will be taken in the Old Town of Niagara and Established Residential designations to maintain the low-density character. Therefore new residential development in these areas consisting of more than two units will be accompanied by a detailed site and area analysis demonstrating that there will be minimal impact on surrounding neighbourhoods and development.

The Plan does contemplate allowing a density greater than 30 uph subject to an analysis demonstrating that *“there will be minimal impact on surrounding neighbourhoods and development.”* It should be noted that this is not an omnibus policy in the sense that this is the only test for a density greater than 30 uph.

Even within this section there is specific reference to the Old Town and the Established Residential designation (where the subject lands are located) noting that special care will be taken to maintain the low-density character. This policy specifically addresses the density of a proposal but does not exempt an application from meeting all of the Plan tests dealing with

neighborhood character, built form consistency, density consistency and building height and mass.

Placing a four storey apartment building at a density over three times the permitted maximum in the middle of block of thirteen single detached homes in a semi-rural setting does not conform with this policy. While the applicant's material deals with a wide variety of specific impacts it provides no justification for a building of this size or density.

The proposal does not conform with the general objectives, land use permissions, built form, density, character and justification policies of the existing NOTL Official Plan.

Niagara-on-the-Lake Adopted Official Plan (2019)

The adopted Plan sets out a comprehensive policy for dealing with intensification. The policies direct the majority of intensification areas to lands shown in Schedule B7, as the existing Official Plan does. In general terms the adopted Plan sets out policies that do not anticipate this form of development in the Old Town, in fact do not anticipate this level of density in any location in the Town of Niagara-on-the-Lake.

The proposal does not conform to the use policies, the compatibility policies, the intensification policies or the urban design policies. Rather than providing a commentary on the degree or nature of non-conformity I have quoted the relevant policies below and underlined those that, in my opinion, the proposal does not conform to.

It should be noted that the adopted Plan classifies development that is over 75 uph as high density and does not permit this level of density in the Old Town but only in Glendale and only subject to a secondary plan.

Areas of Non-Conformity

1. The proposal does not reflect the "existing built form".
2. The proposal is not "consistent with the character of the surrounding neighborhood".
3. The proposal in no way "respects and reflects the existing pattern and character of adjacent development".
4. The proposal does not "have heights, massing and scale appropriate for the site and generally consistent with that permitted by the zoning for adjacent properties and properties on the same street."
5. The proposal does not: "have a complementary relationship with existing buildings".
6. The proposal does not meet the requirement that "existing trees and vegetation shall be retained and enhanced through new street tree planting and additional on-site landscaping;".

7. The proposal does not meet the requirement: “that Intensification and/or redevelopment should be compatible with the property and the surrounding neighbourhood, having regard to:
b) Existing and/or planned densities;
e) Privacy;
h) The existing and/or planned height and massing of buildings.”
8. The proposal provides literally no transition when the Official Plan requires that: “Transition in built form will act as a buffer between the proposed development and existing uses and should be provided through appropriate height, massing, architectural design, siting, setbacks, parking, public and private open space and amenity space.”
9. This Plan requirement is not met: “ Height, mass and scale of new development will fit the context within which it is located;”.
11. The proposal does not meet this test: “The design of infill and intensification development will be consistent with the Land Use Compatibility criteria of this Plan.”
12. The building is 18m high and provides no justification for exceeding the height limit: “Generally, building heights in Old Town, St. Davids, and Queenston do not exceed ten (10) metres. This low-rise character will be maintained, and the implementing zoning by-law will limit building height accordingly.”
13. The Plan does not permit medium-rise structures except in a Secondary Plan area, which is not the case: Low-rise structures are the predominant built form throughout the residential areas. Medium-rise structures (e.g. multi-floor apartment buildings) may be recognized in specific locations within specific secondary plans, and subject to a zoning by-law amendment. Low-rise structures are generally one (1) or two (2) storeys in height. Medium-rise structures are generally three (3) or four (4) storeys in height, may not require elevators for access to units, and are subject to the restrictions on building height in Section 4.8.2.
14. Development greater than 75 units per hectare is not permitted in any location except Glendale and subject to the preparation of a secondary plan. There is no secondary plan in the Old town and the proposal is at 99 uph: “High density development, over 75 units per hectare and high-rise structures of five or more storeys in height maybe permitted in Glendale, following completion of a new secondary plan for Glendale. The secondary plan will identify locational and site criteria for potential high density and high rise development.”
15. The proposal is completely out of scale and character with the surrounding residential area: “Any construction of additions or new structures within residential areas will complement existing adjacent development in terms of its scale, character, height, design and mass.”

17. The proposal is out of scale and character despite the consistent and repeated mandatory policies to the contrary: “The existing character of the Established Residential areas shall be maintained.”

17. While a report has been filed addressing the matters required by the Plan the substance of the Report is incorrect, incomplete and flawed. In short it does not ensure the character of the area is maintained:

“b) Until a Secondary plan is approved, within the Established Residential designation new medium-rise development shall only be considered by amendment to this Plan. Any amendment application for medium density development in this area will be accompanied with a detailed visual analysis, planning justification report, traffic study and a heritage impact assessment, if required. In addition, any application must be accompanied by a report by a qualified professional which addresses the adjacent streetscape and character of the existing residential development in the area, to ensure that the character of the area is maintained.”

18. The proposal does not respect and reinforce the character of the neighborhood in any way :

e) Development will respect and reinforce the existing physical character of the neighbourhood, including in particular:

This policy again requires similarity of character which is not achieved:

iii. Heights, massing, scale and dwelling type of nearby residential properties;
iv. Prevailing building type(s).

19. The low profile character of the area is not maintained:

f) Special care will be taken to maintain the low profile character of the area.

The specific policies referred to are provided in Appendix B.

It should be noted that both the Region of Niagara Official Plan and the Town’s adopted Plan anticipate further work to define additional areas for intensification together with a phasing plan. The policy reads as follows:

4.6.2 Following completion of the Regional Municipal Comprehensive Review, this Plan will be amended to provide more specific phasing policies, as needed and based on the direction from the review.

6.0 ALTERNATIVE DEVELOPMENT

It may be that a more gentle form of intensification on the site with a smaller and lower building, at a density more in character with the neighborhood would be appropriate on this

site. This determination should be made as part of the Official Plan update to be undertaken by the Town to implement the Regional Plan.

A handwritten signature in dark ink, appearing to be 'R. Lehman', written over a light grey rectangular background.

Robert Lehman, F.C.I.P.
February 8, 2023

Appendix A

Provincial Policy Statement and Growth Plan

The Provincial Policy Statement 2020 (PPS) provides a relatively prescriptive direction to municipalities on how to plan for intensification. The proposal at 223-227 Mary Street (the Proposal) is considered as intensification by the PPS as it is the redevelopment to a higher density of an existing property in a developed area. The PPS definition is as follows:

Residential intensification: means intensification of a property, site or area which results in a net increase in residential units or accommodation and includes:

- a) redevelopment, including the redevelopment of brownfield sites;
- b) the development of vacant or underutilized lots within previously developed areas;
- c) infill development;
- d) development and introduction of new housing options within previously developed areas;
- e) the conversion or expansion of existing industrial, commercial and institutional buildings for residential use; and
- f) the conversion or expansion of existing residential buildings to create new residential units or accommodation, including accessory apartments, additional residential units, rooming houses, and other housing options.

Section 1.1.2 of the PPS establishes the requirement to make available land for intensification using a planning horizon to 2050:

1.1.2 Sufficient land shall be made available to accommodate an appropriate range and mix of land uses to meet projected needs for a time horizon of up to 25 years, informed by provincial guidelines. However, where an alternate time period has been established for specific areas of the Province as a result of a provincial planning exercise or a provincial plan, that time frame may be used for municipalities within the area.

Within settlement areas, sufficient land shall be made available through intensification and redevelopment and, if necessary, designated growth areas.

Section 1.1.3.2 and 1.1.3.3 direct municipalities to identify in their Official Plans where intensification and redevelopment is to occur. These Sections state:

“1.1.3.2 Land use patterns within settlement areas shall also be based on a range of uses and opportunities for intensification and redevelopment in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.

“1.1.3.3 Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

It should be noted that the existing NOTL Official Plan is consistent with the PPS. It sets out specific areas for intensification on Schedule I-1 and has policies that deal with the form and location of intensification. In the context of Provincial policies there has been a recent change from a 2041 growth horizon to a 2051 target year. This is reflected in the Niagara Region Official Plan and requires the Town to undertake further studies in a number of areas, including the determination of whether additional lands are needed to provide the capacity for the 2051 intensification target.

The PPS policy 1.2.4 directs the Region of Niagara, as an upper-tier municipality, to identify the targets for intensification within the lower tier municipalities, which would include Niagara-on-the-Lake:

“1.2.4 Where planning is conducted by an upper-tier municipality, the upper-tier municipality in consultation with lower-tier municipalities shall:

- a) identify, coordinate and allocate population, housing and employment projections for lower-tier municipalities. Allocations and projections by upper-tier municipalities shall be based on and reflect provincial plans where these exist;*
- b) identify areas where growth or development will be directed including the identification of nodes and the corridors linking these nodes;*
- c) identify targets for intensification and redevelopment within all or any of the lower-tier municipalities, including minimum targets that should be met before expansion of the boundaries of settlement areas is permitted in accordance with policy 1.1.3.91.1.3.8;”*

The Growth Plan 2020

The policies of the Growth Plan establish the amount of intensification required. The Growth Plan is the provincial plan referenced in Section 1.1.3.5 of the PPS which reads as follows:

“1.1.3.5 Planning authorities shall establish and implement minimum targets for intensification and redevelopment within built-up areas, based on local conditions. However, where provincial targets are established through provincial plans, the provincial target shall represent the minimum target for affected areas.”

The Growth Plan, in Section 2.2.3 sets out a 40% minimum target for intensification as follows:

2.2.2 Delineated Built-up Areas

1. *By the time the next municipal comprehensive review is approved and in effect, and for each year thereafter, the applicable minimum intensification target is as follows:*

a) A minimum of 50 per cent of all residential development occurring annually within each of the Cities of Barrie, Brantford, Guelph, Hamilton, Orillia and Peterborough and the Regions of Durham, Halton, Niagara, Peel, Waterloo and York will be within the delineated built-up area; and

5.2.5 Targets

6. *In planning to achieve the minimum intensification and density targets in this Plan, municipalities will develop and implement urban design and site design official plan policies and other supporting documents that direct the development of a high quality public realm and compact built form.*

To summarize, Provincial policies require the Region of Niagara to set targets for each municipality in the Region for the total amount of residential growth and the proportion of that growth that is to occur through intensification. Using these targets each municipality must establish where the growth through intensification should occur. Municipalities are also required to establish official plan policies directing the form and nature of the intensification. These targets can vary by municipality provided the overall 50% intensification target is met.

Appendix B
Relevant Planning Policies in the Adopted Official Plan

Underlining indicates policies with requirements that are not met by the application.

2.4.2 Growth Strategy Objectives

2.4.2.1 The objectives of the Town's growth strategy are to:

d) direct appropriate intensification to Designated Intensification Areas;

4.5 Intensification Strategy

4.5.1 Intensification and infilling within appropriate areas throughout the Built-Up Area will be supported in accordance with Community Design and other applicable land use compatibility criteria of this Plan. The Town supports forms of infilling that use the existing built form, including garden suites and second dwelling units, where the proposed development is consistent with the policies of this Plan.

4.5.2 Objectives

4.5.2.1 The objectives of the intensification policies of this Plan are to:

a) Support the Built-up Areas by strategically directing most intensification to Intensification Areas identified on Schedule B7;

f) Ensure that intensification and infilling are consistent with the character of the surrounding neighbourhood.

4.5.3 Policies

4.5.3.2 The predominant built form for intensification and redevelopment within the residential areas of the Built-up Area will be single- detached, semi-detached, townhouses, and low-rise apartment buildings subject to the relevant development and compatibility policies of this Plan.

4.5.3.7 Intensification areas will be developed at a higher density than surrounding areas, subject to other applicable policies of this Plan related to cultural heritage resources, the character of the area and appropriate design standards.

4.5.3.10 In considering an application for development approval on lands in the Established Residential and Residential designations, or on properties not currently zoned for high density residential development, Council shall ensure infill and intensification development and redevelopment respects and reflects the existing pattern and character of adjacent development, by adhering to the development criteria outlined below, unless otherwise specified in a Heritage Conservation District Plan:

- a) *the lot frontage(s) and lot area(s) of the proposed new lot(s) shall be consistent with the sizes of existing lots on both sides of the street on which the property is located;*
- b) *the proposed new building(s) shall have heights, massing and scale appropriate for the site and generally consistent with that permitted by the zoning for adjacent properties and properties on the same street;*
- e) *the new building(s) shall have a complementary relationship with existing buildings, while accommodating a diversity of building styles, materials and colours;*
- f) *existing trees and vegetation shall be retained and enhanced through new street tree planting and additional on-site landscaping;*

4.7.2 Compatibility

4.7.2.1. *Intensification within the Built-up Areas should be compatible with surrounding existing and planned land uses. Intensification and/or redevelopment should be compatible with the property and the surrounding neighbourhood, having regard to:*

- b) Existing and/or planned densities;*
- e) Privacy;*
- h) The existing and/or planned height and massing of buildings.*

4.7.2.2. *Development proposals shall demonstrate compatibility and integration with surrounding land uses by ensuring that an effective transition in built form is provided between areas of different development densities and scale. Transition in built form will act as a buffer between the proposed development and existing uses and should be provided through appropriate height, massing, architectural design, siting, setbacks, parking, public and private open space and amenity space.*

4.7.3 Conflicts between Built Form and Intensification

4.7.3.1. *In circumstances where a proposed development satisfies the Town's intensification target but does not support the compatibility policies of the Plan, the compatibility policies shall prevail.*

4.8 Community Design

4.8.1 Design Policies

4.8.1.9. *In addition to meeting other design related policies of this Plan, the following design guidelines apply to intensification proposals in **Virgil and Old Town** until more detailed Community Design Guidelines are approved by the Town:*

d) Height, mass and scale of new development will fit the context within which it is located;

f) The design of infill and intensification development will be consistent with the Land Use Compatibility criteria of this Plan.

4.8.2 Building Height Restrictions

4.8.2.1 With the exception of **Glendale**, the Town consists of low-rise structures in a small town setting with a large number of cultural heritage resources. Generally, building heights in **Old Town**, **St. Davids**, and **Queenston** do not exceed ten (10) metres. This low-rise character will be maintained, and the implementing zoning by-law will limit building height accordingly. Special provisions may be included in the zoning by-law limiting the building height to less than ten (10) metres in residential areas where the majority of the buildings are 1 or 1.5 storeys in height. The lands identified in special policies S4-17 may have increased building heights, as identified in S4-17.

4.10. Residential Areas

4.10.3 Policies

4.10.3.1 Low-rise structures are the predominant built form throughout the residential areas. Medium-rise structures (e.g. multi-floor apartment buildings) may be recognized in specific locations within specific secondary plans, and subject to a zoning by-law amendment. Low-rise structures are generally one (1) or two (2) storeys in height. Medium-rise structures are generally three (3) or four (4) storeys in height, may not require elevators for access to units, and are subject to the restrictions on building height in Section 4.8.2.

4.10.3.3 High density development, over 75 units per hectare and high-rise structures of five or more storeys in height maybe permitted in Glendale, following completion of a new secondary plan for Glendale. The secondary plan will identify locational and site criteria for potential high density and high rise development.

4.10.3.4 Any construction of additions or new structures within residential areas will complement existing adjacent development in terms of its scale, character, height, design and mass.

4.10.4 Established Residential Designation

4.10.4.1 Character:

a) *The Established Residential areas represent older, stable neighbourhoods. These neighbourhoods can include cultural heritage resources that must be conserved. The existing character of the Established Residential areas shall be maintained.*

4.10.4.2 Permitted Uses:

b) *Until a Secondary plan is approved, within the Established Residential designation new medium-rise development shall only be considered by amendment to this Plan. Any amendment application for medium density development in this area will be accompanied with a detailed visual analysis, planning justification report, traffic study and a heritage impact assessment, if required. In addition, any application must be accompanied by a report by a qualified professional which addresses the adjacent streetscape and character of the existing residential development in the area, to ensure that the character of the area is maintained.*

e) *Development will respect and reinforce the existing physical character of the neighbourhood, including in particular:*

- i. *Patterns of streets, blocks and lanes, parks and public building sites;*
- ii. *Size and configuration of lots;*
- iii. *Heights, massing, scale and dwelling type of nearby residential properties;*
- iv. *Prevailing building type(s);*
- v. *Setbacks of buildings from the street or streets;*
- vi. *Prevailing patterns of rear and side yard setbacks and landscaped open space;*
- vii. *Continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and*
- viii. *Conservation of cultural heritage resources.*

f) *Special care will be taken to maintain the low profile character of the area. New residential development in these areas consisting of more than two units shall be accompanied by a detailed site and area analysis demonstrating there will be minimal impact on surrounding neighbourhoods and development.*